



**REQUEST FOR PROPOSAL  
RFP NO: PAG-020-002**

**CONSTRUCTION MANAGEMENT SERVICES for the  
Rehabilitation of H-Wharf and Highway 11 Roadway  
Reconstruction**

**Port Authority of Guam  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925**

**RORY J. RESPICIO  
General Manager**

**March 2020**

**PORT OF GUAM**

ATURIDAT I PUETTON GUAHAN

Jose D. Leon Guerrero Commercial Port

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Website: [www.portguam.com](http://www.portguam.com)

Lourdes A. Leon Guerrero

Governor of Guam

Joshua F. Tenorio

Lieutenant Governor

**Request for Proposal No. RFP-PAG-020-002****Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction**

The Port Authority of Guam (PAG), a public corporation and an autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified firm or professional individuals, or companies (Offerors) to provide Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction.

Request for Proposal (RFP) packages may be obtained at the PAG Procurement and Supply Division Office located on the 2<sup>nd</sup> floor of the PAG Administration Building, from Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m., or may be downloaded via Port Authority of Guam website at [www.portguam.com](http://www.portguam.com).

**A Pre-Proposal Conference is scheduled to take place on Tuesday, March 17, 2020 at 10:00 am (Chamorro Standard Time).** Conference will be held in the former Board of Directors Conference room. **A tentative site visit is scheduled (and will be discussed at pre-proposal conference) tentatively for the same day immediately after pre-proposal meeting.** All Offerors are encouraged to attend.

**Deadline for Request for Inquiries (RFI), is on or before 4:00 p.m., Friday, March 20, 2020 (Chamorro Standard Time/Guam Time).** All Offerors are encouraged to submit any questions, concerns, or inquiries.

**Deadline for submission of all proposals is 4:00 pm, Friday, April 3, 2020 (Chamorro Standard Time/Guam Time).** All proposals must be submitted to the attention of the PAG General Manager.

PAG shall have the right to reject, in whole or in part, proposals or offers which have been submitted in response to this RFP, and/or cancel this RFP if it is determined to be in the best interest of the PAG and/or for whatever reason allowed by law and/or regulation. This right to reject and/or cancel is pursuant to GSA Procurement Regulation 3115 (d)(2)(A).

For additional information, contact Mr. Steven P. Muna, Contract Management Administrator at (671) 477-5931/35 ext. 269 or email at: [spmuna@portguam.com](mailto:spmuna@portguam.com)

  
**RORY J. RESPICIO**  
General Manager

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**PORT AUTHORITY OF GUAM (PAG)**

**Request for Proposal: RFP NO. PAG-020-002**

**CONSTRUCTION MANAGEMENT SERVICES for the Rehabilitation of  
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## **REQUEST FOR PROPOSAL (RFP)**

**RFP No: PAG-020-002**

### **CONSTRUCTION MANAGMENT SERVICES** **for the Rehabilitation of H-Wharf and Highway 11 and Roadway Reconstruction**

#### **BASIC INFORMATION**

##### **I. BACKGROUND OVERVIEW:**

The Jose D. Leon Guerrero Commercial Port ("Port") is a public corporation and autonomous instrumentality of the Government of Guam, soliciting proposals from qualified and interested Professional Firm(s) to provide services to include, but not limited to Construction Management Services for the Rehabilitation of H-Wharf & Hwy 11 Roadway Reconstruction.

##### **II. INTRODUCTION**

- A. The Jose D. Leon Guerrero Commercial Port ("Port") will require Offeror(s) who may be supported by a sub-consultant to be ultimately responsible for services provided as part of the Proposal of Offeror(s).
- B. The Port will use procedures prescribed by the Guam Procurement Act, 5 GCA §5001-5805, and DEPARTMENT OF ADMINISTRATION General Services Administration Procurement Regulations to establish a contract. The website to review the Guam Procurement Act is [www.guamcourts.org/CompilerofLaws/GCA/Title5.html](http://www.guamcourts.org/CompilerofLaws/GCA/Title5.html) and Guam Procurement Regulations is [www.guamcourts.org/CompilerofLaws/GAR/02gar.html](http://www.guamcourts.org/CompilerofLaws/GAR/02gar.html).
- C. Offerors are expected to have and shall have sole responsibility for working knowledge of these laws and regulations.
- D. Issuing Office: This Request for Proposals (RFP) is issued by the Port. No oral explanations in regard to the meaning of the RFP will be made and no oral instructions will be given before award of a contract to the selected Offeror. All proposals and any inquiries of prospective Offerors regarding this RFP must be in writing and must be to the attention of:

Mr. Rory J. Respicio  
General Manager  
Port Authority of Guam  
Jose D. Leon Guerrero Commercial Port  
1026 Cabras Hwy, Ste. 201  
Piti, Guam 96925  
Email: [rjrespicio@portguam.com](mailto:rjrespicio@portguam.com)

**Attn:** Mr. Steven P. Muna  
Contract Management Administrator  
Procurement Division  
Jose D. Leon Guerrero Commercial Port  
Tel: (671) 477-5391/5 Ext. 302 or 269  
Email: [spmuna@portguam.com](mailto:spmuna@portguam.com)

**Address:** Jose D. Leon Guerrero Commercial Port  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925  
Tel: (671) 477-5931/5 Ext. 302 or 269  
Fax: (671) 477-4445 or 472-1439

*Except to the above person named, direct or indirect contact with Port Management, Staff, Board Members or any person participating in the selection process is prohibited.*



**III. DESCRIPTION OF THE WORK:**

A Scope of Work, describing the work to be performed is detailed in **Attachment No. 1**. Upon final selection of the best qualified Offeror, the Scope of Work may be modified and refined during fee negotiations.

**IV. TIME AND DURATION OF THE WORK INVOLVED:**

- A. The successful Offeror or Consultant shall commence work upon issuance of Notice to Proceed.
- B. All work required for the Scope of Services/Work shall be completed within the initial two (2) year term. The Port will have three (3) additional one-year options to extend for periods of one (1) additional year. Provided this contract does not exceed a total of five (5) years. The renewal of this agreement will be at the sole discretion of the Port.

**V. TYPE OF CONTRACT:**

A Service Agreement will be consummated between the Offeror and the Port. A sample agreement is attached herein as **Attachment No. 2**, for reference. The Port reserves the right to modify the sample Agreement during the proposal period or negotiation period. The Offeror(s) selected must be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

**VI. SUBMISSION DEADLINE AND REQUIREMENTS:**

All proposals in response to this RFP solicitation shall be in writing must be time-stamped and received at the Procurement and Supply Division, located at the 2<sup>nd</sup> floor of the Port Authority of Guam (PAG) Administration Building, and shall be to the attention of the General Manager, **no later than 4:00 p.m. on Friday, April 3, 2020 Chamorro Standard Time (Guam Time)**. No proposals shall be received after such date and time. Additionally, proposals transmitted via facsimile or email will not be accepted.

Offeror(s) must provide one (1) original, five (5) complete sets and one (1) CD or USB containing electronic file copy in PDF format. All items should be sealed in one package bearing on the outside name of the Offeror, address, and the name of the project for which the proposal is submitted and shall be submitted no later than the deadline.

**VII. REQUEST FOR INFORMATION DEADLINE:**

All Request for Information (RFI) (inquiries, clarifications, or questions) must be submitted **no later than 4:00 p.m., Friday, March 20, 2020 Chamorro Standard Time (Guam Time)**. RFI shall reference the RFP number, project title and must be addressed to Mr. Rory J. Respicio, General Manager, Port Authority of Guam, attention Steven P. Muna, Contract Management Administrator at [spmuna@portguam.com](mailto:spmuna@portguam.com).

**VIII. LATE PROPOSALS:**

Proposals submitted after the above submission deadline will **NOT** be accepted.

**IX. OPENING OF PROPOSALS:**

Proposals and modifications shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of two or more procurement officials or designees of the Port. A register of Proposals shall be established which shall include all proposals, the name of each Offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The register of Proposals shall be opened for public inspection only after the contract has been awarded. Proposals of Offerors who are not awarded the contract shall not be opened for public inspection.

**X. BUSINESS LICENSE:**

Firm/Offeror(s) must be fully licensed to do business in Guam prior to the execution of any contract resulting from this RFP. Firm/Offeror(s) and Sub-Consultants must also be registered with the Guam PEALS Board, and authorized to practice engineering on Guam.

**XI. TRADE SECRETS AND PROPRIETARY DATA:**

Offerors may designate those portions of their proposal that contain trade secrets or proprietary data, which are to remain confidential. The Port will examine any such request to designate portions of proposals as trade secrets or proprietary data as confidential and determine the validity of such request prior to entering into negotiations with prospective Offeror.

**XII. CONTENTS OF THE PROPOSAL:**

The Proposal, at the minimum, must contain the following:

**A. Transmittal Letter:**

1. A transmittal letter, prepared on the Offeror's business stationary, is to accompany the original and required copies of the Submission.
2. The purpose of this letter is to transmit the Proposal and should be brief.
3. The letter must be signed by an individual who is authorized to bind the Offeror to all statements contained in the submission.
4. The transmittal letter must make reference to the RFP number and A/E Engineering Services that Offeror is responding to.

**B. Statement of Qualifications:**

The proposal should demonstrate the ability of the Offeror to perform and provide the services enumerated in the Preliminary Scope of Work attached herein as Attachment No. 1. The Statement of Qualifications must be current, accurate, and complete; thus, shall include the following:

1. The name of the Offeror, the location of Offeror's principal place of business and, if different, the place of performance of the proposed services, the age of the Offeror's business, the average number of employees over the past five (5) year; and the current workload of the Offeror.
2. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform the services contained in Attachment No. 1.
3. A list of all contracts under which services similar in scope, size and discipline for the required services, which the Offeror has substantially performed or accomplished as the Prime and/or Principal Firm over the past five (5) years, including client names, addresses, phone numbers and point of contacts. A listing and description of other contracts under which services similar in scope, were performed or undertaken within the past five (5) years.

The information is required for the Offeror and each subcontractor, if any, but information on the Prime Offeror and subcontractor(s) should be presented separately. The purpose of this requirement is to provide the Port with a basis for determining the Offeror's and subcontractors financial and

technical capability for undertaking this project. The Port is not interested in a voluminous description of all prior contracts undertaken, but rather a concise, thorough description of experience relevant to this project.

4. A detailed plan specifying how the scope of work/services will be accomplished to include time and personnel resources.
5. A plan giving as much detail as is practical explaining how the services will be provided, including but not limited to, tasks or activities, deliverables, timeline, etc.
6. A statement that the Offeror has established and implemented an Affirmative Action Plan.
7. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
8. A statement of agreement with the Port's General Terms and Conditions and the Special General Provisions, which are made part of this RFP documents.
9. Statement of qualification on U.S. Government standard form SF 330 Architect, Engineer Qualification Part I and Part II, effective June 8, 2004.
10. All items submitted in response to the RFP become the property of the Port and none will be returned.

### **XIII. SELECTION OF BEST QUALIFIED PROPOSER AND PROPOSAL:**

- A. **Evaluation and Ranking:** After receipt of all proposals, the Evaluation Committee established by the General Manager, will conduct an independent evaluation of all proposals received under this solicitation. Each proposal shall be evaluated according to the criteria as reflected herein and shall be ranked accordingly. The ranking of the proposals will be based on the total points awarded to the proposals by each Evaluation Committee member.

**Offerors may be required to be interviewed or hold discussions with the Evaluation Committee to clarify certain items from the submitted proposal. These discussions, if any, will be in accordance with the Guam Procurement Laws.**

In the event of a tie between two or more evaluation scores, Offerors shall be invited to appear before the evaluation committee for further interviews for the purpose breaking this tie.

- B. **Selection:** The selection of the best qualified responsible, responsive Offeror shall be the highest rank Offeror. A "Short Listing" will be established based on the ranking results of the evaluation process. The PAG reserves the right to short-list to a maximum of three (3) qualified Offerors.

The highest ranked Offeror will be selected to enter into negotiations with the Port. If an agreement can be reached as reasonable fees, a contract will then be prepared for signatures by both parties. The signature of the Port's General Manager or his designated representative is the only signature that will bind the Port.

If the Port is unable to negotiate a contract with the highest ranked Offeror, the General Manager or designee, may re-solicit for offers or enter into negotiations with the next highest ranked Offeror based on the established short list.

#### **XIV. EVALUATION CRITERIA:**

Each proposal shall be evaluated on the following evaluation factors using a scale of one (1) to one hundred (100). The following factors and their relative importance that will be used in the evaluation of the proposals are:

- A. A detailed plan with how the scope of work/services will be accomplished to include time and personnel resources, and schedule of activities to include begin/end dates. **(30 points)**
- B. The ability of the Firm/Offeror(s) to perform the requisite services as reflected by technical training and education, general professional experience, specific experience in providing the services, and the qualifications and abilities of personnel proposed to be assigned to perform the services, which professional qualification and experience in this type of work or services, includes but is not limited to:
  - i. Knowledge of and experience with developing and reviewing design/drawings/specifications for Wharfs, Docks, Piers or of projects similar in nature. **(10 points)**
  - ii. Knowledge of and experience with environmental issues, impact studies, federal & local permits requirements and environmental protection plans in line with the water/ocean front projects, coral restoration, re-habilitation and re-construction of Wharfs, Docks, Piers or of projects similar in nature. **(10 points)**
  - iii. Knowledge of and experience with Design Replacement of Mooring Bollards, Cleats, and all other appurtenances pertaining to Wharf, Docks, Piers or of projects similar in nature. **(10 points)**
- C. The Firm/Offeror(s) record of past performances related to the scope of services detailed in the RFP. **(20 points)**
- D. The Firm/Offeror(s) personnel in different engineering and technical fields related to and required for performance of the scope of work and relevant equipment and facilities that are currently available or demonstrated to be available at the time of contracting. **(20 points)**

During the technical evaluation phase, the Committee reserves the right to hold discussions with the Offerors in order to obtain clarification of pertinent items in their proposal. These discussions, if any, will be in accordance with Guam Procurement Laws and General Services Agency Procurement Regulations.

The General Manager will review the recommendation of the Evaluation Committee and shall, in concert with appropriate technical staff representatives, make the final selection.

#### **XV. FEE PROPOSALS:**

Offerors shall not submit any cost or pricing data with their proposal. Fee proposal will be solicited by the Port upon selection of the highest ranked proposal and be submitted at a time and in a format as determined by the Port.

#### **XVI. REQUIRED FORMS:**

Offerors must submit all forms required in this solicitation. Failure to submit any of the required forms may result in disqualification and rejection of the Offeror's proposal. The following required forms to accompany the Offeror's proposals are included and made part of this RFP:



1. *Special Reminder to Prospective Offerors:* This form is the checklist of the required forms to be submitted accompanying the proposals. By completion and submittal of this form, the Offeror acknowledges and understand its intent and implications. Offerors are held responsible for ensuring that all documents required in this RFP, which may not appear on the checklist, are submitted with their proposal.
2. *Affidavit Disclosing Ownership and Commissions:* Guam Law requires that any partnership, sole proprietorship, or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, or corporation at any time during the twelve (12) month period immediately preceding submission of the Proposal.

The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) months period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the work described in this RFP for the Offeror and shall contain the amounts of such commission, gratuity, or other compensation. The affidavit shall be opened and available to the public for inspection and copying. **AG-Form 2**

3. Affidavit re Non-Collusion, **AG. Form 3**
4. Affidavit re No Gratuities or Kickbacks, **AG. Form 4**
5. Affidavit re Ethical Standards, **AG. Form 5**
6. Declaration re Compliance with U.S. DOL Wage Determination, **AG. Form 6**
7. Affidavit re Contingent Fees, **AG. Form 7**
8. Restriction against Sex Offenders Employed by Service Providers of Government of Guam from Working on Government Property

**\*\*\* END OF BASIC INFORMATION \*\*\***

## **GENERAL TERMS AND CONDITIONS**

### **1. AUTHORITY:**

This Request for Proposal (RFP) solicitation is issued subject to all the provisions of the Guam Procurement Act (Public Law 16-124) and the Guam Procurement Regulations (copies are available for inspection from the following website:

- [www.guamcourts.org/CompilerofLaws/GCA/Title.html](http://www.guamcourts.org/CompilerofLaws/GCA/Title.html)
- [www.guamcourts.org/CompilerofLaws/GAR/1@gar.html](mailto:www.guamcourts.org/CompilerofLaws/GAR/1@gar.html)

The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

### **2. EXPLANATION TO OFFERORS:**

No oral explanation in regard to the meaning of the specification will be made and no oral instructions will be given before the award of the proposal. Discrepancies, omissions, or doubts to the meaning of the specifications should be communicated in writing to the named contact individual of the requesting agency/department for interpretation. Offerors should act promptly and allow sufficient time for a reply to reach them before submission of their proposals. Interpretation, if required, shall be made in the form of an amendment or addendum to the RFP which will be forwarded to all prospective Offeror and its receipt by the Offerors should be acknowledged on the proposal form.

### **3. METHOD OF AWARD:**

The PAG reserves the right to waive any minor informality or irregularity in proposals received. The PAG shall have the prerogative to award, amend, or reject proposals in whole or in part. It is the policy of the PAG to award contracts to selected Offerors duly authorized and licensed to conduct business in Guam.

### **4. REJECTION:**

The PAG shall have the prerogative to reject proposals in whole or in part for if a determination is made that such action is in the best interest of the PAG.

### **5. TAXES:**

Offerors are cautioned that they are subject to Guam Income Taxes as well as other taxes on Guam transactions. Specific information on taxes may be obtained from the Department of Revenue and Taxation.

### **6. LICENSING:**

Offerors are cautioned that PAG will not consider for award any offer submitted by a proposer who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Department of Revenue and Taxation.

### **7. COVENANT AGAINST CONTINGENT FEES:**

The Offeror warrants that he has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the PAG the right to terminate the contractor, or in its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contract or sales secure or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

**8. JUSTIFICATION OF DELAY:**

The Offeror who is awarded the proposal guarantees that the service will be completed within the agreed upon completion date. If, however, the Offeror cannot comply with the completion requirement, it is the Offeror's responsibility to advise the PAG in writing explaining the cause and reason of the delay.

**9. EQUAL EMPLOYMENT OPPORTUNITY:**

In compliance with the 14<sup>th</sup> Amendment to the Constitution, Section 5 (Bill of Rights) and 9(a) (Merit System), and federal laws; Title VI and VII of the Civil Rights Act; the Civil Rights Act of 1991; Title I of the American Disabilities Act; the Equal Pay Act; the Age Discrimination in Employment Act; Section 504 of the Vocational Rehabilitation Act; Title IX of the Education Amendments of 1972; other pertinent federal laws and Guam laws; Title 4 of the Guam Code Annotated; Title 17, Chapter 2 of the Guam Code Annotated; Public law 14-28, Section 5; Public Law 15-17; Public Law 28-68; Public law 28-112 and other pertinent laws, it is the intent of the Government of Guam, hereinafter the Government:

- A. To provide equal employment opportunity for all applicants and employees to compete and be considered for jobs on the basis of merit and ability to perform, and to prohibit discrimination in any aspect, term, condition or privilege of employment on the basis of race, religion, color, sex, including sexual harassment and orientation, national origin, age, physical or mental disability, marital status, or political affiliation and retaliation. \*Such discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration is prohibited.
  - *Except where specific factors legally constitute a bona fide occupational qualification or in the case of specifically funded programs to facilitate employment of disadvantaged persons, but only with the prior approval of the Equal Opportunity Administrator.*
- B. To carry out all government programs and activities in compliance with applicable Federal and Territorial laws and in such a manner that no person shall, on a basis of race, religion, color, sex, including sexual harassment and orientation, national origin, age, physical or mental disability, marital status, or political affiliation and retaliation be excluded from participation in, be denied the benefits of, or be subjected to discrimination with respect to any program or activities.

**10. ASSIGNMENT:**

Assignment will not be accepted without prior approval from PAG. Request for approval of assignment must be made with submission of proposal. No assignment will be accepted if request is not made with the proposal.

**11. DETERMINATION OF RESPONSIBILITY OF PROPOSER:**

The PAG reserves the right for securing from Offerors information necessary to determine whether or not they are responsible and to determine the responsibility in accordance with Section 3116(2) of the Guam Procurement Regulations.

**\*\*\* END OF GENERAL TERMS AND CONDITIONS \*\*\***

## **SPECIAL GENERAL PROVISION**

### **1. PROPOSALS:**

The Offeror is required to read each and every page of the RFP document and by the act of submitting a proposal shall be deemed to have accepted all conditions contained therein. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a proposal after opening. Proposals shall be filled out and signed in ink or typewritten. Erasures or omissions other changes in a proposal must be explained or noted over by the signature of the Offeror. Proposals containing any conditions, omissions, unexplained erasures or alterations or items not called for in the Proposal, or irregularities of any kind shall be rejected by the PAG as being incomplete.

### **2. GENERAL INTENTION:**

Unless otherwise specified. It is the declared and acknowledged intention and meaning of these Special General Provisions and General Terms and Conditions for the Offeror to provide the PAG with specified services.

### **3. AUTHORIZED REPRESENTATIVE AND CONTACT FOR CONTRACT ADMINISTRATION:**

All proposals submitted in response to this RFP shall be signed by an individual authorized to bind the Offeror to all statements, information and the services contained in the proposal. The Offeror is required to include in the proposal a written authorization designating a representative for the purpose of negotiating and executing a contract pursuant to this RFP and allowing such representative to negotiate on behalf of the Offeror. The authorization shall include:

- a. Name of Authorized Person
- b. Title of the Authorized Person
- c. Contact Numbers: Office, Fax, Mobile Phone
- d. E-mail address, if any.

### **4. DISCUSSIONS:**

The PAG may conduct discussions with all qualified Offerors who are prepared to discuss their proposals for the purpose of clarifying questions regarding the Proposal content and to afford Offerors an opportunity to further explain or clarify Proposal details. All qualified Offerors will be provided full and equal treatment with respect to any opportunity for discussion. During discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

Offerors will be afforded an opportunity to clarify and revise their proposals prior to the conclusion of discussions and prior to final ranking by the Evaluation committee. There will be no official call for best and final proposals. The submission of revisions pursuant to discussions will be optional and at the sole discretion of individual Offerors. All discussions with the Offeror will be recorded and preserved for the procurement record.

### **5. PAYMENT:**

Payment shall be made using a method mutually agreed upon by the PAG and the successful Offeror.

### **6. RECEIPT AND HANDLING OF PROPOSALS:**

Envelopes containing proposals shall be sealed and marked on the outside with the name and address of

the Offeror, the description of the services being solicited and the time and date of submission. Telegraphic proposals will not be considered, nor will modification by telegraph of proposals already submitted not be considered. Proposals shall be mailed or hand carried so as to be received on or before the submission deadline as indicated in the RFP document. All Proposals received, hand delivered or through the mail, after the established submission date and time will not be accepted and shall be deemed "late proposals".

Proposals and modifications shall not be opened publically nor disclosed to unauthorized person, but shall be opened in the presence of two or more procurement officials or designees of the PAG. A Register shall be established which shall include all proposals, the name of each Offeror, the number of modification received, if any and a description sufficient to identify the services offered. The Register of Proposals shall be opened to public inspection only after award of the contract. Proposals of Offerors who are not awarded the contract shall not be opened to public inspection.

**7. WITHDRAWAL OF PROPOSALS:**

Proposals may be withdrawn by written or facsimile notice received by PAG at any time prior to the conclusion of any discussion that may take place between PAG and one or more Offeror. Proposals may be withdrawn in person by an Offeror's authorized representative upon verification of the representative's authority and execution of a receipt for the Offeror's returned proposal.

Negligence on the part of the proposer, in preparing the proposal, grants no right for the withdrawal of the proposal, after it has been opened. All items submitted in response to the RFP become the property of the PAG and none will be returned.

**8. LATE PROPOSALS:**

Late proposals will **NOT** be accepted.

**9. LIABILITY FOR COST TO THE PROPOSAL:**

The PAG is not liable for any cost incurred by the Offeror in connection with this RFP. By submitting a proposal, the Offeror specifically waives any claim against the PAG for any expenses incurred in proposal preparation. Submitted proposals become the property of the PAG and will be a part of the official procurement record. Offerors request for the return of specific proprietary material may be considered by the PAG.

**10. RIGHT TO AMEND, CANCEL OR REISSUE:**

The PAG reserves the right to amend, supplement or cancel the RFP, in whole or in part at any time, or reject any or all proposals submitted in response, or reissue the RFP, when this action serves the best interest of the PAG.

**11. CONTRACT PROVISIONS:**

The PAG reserves the right to include any part of the Offeror's Proposal in the final agreement or contract. The Offeror's Proposal may be subject to additional conditions and terms as may be imposed by the PAG during contract negotiations.

All Offerors warrant that they have not employed any person to solicit or secure any resolution contract based upon a promise for a commission, percentage, brokerage or contingent fee. Breach of such warranty shall be grounds for the PAG the right to terminate clarifying discussion or pre contract negotiations or immediately terminate any contact that has been executed pursuant to this RFP.

The PAG will conduct negotiations with the best qualified Offeror. If the best qualified Offeror and the PAG are unable to agree on the terms and conditions of a contract, then the PAG may, at its sole and absolute discretion, terminate negotiations. In such instance, the PAG will have the right to initiate negotiations with the next highest ranked Offeror.

By submitting a proposal, the Offeror specifically understands and agrees that it has a duty to explain and clarify any and all conditions imposed on or included in its responses and questions in this RFP. The Offeror further understands that it has an affirmative duty to inquire about and clarify any section of the RFP that the Offeror does not understand or that the Offeror believes may be susceptible to more than one interpretation.

## **12. SPECIAL PERMITS AND LICENSES:**

The Offeror shall, at his/her own expense, procure all permits, certificates and license and shall give all notices and necessary reports required by law for the execution of the work.

## **13. LAWS TO BE OBSERVED:**

- a. The offeror accepts sole responsibility for compliance with any/all applicable federal and local laws, codes, ordinances, and regulations which in any affect those engaged or employed in the work, or the material or equipment used in or upon the site, contemplated by this RFP. No place of misunderstanding or ignorance on the part of the Offeror of applicable laws, codes, ordinances, or regulations will in any way serve to modify any contract executed pursuant to this RFP.
- b. Restriction Against Contractors/Consultants Employing Convicted Sex Offenders from Working at Government of Guam Venues. (Subsection 5253 of Title 5 Guam code Annotated)
  - i. No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam other than a public highway.
  - ii. All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
  - iii. Duties of the General Services Agency or Procurement Administrators. All contracts, bids or Request for Proposals shall state all the conditions in §5253(b).



- iv. Any contractor/consultant found in violations of §5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority
- c. **Port Security Guidelines:** Any Offeror performing work on PAG property shall be required to comply with any applicable law, regulation, or policy regarding Port security, including but not limited to 33 CFR 105 and the following conditions:
  - i. Contractors/Consultants and/or vendors authorized to conduct business within the controlled or restricted areas must pre-arrange their visits a minimum of twenty-four (24) hours in advance. Such notice shall indicate contractor/vendor company name, list of employees with either Social Security number or Driver's License number requesting entry, the time and date of their anticipated visit, and the nature of the business/work.
  - ii. No personnel, visitors or other non-employees shall have access to restricted areas without Port Police clearance or escort (when required) consisting of a properly identified employee authorized access.
  - iii. The PAG Police division currently issues identification cards to Port Authority employees, tenants, users and other persons authorized to enter the Commercial Port compound. Temporary I. D.'s, is without a photo, however bears a control number and must be signed out to visitors requesting access in exchange for an acceptable valid photo I.D. The temporary I.D. card must be worn and visibly displayed on the exterior of the bearer's clothing. Lost or misplaced temporary I.D. cards must be reported immediately to the Port Police Division. Failure to report and/or return the issued temporary I.D. card constitutes a security breach and shall disallow holder to enter the terminal compound for the entire contractual period.
  - iv. Contractor/Consultant must comply with the commercial Port's Insurance Policy (Policy Memorandum 97-001); submit listing and attach copies of registrations and proof of insurance of each company vehicle and/or equipment to be utilized and brought into the area. Third party contractual services shall be required to adhere to the same conditions as the primary contractor. If third party cannot fulfill the minimum insurance requirements the primary contractor shall be responsible to ensure coverage under their policy and show proof of coverage to Commercial Port Police prior to initiating performance.
  - v. Upon clearance of company vehicle and/or equipment documents submission, temporary passes will be issued by the Commercial Port Police division. In instances where Contractor/Consultant/Vendors are required to conduct business or perform work in any of the areas within the terminal compound on a "near daily" seven (7) consecutive days' basis, a written notice of twenty-Four (24) hours advance notice is required.

**d. Transportation Workers Identification Credential (TWIC)**

- i. TWIC is a common identification credential for all personnel requiring unescorted access to secure areas as defined in the Maritime Transportation Security Act or MTSA-regulated facilities and vessels, and all mariners holding U.S. Coast Guard issued credentials. Transportation

Security Administration will issue workers a tamper resistant "Smart Card" containing the worker's biometric (fingerprint template) to allow for a positive link between the card itself and the individual.

- ii. In accordance with a U.S. Coast Guard approved security plan, owners/operators define the areas of vessels or facilities that are "secure areas" and therefore require access control measures.
- iii. It will be the responsibility of the successful Offeror to comply with TWIC Program. For additional information, contact TSA's TWIC Program Help Desk at 1-866-DHS-TWIC (1-866-347-8924). You may also correspond by email at [uscg-twic-helpdesk@uscg.mil](mailto:uscg-twic-helpdesk@uscg.mil) . For specific questions regarding implementation for 105 or 106 facilities owners/operators/facility security officer/CSO's are encouraged to seek directly from the local Captain of the Port.

**14. STATUS OF OFFEROR:**

Offeror and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the Port or the government of Guam. Offeror and its officers, agents, servants and employees shall not accrue vacation or sick leave; participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees. Offeror agrees that Offeror and its employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11 and its associated rules and regulations). Nothing in any contract pursuant to this RFP or any action taken pursuant to this RFP shall be deemed or construed in any manner or for any purpose to evidence or establish as between Offeror and the PAG a relationship of partnership, agency, association, joint, venture or representative, not authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the PAG for the Offeror.

**15. INSURANCE:**

The successful Offeror shall procure and maintain at their own expense all necessary comprehensive insurance for their employees including but not limited to Worker's Compensation and General Liability Insurance required by the PAG.

**16. OWNERS RIGHT TO REJECT PROPOSAL:**

The PAG may make such investigation as deem necessary to determine the ability of the Offeror to perform the work and the Proposer/Consultant shall furnish to the PAG all such information and data for this purpose as the PAG may request. The PAG reserves the right to reject Offeror if the evidence submitted by, or investigation of such Offeror fails to satisfy the PAG that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated herein. Conditional proposals will not be accepted.

Minor irregularities in proposals that are immaterial or inconsequential in nature may be waived by the PAG whenever it is deemed in the best interest of the PAG.

**17. CONFIDENTIAL OR PROPRIETARY INFORMATION:**

Proposals of Offerors who are not awarded the contract shall not be opened to public inspection, but will be part of the official procurement record. After award, the proposal of the Offeror receiving a contract will

become available for public inspection. If the Offeror selected for award has requested in writing the non-disclosure of trade secrets or other proprietary data so identified, the PAG shall examine the designated information to determine whether such information shall become proprietary. If the PAG and the Offeror are unable to agree as to the disclosure of certain portions of the Offeror's proposal, the PAG shall inform the Offeror in writing what portion of the proposal will be disclosed and that, unless the Offeror withdraws the proposal or protests under 5GCA Article 9 (Legal and Contractual Remedies) of the Procurement Act, the information may be so disclosed. [Refer to Title 2, Guam Administrative Regulations, Division 4, Section 3114(h)(2)]

**18. ETHICAL STANDARD:**

The Offeror represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in Guam's Procurement Code or Regulations pertaining to ethics in public contracting. Offeror represents that it will comply with ethical obligations under Guam Procurement Law. See 5GCA Sections 5601-5677.

**19. PROHIBITION AGAINST GRATUITIES AND KICKBACKS:**

The respondents represent that it has not violated, is not violating, and promises that it will not violate the prohibition against any kickbacks set forth in the Guam Procurement Law. The prohibition is as follows: It is a breach of ethical standards for any person to offer, give or agree to give any government employee or former government employee, or for any government employee or former government employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation of proposal therefore. Further, it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or order.

**20. COVENANTS AGAINST CONTINGENT FEES.**

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the Port shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the contract price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**21. APPLICABILITY OF GUAM PROCUREMENT LAW:**

If any part of this RFP is contrary to the Guam Procurement Law or contains ambiguous terms, then such portion of the RFP shall be interpreted or resolved in favor of or according to the provisions of the Guam Procurement Law.

**\*\*\* END OF SPECIAL GENERAL PROVISIONS \*\*\***

# **ATTACHMENT NO. 1**

## **SCOPE OF WORK**

## **ATTACHMENT 1 - SCOPE OF WORK**

The proposed construction involves two major components: 1) Replacement of H-Wharf structures and adjacent upland facilities, and 2) Reconstruction of the access roadway, Highway 11.

### **1) Replacement of H-Wharf with a new bulkhead with a modern mooring and fendering system, utilities, and pavement.**

**Demolition** - Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structures including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavement, and the partial demolition of existing bulkheads and concrete caps

**Wharf Construction** - New wharf construction consist of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface. The new sheet pile bulkhead retaining wall will be approximately 3-ft outside of the existing sheet pile bulkhead and is approximately 500 feet along the pier head line with approximately 100-foot returns on each side. This would increase the wharf footprint within the water by approximately 2100 S.F. wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile "deadmen" walls, batter piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pier head line in the ship-unloading zone. Structural fill will be placed in the area between the existing and new bulkheads. The concrete pavement within the ship unloading zone will be designed for 750 psf. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems.

**Utilities** - Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, storm water with oil-water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in manholes to support future construction. Electrical lines from the load center will feed low mast perimeter wharf security lighting and site power requirements. Conduit and manholes will be positioned to support future construction at both the northwest and northeast corners of the wharf adjacent to the access road.

**Upland Pavement** - The upland surface will be impervious with the area inboard of the 100-foot ship unloading zone consisting of asphalt pavement with a design load of 1500 psf. The area of asphalt pavement is approximately 2.5 acres.

### **2) Highway 11 Roadway Reconstruction**

**Roadway Reconstruction** - The roadway utilized to access the wharf will be reconstructed for approximately 4200 feet, and paved with slight adjustments to the

typical section, alignment, profile, ditches, and drainage structures. The roadway section will consist of two 11-foot lanes and 2-foot unpaved shoulder section. Work includes new pavement striping and signage. Utilities under the roadway will include water line replacement, storm water piping, and empty data transmission conduit. Surface runoff from the new access roadway will be collected in bio-swales for natural filtration prior to out-falling in Apra Harbor. New roadway lighting is not required.

**The scope of work includes, but is not limited to the following:**

**I. INTENT**

The intent of this Scope of Work is to define the extent of *Scope of Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction*, at Cabras Island, Piti.

The Construction Manager shall:

- Administer the construction contract.
- Ensure, certify or verify that all work is accomplished in accord with approved drawings, plans, specifications and the contract documents.
- Confirm the quality of materials used on the project are in accordance with approved contract documents.
- Comply with the U.S. Department of Transportation Maritime Administration (MARAD) Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant Agreement. (Appendix B.)

**II. SERVICES**

The Construction Manager shall provide the following services:

**A. Contract Administration**

**1. General Administration**

- a. Administer the construction contract as the authorized representative of the Port Authority of Guam and as further defined on this agreement.
- b. Arrange and conduct a pre-construction conference, with the contractor, to present and explain contract requirements dealing with mobilization, prosecution of work, safety, environmental protection and historic preservation, payment processing, review and approval of submittals, preparation and updating of the progress schedule, material and equipment testing procedures, inspections, and the role as well as the duties and responsibilities of the Construction Manager and Port Authority of Guam.
- c. Conduct periodic meetings with the Port Authority of Guam and the Contractor to discuss progress of work, contract requirements, problems and other pertinent



aspects of the projects.

- d. Prepare project correspondence, reports and other documents as required for the proper management of the construction of the project.
  - e. Keep a photographic log of the project.
    - i. Photographs (slide film)
    - ii. Videos
  - f. Secure and transmit to PAG, Contractor or other government agencies, certificates, waivers, affidavits, releases etc., as required by the construction contract or for the timely prosecution of construction work.
  - g. Prepare monthly construction status reports using a format acceptable to PAG and U.S. Department of Transportation Maritime Administration (MARAD) as defined in the grant agreement *FY2016 Transportation Investment Generating Economic Recovery (TIGER)* Grant No. DTMA91G1600007 (*Appendix B*) (*Attachment No. 4*).
  - h. Advise PAG of any case of non-compliance with applicable Territorial and Federal requirements.
  - i. Set up and maintain a project filing system in conformance with generally accepted accounting principles.
2. Pre-Bid Services
- a. Review Contractor Pre-Qualification documents and report to PAG on suitability of contractors.
  - b. Review of construction documents for constructability.
  - c. Prepare and submit building permit application.
3. Bid Phase Services
- a. Printing and assembly of contract documents for bidding.
  - b. Conduct pre-bid conference.
  - c. Issue addendums
  - d. Assist with Bid Opening
  - e. Evaluation of Bids and Bid Bonds
  - f. Review contractor documents
    - i. Environmental Protection Plan
    - ii. Performance and Payment Bonds
    - iii. Schedule of Values
    - iv. Construction Schedule
    - v. Contractor Safety Plan
    - vi. Contractor QC Program
4. Preparation and Processing of Payment Estimates
- a. Review and recommend payment of Contractor's payment requests submitted in conformance with construction contract requirements.

5. Processing Construction Change Orders
  - a. Notify PAG of any apparent deficiencies in the contract documents or problem raised by the Constructor in the prosecution of work which may lead to material changes in the construction cost or design of the project.
  - b. Formulate recommendations on how to deal with these potential changes.
  - c. Review and evaluate any changes requested by the contractor and make recommendations regarding the manner and method of executing the changes. Coordinate, as required, with the design engineers.
  - d. Prepare cost estimates for and negotiate change orders on behalf of PAG together with PAG representative.
  - e. Prepare and submit Change Orders and supporting documents for PAG approval within 15 days after the Contractor has submitted its proposal.
  - f. Administer approved Change Orders.
  - g. Record costs of all approved change orders and assure that subsequent payment estimates reflect all current change orders.
6. Processing Claims and Disputes
  - a. Notify PAG of apparent deficiencies in the contract documents raised by the Contractor, which may lead to claims by or a dispute with the Contractor, and recommend solutions.
  - b. Review claims by or disputes with the Contractor and recommend solutions.
  - c. Maintain accurate and adequate records of information associated with claims or disputes.
  - d. Assist PAG in settling claims or disputes with the Contractor or with other parties, including preparation of related reports, negotiating claim settlements, or testifying at hearings if necessary. Any such services performed outside of the timeframes for this Scope of Work shall be considered as extra services.
7. Project Closeout Services
  - a. Upon completion of the project, arrange and inventory all projects files and records.
  - b. Administer final acceptance procedures.
  - c. Collect warranty documents and provide to PAG.

**B. Engineering and Surveying Services**

1. Phasing Plan
  - a. Review of Contractor's phasing plan prior to the start of construction.

- b. The phasing plan shall be done in such a manner as to the PAG daily operations.
- 2. Continuing Review of Contract Documents
  - a. Provide continuing review of the contract documents to detect possible deficiencies which may lead to changes or to possible claims by or disputes with the Contractor, or to determine changes which can be made to save money, time or both for PAG without altering or jeopardizing the intent and function of the project. If any deficiencies or potential cost-saving changes are discovered, they shall be brought to the attention of PAG. If approved, a change order process shall be implemented.
  - b. Clarify or obtain clarification from the design engineers of any areas of the contract documents which are the subject of inquiries by the Contractor or PAG.
  - c. Administer/assist with changes to the plans, specifications or contract documents and implement such changes pursuant to IIA (5) above.
- 3. Submittal Review and Approval
  - a. Review Contractor submittals for completeness and coordinate the review by the design engineers.
  - b. Evaluate and make recommendation on the contractor's requests for material or equipment substitutions. The Construction Manager shall be authorized to approve such requests upon concurrence by the design engineers and PAG.
  - c. Process and implement approved requests for substitutions in accord with IIA (5) above.
- 4. Review and Analysis of the Project Schedule
  - a. Evaluate the Contractor's work schedule and advise Contractor to make changes, if required, to assure that the schedule is accurate, realistic and shows an efficient sequence of construction work.
  - b. Administer Contractor compliance with the approved work (progress) schedule.
  - c. Direct the contractor to update or revise the progress schedule as necessary.
- 5. Construction Check Survey Services
  - a. Review the Contractor's survey and arrange for construction check survey services, if required, to insure that item of construction conform to contract requirements.
  - b. Such survey shall include checking of the horizontal and vertical layout or alignment of the various components of the project, checking elevation of pipelines, valves and other items or work.

6. As-Built Drawing Preparation

- a. Require the Contractor to prepare accurate "as-built" information on a monthly basis.
- b. At the conclusion of the project, coordinate with the designer to incorporate the "as-built" information into the original contract drawings.

**C. Construction Inspection and Quality Control**

1. Inspection

- a. Provide inspection of the construction of the project to assure that the work is accomplished in accord with the contract documents.

(1) Under water inspections shall be carried out as required.

- b. Administer all the provision of the contract dealing with the prosecution of work.
- c. The Construction Manager shall be authorized to issue stop work orders for the portion of or the entire project in accordance with the following:
  - i. Without prior notice to PAG when actions by the Contractor threaten the health and safety of the Contractor's personnel, inspectors or the public.
  - ii. With prior notice to PAG when actions by the Contactor are in violation of the contract documents or local or federal laws.
- h. Recommend changes to the Contractor's operations if needed to minimize inconvenience to and protect the safety of the public.
- i. Recommend changes to the Contractor's operation if needed to comply with local laws or applicable Gov. Guam regulations such as those dealing with environmental protection and historic preservation.
- j. Maintain daily, detailed record of the progress of construction work.
- k. Schedule, arrange and conduct interim, preliminary and final inspections of the project with representatives of PAG and other agencies/departments affected by the project.

2. Quality Control and Testing

- a. Administer all provisions of the contract documents dealing with the quality of workmanship.
- b. Obtain certificates for or schedule, witness and approve or reject, as appropriate, all test required to be performed by the Contractor.

### **III     STAFFING**

The following staffing will be supplied at site as noted below:

1. Construction Manager full time at the construction site for a period of 18 months commencing four (4) weeks after Notice to Proceed to the Construction Contractor.
2. Site clerical, as required, for a period of 17 months beginning one month after Notice to Proceed to Construction Contractor.
3. Additional inspection and engineering support, as required, during the construction and number of hours to be determined by the Construction Manager Consultant as repair by the project:
  - a. Civil
  - b. Structural
  - c. Electrical/Mechanical
  - d. Pile Driving inspection and monitoring
  - e. Soil Engineering
  - f. Diving inspections, as required with a minimum of 20 dives, on a reimbursable basis.

### **IV     RESPONSIBILITIES OF PORT AUTHORITY OF GUAM**

Port Authority of Guam shall be responsible for the following:

- a. Decision on all policy questions not in the Scope of Work.
- b. Approval of Change Orders.
- c. Secure and transmit to the Construction Manager right-of-entry permit for the project.
- d. Acquire all easements and right-of-way required for the construction of the project.
- e. Furnish the Construction Manager with a sufficient number of copies of the contract documents for use on the project including reproducible copies as required.
- f. Furnish the Construction Manager with documents and references required to carry out its duties and responsibilities as set forth in the Scope of Work.
- g. Prepare all Insurance Company Documentation.
- h. Make timely payments to the Construction Manager based upon the Contract.
- i. Payment for extra services requested by PAG that are not included in the Scope of Work.

- j. A suitably furnished field office, which will be supplied by the Construction Contractor, as described in the Construction Documents.
- k. Comply with PAG, U.S Department of Transportation Maritime Administration (MARAD), FY2016 Transportation Investment Generating Economic Recovery (TIGER) Grant No. DTMA91G1600007 (Appendix B).

**\*\* END OF SCOPE OF WORK \*\***



**ATTACHMENT NO. 2**

**SAMPLE AGREEMENT/CONTRACT**

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**JOSE D. LEON GUERRERO COMMERCIAL PORT  
(PORT AUTHORITY OF GUAM)**

**AND**

**CONSULTANT**

**CONSTRUCTION MANAGEMENT SERVICES**

**for the Rehabilitation of Hotel (H) Wharf and Highway 11 and Roadway Reconstruction**

**THIS AGREEMENT** is entered into by and between the **JOSE D. LEON GUERRERO COMMERCIAL PORT (PORT AUTHORITY OF GUAM) ("Port")**, a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 ("Authority") and ("Consultant") authorized and licensed to do business in Guam, whose address is:

**WHEREAS**, the Port issued a Request for Proposal ("RFP") **RFP No. PAG-020-002** seeking to retain a consultant to perform **Construction Management Services for the Construction Management Service for the Rehabilitation of H-Wharf and Highway 11 and Roadway Reconstruction**.

**WHEREAS**, the Consultant responded to the RFP through submitting a proposal ("Proposal") to provide services in accordance with the RFP-PAG-020-002, (Consultant) Firm/Company was selected as the highest most qualified Offeror;

**WHEREAS**, in submitting the Proposal, Consultant warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

**WHEREAS**, the Port desires to retain the Consultant as an independent contractor on the terms and conditions set forth in this Agreement and Consultant has agreed to accept such retainer;

**WITNESSETH**, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

**I. Statement of Work to be Performed.**

A. Scope of Work. The Consultant shall furnish Construction Management Services pursuant to and in accordance with the Scope of Services as identified in the RFP, Consultant's Proposal and Projects agreed to by both parties. A copy of the RFP, and Consultant's Proposal are attached as Attachment 1 & Exhibit 1 Services Required, incorporated as part of this Agreement. Consultant shall provide status reports on the services performed and required under this Agreement upon request by the Port.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent, professional manner, in line with the services of a typical consultant engaged in the same and similar field as Consultant herein. The Port may, in its sole discretion and based upon availability, provide staff assistance to Consultant in furtherance of this Agreement. The Consultant shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. The Port acknowledges and agrees that Consultant may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Consultant is providing services to a third party which

conflicts with or hinders the performance of services under this Agreement, Consultant must immediately cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

## II. Term of Agreement.

The contract period shall be for an initial two (2) year term, with three (3) additional one-year options for renewal, provided this contract does not exceed the total contract term of five (5) years. The renewal of this agreement after the initial term shall be at the sole discretion of the Port.

## III. Compensation.

A. Compensation. In consideration for the Construction Management Services performed under this Agreement, the Port shall pay Consultant based on fees in accordance with negotiations. The services under this agreement shall be performed and compensated in accordance with the terms herein and agreed upon and authorized by the Parties.

B. Payment Terms. Payment shall be made upon the Payment Terms set forth in the RFP and based on deliverables. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in the RFP and upon satisfactory performance by Consultant of the services in compliance with the terms of this Agreement, and shall be payable within thirty (30) days. Upon written notification by the Port of unsatisfactory performance by Consultant, Consultant shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

C. Expenses. Consultant shall be responsible for all expenses incurred in the performance stipulated under this Agreement.

D. No Compensation Prior to Approval of Agreement. The Port shall not be liable to Consultant for any services performed by Consultant prior to full execution of this Agreement by all parties, and all Consultant expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

E. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Consultant under this Agreement. Prior to the final payment due Consultant, and as a condition precedent thereto, Consultant shall execute and deliver to the Port a release in form approved by the Port of claims against the Port arising under this Agreement. Consultant expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*

F. Payment. All rates and prices and payments to the Consultant shall be in the currency of the United States.

## IV. Early Termination.

A. By the Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion:

(i) Termination without Cause: The Port may terminate this Agreement, without

cause, upon the delivery of written notice to the Consultant at least thirty (30) days prior to the intended date of termination;

(ii) Termination in the Best Interest of the Government of Guam: The Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Consultant and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Consultant's successful completion of services under this Agreement to the satisfaction of the Port.

(iii) Termination for Cause/Default: The Port shall notify Consultant in writing of deficiencies or default in the performance of its duties under this Agreement. The Consultant shall have ten (10) days, which period may be extended by the Port (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the Port. The Port shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Consultant of said action. The action by the Port shall be either to confirm, in whole or in part, the specified deficiencies or default, or find that there are no deficiencies or default, or such action as deemed necessary in the judgment of the Port. Failure of Consultant to remedy said specified default in notice by the Port within ten (10) days of receipt of such notice of such action, or such time reasonably necessary to correct the deficiency and/or cure the default, shall result in the termination of this Agreement, and the Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.

(iv) Effects and Responsibilities of Parties for Early Termination by the Port: In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Consultant agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) by the Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. In the event of an Early Termination by reason of an event described in clause (iii), above, the Port shall not reimburse Consultant for services performed. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) Termination without Cause. Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date and the Port shall have no other or further obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

(ii) Termination for Cause: Consultant shall notify the Port in writing of deficiencies or default in the performance of the Port's duties under this Agreement. The Port shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, the Consultant shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and the Port shall have no obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

C. Termination/Modification for Lack of Funds. The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to Consultant and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement

pursuant to Section IV of this Agreement as applicable.

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Port, the Consultant shall take timely, reasonable and necessary action to protect and preserve the property in the possession of Consultant in which the Port has an interest.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defenses with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

**V. Contact Person.**

The Consultant agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsive to the questions and direction of the Port. The contact person must be identified in writing within thirty (30) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by the Consultant under this Agreement.

**VI. Confidentiality.**

A. Information. The Consultant hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Consultant to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Consultant shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by the Port. All of the Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Consultant shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Consultant shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the Port, and then only if the Consultant requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Consultant to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Consultant to liability, including all damages and injunctive relief.

**VII. Conflicts of Interests/Ethics**

A. The Consultant warrants and covenants that it has not violated and will not violate Guam's

Procurement Law or Regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Consultant is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Consultant agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the Consultant without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Consultant agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement, that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to the Port.

**VIII. Prohibition Against Gratuities and Kickbacks.**

A. Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

B. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontractor or order.

IX. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the Port shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the contract price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**X. Waiver.**

No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

**XI. Severability.**

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

**XII. Survival of Warranties.**

All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.



**XIII. Fees and Expenses.**

Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

**XIV. Notices.**

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be affected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PORT: RORY J. RESPICIO, General Manager  
PORT AUTHORITY OF GUAM  
Jose D. Leon Guerrero Commercial Port  
1026 Cabras Highway, Suite 201  
Piti, Guam 96925

TO CONSULTANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**XV. Assignment/Subcontractors.**

It is expressly acknowledged that Consultant is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Consultant utilizes one or more subcontractors for such purpose. The right and interest of Consultant under this Agreement (including, but not limited to, Consultant's right to or interest in any part or all of payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Consultant, Consultant agrees that any subcontractors retained by Consultant or assignees shall be subject to all provisions of this Agreement.

**XVI. Successors and Assigns.**

This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

**XVII. Scope of Agreement.**

This Agreement, RFP, Proposal, and Cost Proposal collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Consultant and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

In the event of a contradiction between the provisions of any of the documents collectively comprising this Agreement, Request for Proposal, RFP No. PAG-020-002 Construction Management Services, and

the Offeror's Cost Proposal, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time); and, third, to the provisions of the Proposal and Cost Proposal (as they may be clarified or amended from time to time).

**XVIII. Captions.**

All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

**XIX. Counterparts.**

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

**XX. Governing Law and Forum Selection.**

Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

**XIX. Compliance with Laws.**

A. In General. The Consultant shall comply with all U.S. and Guam Laws, Statutes, Regulations and Ordinances applicable to this Agreement. The Consultant represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Consultant agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause

**XXI. Retention and Access to Records and Other Review.**

The Consultant, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Consultant to provide access to all documents and Port property reasonably necessary to the performance of Consultant's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

**XXII. Liability.**

A. Indemnification. Consultant shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Consultant and/or the Consultant's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of the Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to Consultant's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

### **XXIII. Delays, Extensions and Suspensions.**

The Port unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Port. The Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or suspension. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Consultant's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another contractor in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

### **XXIV. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.**

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Consultant. The Port shall have the power to make changes in the Agreement as a result of changes in law and to impose new rules and regulations on the Consultant under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The Port shall give the Consultant notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Consultant. In the event of any future change in federal or Guam laws, the Port materially alters the obligations of the Consultant, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations for the Consultant, then the Consultant or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. Consultant shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The Port and the Consultant agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the Port and the Consultant shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Consultant directly and demonstrably due to any modification in the Agreement under this clause.

### **XXV. Independent Consultant and its Employees.**

A. Status of Consultant. The Consultant and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the Port, and are not employees of either the Port or the Government of Guam. The Consultant and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Consultant agrees that Consultant and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any

time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Consultant and the Port a relationship of partnership, agency, association, joint, venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port for the Consultant.

B. Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement. Furthermore, Consultant shall maintain at the Consultant's expense all necessary insurance for its employees including but not limited to Worker's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Consultant agrees to hold harmless and indemnify the Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Consultant or Consultant's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Consultant's failure to comply with terms of this subparagraph B.

**XXVI. Disclosure.**

The Consultant hereby represents that it has disclosed to the Port all matters regarding Consultant which if not disclosed to the Port would materially affect the Port's decision to enter into this Agreement with Consultant.

**XXVII. Disposition of Property and Materials: Intellectual Property Rights.**

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of the Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant and without any additional costs to the Port.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the sole and exclusive property of the Port. Consultant explicitly acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement. Consultant shall not use or permit others to use in any way or form the Work Product without the express written consent of the Port.

**XXVIII. Attachments, Exhibits, Schedules, and Entire Agreement.**

The Agreement, including its Attachments, Exhibits and Schedules, constitute the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

**XXIX. Computation of Time.**

Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

**XXX. Partial Invalidity.**

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

**XXXI. Amendments/Modifications.**

Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

**\*\*\* Signature Approvals appear on next page \*\*\***

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year appearing opposite their respective signatures.

**CONSULTANT:**

Port Authority of Guam  
**JOSE D. LEON GUERRERO**  
**COMMERCIAL PORT**

\_\_\_\_\_  
President/General Manager

\_\_\_\_\_  
**RORY J. RESPICIO**  
General Manager

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

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

**LEGAL COUNSEL FOR  
PORT AUTHORITY**

**CERTIFICATION OF AVAILABILITY  
OF FUNDS:**

\_\_\_\_\_

\_\_\_\_\_  
**JOSE B. GUEVARA III,**  
Financial Affairs Officer, Controller

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

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

**ATTACHMENT NO. 3**

**REQUIRED FORMS**



REQUEST FOR PROPOSALS (RFP) NO. RFP-PAG-CIP-020-002

PROJECT DESCRIPTION:

**Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 and Roadway Reconstruction.**

**SPECIAL REMINDER TO PROSPECTIVE OFFERORS**

Proposers are reminded to read the Request for Proposal and General Terms and Condition attached to the RFP to ascertain that all of the following requirements checked below are submitted in the proposal envelope, **one (1) original, five (5) copies, and one (1) CD or USB containing electronic file** at the date and time it is due.

- ☒ STATEMENT OF QUALIFICATION
- ☒ AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)
- ☒ AFFIDAVIT RE NON-COLLUSION (AG Form 003)
- ☒ AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)
- ☒ AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)
- ☒ DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)
- ☒ AFFIDAVIT RE CONTINGENT FEES (AG Form 007)
- ☒ RESTRICTION AGAINST SEX OFFENDERS EMPLOYED BY SERVICE PROVIDERS OF GOVERNMENT OF GUAM FROM WORKING ON GOVERNMENT PROPERTY
- ☒ **OTHER REQUIREMENTS: PEALS Certificates and/or Business License whichever is applicable and copies of past 2 years of quarterly business privileged tax filings.**

This reminder must be signed and returned in the PROPOSAL envelope together with the proposal. **Failure to comply with the above requirements will mean a disqualification and rejection of the proposal.**

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, I, \_\_\_\_\_, authorized representative of \_\_\_\_\_, acknowledge receipt of this special reminder to prospective Offerors for the above referenced RFP and hereby attest that I have read and understand its intent and implications.

\_\_\_\_\_  
Signature of Authorized Representative

**THIS REMINDER FORM MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL**



# **AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS**

CITY OF \_\_\_\_\_ )  
 ) ss.  
ISLAND OF GUAM )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

☐ The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

☐ The offeror is a corporation, partnership, joint venture, or association known as \_\_\_\_\_ *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

\_\_\_\_\_  
Signature of one of the following:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

**CITY OF \_\_\_\_\_ )**  
**ISLAND OF GUAM ) ss.**

1. The name of the offering company or individual is *[state name of company]*

3. I make this statement on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

AG Procurement Form 003 (Jul. 12, 2010)

**AFFIDAVIT re NO GRATUITIES or KICKBACKS**

CITY OF \_\_\_\_\_ )  
 ) ss.  
ISLAND OF GUAM )

\_\_\_\_\_[*state name of affiant signing below*], being  
first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [*state name of offeror company*]  
\_\_\_\_\_. Affiant is \_\_\_\_\_ [*state one  
of the following: the offeror, a partner of the offeror, an officer of the offeror*] making the foregoing  
identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
representatives, agents, subcontractors, or employees have violated, are violating the prohibition against  
gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf  
of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4  
§ 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
representatives, agents, subcontractors, or employees have offered, given or agreed to give, any  
government of Guam employee or former government employee, any payment, gift, kickback, gratuity or  
offer of employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of  
the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_, \_\_\_\_\_.

**AFFIDAVIT RE ETHICAL STANDARDS**

CITY OF \_\_\_\_\_ )  
 ) ss.  
ISLAND OF GUAM )

\_\_\_\_\_ [state name of affiant signing below], being first  
duly sworn, deposes and says that:

The affiant is \_\_\_\_\_ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

\_\_\_\_\_  
Signature of one of the following:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_, \_\_\_\_\_.

**DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION**

Procurement No.: \_\_\_\_\_

Name of Offeror Company: \_\_\_\_\_

I, \_\_\_\_\_ hereby **certify under penalty of perjury**:

(1) That I am \_\_\_\_\_ [*please select one: the offeror, a partner of the offeror, an officer of the offeror*] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

\_\_\_\_\_  
Signature

**AFFIDAVIT re CONTINGENT FEES**

**CITY OF \_\_\_\_\_ )**  
**ISLAND OF GUAM ) ss.**

\_\_\_\_\_ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]

2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 11108(f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 11108(h).

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

**Signature of one of the following:**

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

**NOTARY PUBLIC**

My commission expires \_\_\_\_\_, \_\_\_\_\_.

## **SPECIAL PROVISIONS**

### **Restriction against Sex Offenders Employed by service providers to Government of Guam from working on Government Property**

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25: Title 9 of Guam Code Annotated, or of an offense defined in Article 2, Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed in the Sex Offender Registry, shall provide services on behalf of the service provider while on Government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on Government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on Government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

\_\_\_\_\_  
Signature of Bidder/Offeror

\_\_\_\_\_  
Date

- Proposer, if an individual;
- Partner, if a partnership;
- Officer, if a corporation.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ATTACHMENT NO. 4**

**GRANT AGREEMENT**



**ATTACHMENT NO. 4**

**GRANT AGREEMENT**

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE  
CONSOLIDATED APPROPRIATIONS ACT, 2016  
(PUB. L. 114-113, DECEMBER 18, 2015)  
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS  
DISCRETIONARY GRANT PROGRAM  
(FY 2016 TIGER DISCRETIONARY GRANTS)

PORT AUTHORITY OF GUAM

REHABILITATION OF "H" WHARF

MARAD FY 2016 TIGER Grant No. DTMA91G1600007

7069M81430 2019 1RHW160007 0000150002 41010 61006600 – \$10,000,000.00

This agreement is between the United States Department of Transportation (*the "USDOT"*) and Port Authority of Guam (*the "Recipient"*). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113, December 18, 2015), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2016, 81 FR 9935 (February 26, 2016) (*the "NOFO"*). In this agreement, "FY 2016 TIGER Discretionary Grant" means an award under those provisions.

**ARTICLE 1. AWARD TERMS AND CONDITIONS**

- 1.1 **Operating Administration.** The Maritime Administration ("**MARAD**") will administer this agreement on behalf of the USDOT. In this agreement, the "**Administering Operating Administration**" means MARAD.
- 1.2 **Purpose.** The purpose of this award is to advance capital investments in surface transportation infrastructure that will have a significant impact on the nation, a metropolitan area, or a region. The parties will achieve that purpose by completing the project that was described in the Recipient's technical application, titled Rehabilitation of "H" Wharf, as modified by the negotiated provisions on the project's material terms and conditions, including the attachments referenced in Section 1.8.
- 1.3 **Federal Award Amount.** The USDOT hereby awards a FY 2016 TIGER Discretionary Grant in the amount of Ten Million Dollars (\$10,000,000.00) for the period of performance. The USDOT shall not provide funding greater than this amount under this

agreement. The Recipient acknowledges that USDOT is not liable for payments that exceed this amount.

1.4 **Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in Section 2.2. Under 2 CFR 200.309, the Recipient shall not charge to this award costs that are incurred after the period of performance.

1.5 **Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the technical application, the USDOT hereby designates the project to be a project in a rural area, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

1.6 **Fund Obligation.**

This agreement obligates the total amount of funds stated in Section 1.3.

1.7 **Federal Award Identification Number.** The USDOT identifies this award with the following federal award identification number:

DTMA91G1600007

1.8 **Attachments.** This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Schedule
Attachment C	Estimated Project Budget
Attachment D	Performance Measurement Table

## **ARTICLE 2. PROJECT AND RECIPIENT INFORMATION**

2.1 **Summary of Project's Statement of Work.** (See Attachment A for additional details).

The project will reconstruct and expand a wharf built in 1948, including a new sheet pile bulkhead retaining wall, and upgrade an access road. The project also includes demolition of surface facilities and construction of additional structural components.

2.2 **Summary of Project's Estimated Schedule.** (See Attachment B for additional details).

Actual Completion of NEPA:	07/17/2019
Actual Completion of Final Design:	04/20/2018
Actual PS&E Approval:	04/30/2018
Planned Construction Start Date:	01/01/2020

Planned Construction Substantial Completion Date: 07/30/2021

Period of Performance End Date 11/30/2021

Planned Project Closeout Date 02/28/2022

**2.3 Summary of Project's Estimated Budget.** (See Attachment C for additional details).

TIGER Grant Funds and Additional Sources of Project Funds:

TIGER Discretionary Grant Amount:	\$10,000,000	42%
Local Funds (PAG):	\$13,774,255	58%
Total Project Cost:	\$23,774,255	100%

**2.4 Recipient Cost Share Certification.**

As negotiated, the Recipient hereby certifies that not less than Thirteen Million Seven Hundred and Seventy-Four Thousand and Two Hundred and Fifty-Five dollars (\$13,774,255.00) in non-Federal funds are committed to fund the project.

**2.5 Project's State and Local Planning Requirements.**

Proposed project identified on the Jose D. Leon Guerrero Commercial Port of Guam Master Plan Update 2013 Report.

**2.6 Project's Environmental Approvals and Processes.**

Environmental Documentation Type, Titles and Date: Environmental Assessment, Hotel Wharf and access road maintenance and repair project in Apra Harbor, Guam, approved on July 5, 2019.

Environmental Decision Type and Date: Finding of No Significant Impact (FONSI), approved on July 17, 2019.

Name of Agency and Office Approving each Environmental Decision Document: MARAD, Office of Environment

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	

National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture-Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture-Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

## 2.7 Recipient's and any Subrecipient's Unique Entity Identifiers.

Dun and Bradstreet Data Universal Numbering System No. (the "**DUNS No.**") of the Recipient: 779911338

Name of any First-Tier Subrecipients (if applicable – to be reported if/when identified. If not applicable please note is N/A): N/A

DUNS No. of First-Tier Subrecipient (if applicable – to be reported if/when identified): N/A

## 2.8 Recipient Contacts.

Name:	Rory J. Respicio
Title	General Manager
Agency	Port Authority of Guam
Mailing Address	1026 Cabras Highway, Suite 201, Piti Guam 96925
Phone Number	(671) 477-5931/35, ext. 302, 303
Email Address	rjrespicio@portguam.com

## ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 **Report Submission.** The Recipient shall send all reports required by this agreement to all the USDOT contacts who are listed in Section 9.1.
- 3.2 **Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 3.3 **Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement

requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

- 3.4 **Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (*the "OMB"*). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

#### **ARTICLE 4. PROGRESS REPORTING**

- 4.1 **Quarterly Project Progress Reports.** On or before the 20th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to the USDOT a Quarterly Project Progress Report with the form and content described in Exhibit H. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report in the second calendar year quarter that begins after the date of this agreement.

4.2 **Annual Budget Review and Program Plan.**

- (a) From the date of this agreement until Project Closeout, on or before the 60th day before the end of each Agreement Year, the Recipient shall submit to the USDOT an Annual Budget Review and Program Plan that contains:

- (1) a detailed schedule of activities and milestones for the next Agreement Year;
- (2) an estimate of specific performance objectives, including forecasted expenditures, for the next Agreement Year; and
- (3) a comparison of the approved project budget with an updated estimate of the project costs.

In this agreement, "**Agreement Year**" means 12 months beginning on the date of this agreement or an anniversary of the date of this agreement.

- (b) If the Recipient's updated estimate of the total project costs exceeds the total project costs in the approved project budget, then the Recipient shall:

- (1) include in the Annual Budget Review and Program Plan either documentation of committed funds to cover the increased costs or a written plan describing how the Recipient will cover the increased costs; and
- (2) meet with the USDOT to discuss the Annual Budget Review and Program Plan.

- 4.3 **Closeout Reports.** No later than 90 days after the period of performance end date that is listed in Section 2.2, the Recipient shall:
- (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports; and
  - (2) provide a report comparing the final work, schedule, and budget to the statement of work described in Section 2.1, the schedule described in Section 2.2, and the budget described in Section 2.3.
- 4.4 **Project Closeout.** In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the project is closed out. Under 2 CFR 200.343, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in Section 4.3.

## **ARTICLE 5. PERFORMANCE REPORTING**

- 5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.
- 5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and
  - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 5.3 **Interim Performance Measurement Reports.** After project completion, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table.
- 5.4 **Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:
- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
  - (2) all baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and

- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

## **ARTICLE 6. AGREEMENT MODIFICATIONS**

- 6.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 6.2 **Limited Unilateral Modifications.**
- (a) The Recipient may update the contacts who are listed in Section 2.8 (Recipient Contacts) by written notice to all of the USDOT contacts who are listed in Section 9.1.
  - (b) The USDOT may update the contacts who are listed in Section 9.1 (USDOT Contacts) by written notice to all of the Recipient contacts who are listed in Section 2.8.
- 6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under Section 6.1 or Section 6.2. If an amendment, modification, or supplement is not permitted under Section 6.1 and not permitted under Section 6.2, it is void.

## **ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 7.1 **Statement of Work Changes.** If the project's activities differ from the statement of work that is described in Section 2.1 and Attachment A, then the Recipient shall request a modification of this agreement to update Section 2.1 and Attachment A.
- 7.2 **Schedule Changes.** If the project's substantial completion date changes to a date that is more than three months after the substantial completion date listed in Section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in Section 2.2, then the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.
- 7.3 **Budget Changes.**
- (a) If any of the budget amounts that are listed in Section 2.3 change from the amounts listed in that Section, then the Recipient shall request a modification of this agreement to update Section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment C unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.



- (b) If the actual eligible project costs are less than the “Total Project Cost” stated in Section 2.3, then the Recipient may reduce non-TIGER funds contributed to the project.

## **ARTICLE 8. TERMINATION AND EXPIRATION**

8.1 **USDOT Termination.** The USDOT may, in its sole discretion, terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (1) The Recipient fails to obtain or provide any non-TIGER Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with Sections 2.3 and 2.4;
- (2) The Recipient fails to begin construction before 03/01/2020;
- (3) The Recipient fails to begin expenditure of award funds by 02/15/2020;
- (4) The Recipient fails to achieve the Construction Substantial Completion Date by 10/30/2021;
- (5) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in Section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (6) The USDOT, in its sole discretion, determines that termination of this agreement is in the public interest.

8.2 **Closeout Termination.** This agreement terminates on Project Closeout.

8.3 **Fund Liquidation, Adjustment, and Cancellation.**

- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in Section 2.2. The Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in Section 8.3(c).
- (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 CFR 200.343–.345.
- (c) Outstanding FY 16 TIGER Discretionary Grant balances are canceled by statute after September 30, 2024, and are then unavailable for any purpose, including adjustments and expenditures.

8.4 **Reporting Survival:** The reporting requirements set forth in articles 4 and 5 of this agreement survive the termination of this agreement and the expiration of award funds.

## ARTICLE 9. USDOT CONTACTS

- 9.1 **USDOT Contacts.** Except as authorized by the USDOT under Section 3.2, the Recipient shall send all notices, reports, and information required by this agreement to all of the following contacts:

Judy Bowers  
Grants/Contracting Officer, Office of Acquisitions  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE Washington, DC  
20590  
MAR 380  
W26-418  
Mailstop 5  
(202) 366-1913  
[Judy.bowers@dot.gov](mailto:Judy.bowers@dot.gov)

and

Robert Bouchard  
Director, Office of Infrastructure Development and Congestion Mitigation  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-308  
Mailstop 3  
(202) 366-5076  
[robert.bouchard@dot.gov](mailto:robert.bouchard@dot.gov)

and

David Bohnet  
Supervisor, Grants Management  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-226  
Mailstop 3  
(202) 366-0586  
[David.bohnet@dot.gov](mailto:David.bohnet@dot.gov)

and

OST TIGER Discretionary Grants Coordinator  
United States Department of Transportation  
Office of the Secretary  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
(202) 366-8914  
[TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov)

## **ARTICLE 10. ADDITIONAL TERMS AND CONDITIONS**

- 10.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled "National Infrastructure Investments," with number 20.933 in the Catalog of Federal Domestic Assistance.
- 10.2 **Research and Development Designation.** This award is not for research and development.
- 10.3 **Exhibits.** This agreement includes the following exhibits as integral parts located at: <https://maradpublicsp.marad.dot.gov>
- |           |  |
|-----------|--|
| Exhibit A | Legislative Authority                          |
| Exhibit B | General Terms and Conditions                   |
| Exhibit C | Applicable Federal Laws and Regulations        |
| Exhibit D | Grant Assurances                               |
| Exhibit E | Responsibility and Authority of the Recipient  |
| Exhibit F | Reimbursement of Project Costs                 |
| Exhibit G | Grant Requirements and Contract Clauses        |
| Exhibit H | Quarterly Progress Reports: Format and Content |
- 10.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 12, then the provision in Articles 1 – 12 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

## **ARTICLE 11. SPECIAL GRANT REQUIREMENTS**

### **11.1 Reimbursement Requests.**

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under Section 1.6 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement of a cost more than 180 days after that cost was incurred, the USDOT may deny the request for being untimely.

- (c) The Recipient shall request reimbursement by completing forms in iSupplier, which is on-line and paperless. The USDOT may deny a payment request that is not submitted through iSupplier.
- (d) The Recipient shall complete training on using iSupplier before submitting a request for reimbursement. To encourage the Recipient to complete this training, the USDOT provides the following additional information, which may change after execution of this agreement:
  - (1) The Recipient may access the training from the USDOT "Delphi eInvoicing System" webpage at <http://www.transportation.gov/cfo/delphi-einvoicing-system.html>. The training is linked on the right side of that page under the heading "Web-Based Training (WBT)." The Recipient should click on "Grant Recipient WBT" to access the training, which is also available directly at [https://www.transportation.gov/sites/all/dot\\_assets/DOT\\_GR\\_04-24-2012/lessons/index.html](https://www.transportation.gov/sites/all/dot_assets/DOT_GR_04-24-2012/lessons/index.html).
  - (2) A username and password is not required to access the on-line training.
  - (3) The training is currently available and will be accessible 24/7.
  - (4) The training will take approximately 1 hour to complete.
- (e) After the Recipient completes training on using iSupplier, the Recipient shall request and complete the External User Access Request form to receive a username and password. The Recipient can request the form by sending an email to: Judy Bowers at [judy.bowers@dot.gov](mailto:judy.bowers@dot.gov).
- (f) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at <https://www.marad.dot.gov/wp-content/uploads/pdf/SF270-V1.0-1.pdf>) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.

## **11.2 Buy American Requirements.**

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The project is a public work of the Federal Government under 41 U.S.C. § 8301.

- (b) This Section 11.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
  - (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the U.S.;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under Section 11.2(d).
- (c) If the Recipient uses foreign construction material in violation of Section 11.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Section 8.1 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under Section 6.1, if the USDOT determines that:
  - (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 11.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under Section 11.2(d). If the Recipient makes a request under this Section 11.2(e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:
  - (1) a description of the foreign and domestic construction materials;
  - (2) unit of measure;
  - (3) quantity;
  - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);

- (5) time of delivery or availability;
  - (6) location of the construction project;
  - (7) name and address of the proposed supplier; and
  - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for a waiver under Section 11.2(d);
  - (9) if the Recipient requests authorization under Section 11.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that (1) this agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In this Section 11.2, the following definitions apply:

**“Commercially available off-the-shelf (COTS) item”**

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item as defined by 48 C.F.R. § 2.101;
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**“Construction material”** means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**“Cost of components” means—**

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or



- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

**“Domestic construction material” means—**

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
- (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
- (ii) The construction material is a COTS item.

**“Foreign construction material”** means a construction material other than a domestic construction material.

**“United States”** means the 50 States, the District of Columbia, and outlying areas.

**11.3 Final Section.** There are no other special grant requirements for this project.

## **ARTICLE 12. EXECUTION**

**12.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties shall execute this agreement in triplicate and intend each countersigned original to have identical legal effect.

**12.2 Effective Date.** This agreement is effective when fully executed by authorized representatives of the Recipient and the USDOT. The Recipient shall execute this agreement and then submit three original signed copies of the agreement to the USDOT for execution. This instrument constitutes a FY 2016 TIGER Discretionary Grant when it is signed and dated by the authorized official of the USDOT.

**EXECUTION BY THE USDOT**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of USDOT's Authorized Representative

\_\_\_\_\_  
Name of USDOT's Authorized Representative

\_\_\_\_\_  
Title



**EXECUTION BY PORT AUTHORITY OF GUAM**

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of Recipient's Authorized Representative

\_\_\_\_\_  
Name of Recipient's Authorized Representative

\_\_\_\_\_  
Title

## **ATTACHMENT A STATEMENT OF WORK**

### **Rehabilitation of H-Wharf -- Port Authority of Guam**

The proposed construction involves two major components: 1) Replacement of H-Wharf structures and adjacent upland facilities, and 2) Reconstruction of the access roadway, Highway 11.

#### **1) Replacement of H-Wharf with a new bulkhead with a modern mooring and fendering system, utilities, and pavement.**

**Demolition** - Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structures including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavement, and the partial demolition of existing bulkheads and concrete caps.

**Wharf Construction** - New wharf construction consists of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface. The new sheet pile bulkhead retaining wall will be approximately 3-ft outside of the existing sheet pile bulkhead wall and is approximately 500 feet along the pier head line with approximately 100-foot returns on each side. This would increase the wharf footprint within the water by approximately 2100 S.F. Wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile "deadman" walls, batter piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pier head line in the ship-unloading zone. Structural fill will be placed in the area between the existing and new bulkheads. The concrete pavement within the ship unloading zone will be designed for 750 psf. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems.

**Utilities** - Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, storm water with oil-water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in manholes to support future construction. Electrical lines from the load center will feed low mast perimeter wharf security lighting and site power requirements. Conduit and manholes will be positioned to support future construction at both the northwest and northeast corners of the wharf adjacent to the access road.

**Upland Pavement** - The upland surface will be impervious with the area inboard of the 100-foot ship unloading zone consisting of asphalt pavement with a design load of 1500 psf. The area of asphalt pavement is approximately 2.5 acres.

#### **2) Highway 11 Roadway Reconstruction**

**Roadway Reconstruction** - The roadway utilized to access the wharf will be reconstructed for approximately 4200 feet, and paved with slight adjustments to the typical section, alignment, profile, ditches, and drainage structures. The roadway section will consist of two 11-foot lanes and one 2-foot unpaved shoulder section. Work includes new pavement striping and signage. Utilities under the roadway will include water line replacement, storm water piping, and empty data transmission conduit. Surface runoff from the new access roadway will be collected in bio-swales for natural filtration prior to out-falling in Apra Harbor. New roadway lighting is not required.

**ATTACHMENT B  
ESTIMATED PROJECT SCHEDULE**

Actual Start of Preliminary Engineering: 08/28/2017

Actual End of Preliminary Engineering: 11/17/2017

Actual Completion of NEPA: 07/17/2019

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	
National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture- Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture- Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

Actual Start of Final Design: 11/17/2017

Actual Completion of Final Design: 04/20/2018

Start of Right of Way Acquisition: N/A

End of Right of Way Acquisition: N/A

Actual PS&E Approval 04/30/2018

Planned Construction Contract Award Date: 10/31/2019

Planned Construction Start Date: 01/01/2020

Planned Construction Substantial Completion Date 07/30/2021

**Period of Performance End Date**

**11/30/2021**

**Planned Project Closeout Date:**

**02/28/2022**

**ATTACHMENT C  
ESTIMATED PROJECT BUDGET**

<b>Activity</b>	<b>FY16 TIGER Funds</b>	<b>Local Funds</b>	<b>Project Cost</b>
<b>A. Replacement of H-Wharf</b>			
1. Electrical	\$792,644.74	\$311,320.26	\$1,103,965.00
2. Fencing	\$86,216.49	\$33,862.51	\$120,079.00
3. Fire System	\$505,211.45	\$198,427.55	\$703,639.00
4. Marine Structures	\$6,120,267.98	\$2,403,805.02	\$8,524,073.00
5. Paving Wharf	\$775,827.07	\$304,714.93	\$1,080,542.00
6. Potable Water	\$345,073.46	\$135,531.54	\$480,605.00
7. Sanitary Sewer System	\$15,626.51	\$6,137.49	\$21,764.00
8. Storm Water System	\$435,721.44	\$171,134.56	\$606,856.00
9. Utility Building	\$335,294.33	\$131,690.67	\$466,985.00
<b>SUBTOTAL A:</b>	<b>\$9,411,883.47</b>	<b>\$3,696,624.53</b>	<b>\$13,108,508.00</b>
<b>B. Reconstruction of Access Roadway, Highway 11</b>			
1. Conduit Along Access Road	\$103,352.95	\$40,593.05	\$143,946.00
2. Access Road Paving	\$355,485.15	\$139,620.85	\$495,106.00
3. Forced Main Water Utility	\$55,112.81	\$21,646.19	\$76,759.00
4. Access Road Signing & Pavement Markings	\$25,384.10	\$9,969.90	\$35,354.00
5. Traffic Control	\$48,781.52	\$19,159.48	\$67,941.00
<b>SUBTOTAL B:</b>	<b>\$588,116.53</b>	<b>\$230,989.47</b>	<b>\$819,106.00</b>
<b>CONSTRUCTION TOTAL</b>	<b>\$10,000,000.00</b>	<b>\$3,927,614.00</b>	<b>\$13,927,614.00</b>
15% Contractor General Conditions		\$2,089,142.00	\$2,089,142.00
15% Contractor's Overhead & Profit		\$2,402,513.00	\$2,402,513.00
5% Mobilization		\$920,963.00	\$920,963.00
10% Contingency		\$1,934,023.00	\$1,934,023.00
<b>Construction Management Services</b>		<b>\$2,500,000.00</b>	<b>\$2,500,000.00</b>
<b>PROJECT TOTAL COST:</b>	<b>\$10,000,000.00</b>	<b>\$13,774,255.00</b>	<b>\$23,774,255.00</b>

## ATTACHMENT D PERFORMANCE MEASUREMENT TABLE

**Study Area: Rehabilitation of “H” Wharf, Cabras Island, Piti Guam 93925**

**Pre-project Measurement Date:** Twelve months of data covering data between **January 1, 2019 and December 31, 2019** for each Measure listed below.

**Pre-project Report Date:** **March 1, 2020**

**Project Outcomes Measurement Date:** **October 1, 2021 through September 30, 2024**

**Project Outcomes Report Date:** **December 30, 2024**

**Table 1: Performance Measurement Table**

Measure	Description and Category of Measure	Measurement Period	Reporting Period
Gross Tons	<p><b>This performance measure will report the movement of gross tons for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Shall mean the gross tons used by the carrier according to the vessel’s manifest to assess the carrier’s freight charges to Guam and the Micronesian Region</b></p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p>Interim Performance Measures: Accurate as of <b>October 1, 2021</b></p>	<p>Baseline Measurement: Pre-project Report Date <b>March 1, 2020</b></p> <p>Interim Performance Measures: <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>
Vessel Calls	<p><b>This performance measure will report the vessel calls for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p>	<p>Baseline Measurement: Pre-project Report Date <b>March 1, 2020</b></p> <p>Interim Performance Measures: <b>Quarterly, for a</b></p>

	<b>Vessels calling to the Guam and the Micronesian Region</b>	Interim Performance Measures: Accurate as of <b>October 1, 2021</b>	<b>period of 3 years. The first measured quarter beginning October 1, 2021.</b>
<b>Cargo Lifts</b>	<p><b>This performance measure will report the cargo lifts for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Goods, wares, materials, merchandise or any other objects that is, or to be, transported on Guam and the Micronesian Region</b></p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p>Interim Performance Measures: Accurate as of <b>October 1, 2021</b></p>	<p>Baseline Measurement: Pre-project Report Date <b>March 1, 2020</b></p> <p>Interim Performance Measures: <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>





UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE  
CONSOLIDATED APPROPRIATIONS ACT, 2016  
(PUB. L. 114-113, DECEMBER 18, 2015)  
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS  
DISCRETIONARY GRANT PROGRAM  
(FY 2016 TIGER DISCRETIONARY GRANTS)

PORT AUTHORITY OF GUAM

REHABILITATION OF "H" WHARF

MARAD FY 2016 TIGER Grant No. DTMA91G1600007

7069M81430 2019 1RHW160007 0000150002 41010 61006600 – \$10,000,000.00

This agreement is between the United States Department of Transportation (*the "USDOT"*) and Port Authority of Guam (*the "Recipient"*). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113, December 18, 2015), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2016, 81 FR 9935 (February 26, 2016) (*the "NOFO"*). In this agreement, "FY 2016 TIGER Discretionary Grant" means an award under those provisions.

**ARTICLE 1. AWARD TERMS AND CONDITIONS**

- 1.1 **Operating Administration.** The Maritime Administration ("**MARAD**") will administer this agreement on behalf of the USDOT. In this agreement, the "**Administering Operating Administration**" means MARAD.
- 1.2 **Purpose.** The purpose of this award is to advance capital investments in surface transportation infrastructure that will have a significant impact on the nation, a metropolitan area, or a region. The parties will achieve that purpose by completing the project that was described in the Recipient's technical application, titled Rehabilitation of "H" Wharf, as modified by the negotiated provisions on the project's material terms and conditions, including the attachments referenced in Section 1.8.
- 1.3 **Federal Award Amount.** The USDOT hereby awards a FY 2016 TIGER Discretionary Grant in the amount of Ten Million Dollars (\$10,000,000.00) for the period of performance. The USDOT shall not provide funding greater than this amount under this

agreement. The Recipient acknowledges that USDOT is not liable for payments that exceed this amount.

1.4 **Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in Section 2.2. Under 2 CFR 200.309, the Recipient shall not charge to this award costs that are incurred after the period of performance.

1.5 **Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the technical application, the USDOT hereby designates the project to be a project in a rural area, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

1.6 **Fund Obligation.**

This agreement obligates the total amount of funds stated in Section 1.3.

1.7 **Federal Award Identification Number.** The USDOT identifies this award with the following federal award identification number:

DTMA91G1600007

1.8 **Attachments.** This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Schedule
Attachment C	Estimated Project Budget
Attachment D	Performance Measurement Table

## **ARTICLE 2. PROJECT AND RECIPIENT INFORMATION**

2.1 **Summary of Project's Statement of Work.** (See Attachment A for additional details).

The project will reconstruct and expand a wharf built in 1948, including a new sheet pile bulkhead retaining wall, and upgrade an access road. The project also includes demolition of surface facilities and construction of additional structural components.

2.2 **Summary of Project's Estimated Schedule.** (See Attachment B for additional details).

Actual Completion of NEPA:	07/17/2019
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Actual Completion of Final Design:	04/20/2018
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Actual PS&E Approval:	04/30/2018
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Planned Construction Start Date:	01/01/2020
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Planned Construction Substantial Completion Date: 07/30/2021

Period of Performance End Date 11/30/2021

Planned Project Closeout Date 02/28/2022

**2.3 Summary of Project's Estimated Budget.** (See Attachment C for additional details).

TIGER Grant Funds and Additional Sources of Project Funds:

TIGER Discretionary Grant Amount:	\$10,000,000	42%
<u>Local Funds (PAG):</u>	<u>\$13,774,255</u>	<u>58%</u>
Total Project Cost:	\$23,774,255	100%

**2.4 Recipient Cost Share Certification.**

As negotiated, the Recipient hereby certifies that not less than Thirteen Million Seven Hundred and Seventy-Four Thousand and Two Hundred and Fifty-Five dollars (\$13,774,255.00) in non-Federal funds are committed to fund the project.

**2.5 Project's State and Local Planning Requirements.**

Proposed project identified on the Jose D. Leon Guerrero Commercial Port of Guam Master Plan Update 2013 Report.

**2.6 Project's Environmental Approvals and Processes.**

Environmental Documentation Type, Titles and Date: Environmental Assessment, Hotel Wharf and access road maintenance and repair project in Apra Harbor, Guam, approved on July 5, 2019.

Environmental Decision Type and Date: Finding of No Significant Impact (FONSI), approved on July 17, 2019.

Name of Agency and Office Approving each Environmental Decision Document: MARAD, Office of Environment

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	

National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture-Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture-Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

## 2.7 Recipient's and any Subrecipient's Unique Entity Identifiers.

Dun and Bradstreet Data Universal Numbering System No. (the "***DUNS No.***") of the Recipient: 779911338

Name of any First-Tier Subrecipients (if applicable – to be reported if/when identified. If not applicable please note is N/A): N/A

DUNS No. of First-Tier Subrecipient (if applicable – to be reported if/when identified): N/A

## 2.8 Recipient Contacts.

Name:	Rory J. Respicio
Title	General Manager
Agency	Port Authority of Guam
Mailing Address	1026 Cabras Highway, Suite 201, Piti Guam 96925
Phone Number	(671) 477-5931/35, ext. 302, 303
Email Address	rjrespicio@portguam.com

## ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 **Report Submission.** The Recipient shall send all reports required by this agreement to all the USDOT contacts who are listed in Section 9.1.
- 3.2 **Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 3.3 **Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement

requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

- 3.4 **Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (*the "OMB"*). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

#### **ARTICLE 4. PROGRESS REPORTING**

- 4.1 **Quarterly Project Progress Reports.** On or before the 20th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to the USDOT a Quarterly Project Progress Report with the form and content described in Exhibit H. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report in the second calendar year quarter that begins after the date of this agreement.
- 4.2 **Annual Budget Review and Program Plan.**

- (a) From the date of this agreement until Project Closeout, on or before the 60th day before the end of each Agreement Year, the Recipient shall submit to the USDOT an Annual Budget Review and Program Plan that contains:
- (1) a detailed schedule of activities and milestones for the next Agreement Year;
  - (2) an estimate of specific performance objectives, including forecasted expenditures, for the next Agreement Year; and
  - (3) a comparison of the approved project budget with an updated estimate of the project costs.

In this agreement, "**Agreement Year**" means 12 months beginning on the date of this agreement or an anniversary of the date of this agreement.

- (b) If the Recipient's updated estimate of the total project costs exceeds the total project costs in the approved project budget, then the Recipient shall:
- (1) include in the Annual Budget Review and Program Plan either documentation of committed funds to cover the increased costs or a written plan describing how the Recipient will cover the increased costs; and
  - (2) meet with the USDOT to discuss the Annual Budget Review and Program Plan.

- 4.3 **Closeout Reports.** No later than 90 days after the period of performance end date that is listed in Section 2.2, the Recipient shall:
- (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports; and
  - (2) provide a report comparing the final work, schedule, and budget to the statement of work described in Section 2.1, the schedule described in Section 2.2, and the budget described in Section 2.3.
- 4.4 **Project Closeout.** In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the project is closed out. Under 2 CFR 200.343, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in Section 4.3.

## **ARTICLE 5. PERFORMANCE REPORTING**

- 5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.
- 5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and
  - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 5.3 **Interim Performance Measurement Reports.** After project completion, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table.
- 5.4 **Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:
- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
  - (2) all baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and

- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

## **ARTICLE 6. AGREEMENT MODIFICATIONS**

- 6.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 6.2 **Limited Unilateral Modifications.**
- (a) The Recipient may update the contacts who are listed in Section 2.8 (Recipient Contacts) by written notice to all of the USDOT contacts who are listed in Section 9.1.
  - (b) The USDOT may update the contacts who are listed in Section 9.1 (USDOT Contacts) by written notice to all of the Recipient contacts who are listed in Section 2.8.
- 6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under Section 6.1 or Section 6.2. If an amendment, modification, or supplement is not permitted under Section 6.1 and not permitted under Section 6.2, it is void.

## **ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 7.1 **Statement of Work Changes.** If the project's activities differ from the statement of work that is described in Section 2.1 and Attachment A, then the Recipient shall request a modification of this agreement to update Section 2.1 and Attachment A.
- 7.2 **Schedule Changes.** If the project's substantial completion date changes to a date that is more than three months after the substantial completion date listed in Section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in Section 2.2, then the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.
- 7.3 **Budget Changes.**
- (a) If any of the budget amounts that are listed in Section 2.3 change from the amounts listed in that Section, then the Recipient shall request a modification of this agreement to update Section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment C unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.



- (b) If the actual eligible project costs are less than the “Total Project Cost” stated in Section 2.3, then the Recipient may reduce non-TIGER funds contributed to the project.

## **ARTICLE 8. TERMINATION AND EXPIRATION**

**8.1 USDOT Termination.** The USDOT may, in its sole discretion, terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (1) The Recipient fails to obtain or provide any non-TIGER Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with Sections 2.3 and 2.4;
- (2) The Recipient fails to begin construction before 03/01/2020;
- (3) The Recipient fails to begin expenditure of award funds by 02/15/2020;
- (4) The Recipient fails to achieve the Construction Substantial Completion Date by 10/30/2021;
- (5) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in Section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (6) The USDOT, in its sole discretion, determines that termination of this agreement is in the public interest.

**8.2 Closeout Termination.** This agreement terminates on Project Closeout.

**8.3 Fund Liquidation, Adjustment, and Cancellation.**

- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in Section 2.2. The Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in Section 8.3(c).
- (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 CFR 200.343–.345.
- (c) Outstanding FY 16 TIGER Discretionary Grant balances are canceled by statute after September 30, 2024, and are then unavailable for any purpose, including adjustments and expenditures.

**8.4 Reporting Survival:** The reporting requirements set forth in articles 4 and 5 of this agreement survive the termination of this agreement and the expiration of award funds.

## ARTICLE 9. USDOT CONTACTS

- 9.1 **USDOT Contacts.** Except as authorized by the USDOT under Section 3.2, the Recipient shall send all notices, reports, and information required by this agreement to all of the following contacts:

Judy Bowers  
Grants/Contracting Officer, Office of Acquisitions  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE Washington, DC  
20590  
MAR 380  
W26-418  
Mailstop 5  
(202) 366-1913  
[Judy.bowers@dot.gov](mailto:Judy.bowers@dot.gov)

and

Robert Bouchard  
Director, Office of Infrastructure Development and Congestion Mitigation  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-308  
Mailstop 3  
(202) 366-5076  
[robert.bouchard@dot.gov](mailto:robert.bouchard@dot.gov)

and

David Bohnet  
Supervisor, Grants Management  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-226  
Mailstop 3  
(202) 366-0586  
[David.bohnet@dot.gov](mailto:David.bohnet@dot.gov)

and

OST TIGER Discretionary Grants Coordinator  
United States Department of Transportation  
Office of the Secretary  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
(202) 366-8914  
[TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov)

## **ARTICLE 10. ADDITIONAL TERMS AND CONDITIONS**

- 10.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled "National Infrastructure Investments," with number 20.933 in the Catalog of Federal Domestic Assistance.
- 10.2 **Research and Development Designation.** This award is not for research and development.
- 10.3 **Exhibits.** This agreement includes the following exhibits as integral parts located at: <https://maradpublicsp.marad.dot.gov>
- |           |  |
|-----------|--|
| Exhibit A | Legislative Authority                          |
| Exhibit B | General Terms and Conditions                   |
| Exhibit C | Applicable Federal Laws and Regulations        |
| Exhibit D | Grant Assurances                               |
| Exhibit E | Responsibility and Authority of the Recipient  |
| Exhibit F | Reimbursement of Project Costs                 |
| Exhibit G | Grant Requirements and Contract Clauses        |
| Exhibit H | Quarterly Progress Reports: Format and Content |
- 10.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 12, then the provision in Articles 1 – 12 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

## **ARTICLE 11. SPECIAL GRANT REQUIREMENTS**

### **11.1 Reimbursement Requests.**

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under Section 1.6 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement of a cost more than 180 days after that cost was incurred, the USDOT may deny the request for being untimely.

- (c) The Recipient shall request reimbursement by completing forms in iSupplier, which is on-line and paperless. The USDOT may deny a payment request that is not submitted through iSupplier.
- (d) The Recipient shall complete training on using iSupplier before submitting a request for reimbursement. To encourage the Recipient to complete this training, the USDOT provides the following additional information, which may change after execution of this agreement:
  - (1) The Recipient may access the training from the USDOT "Delphi eInvoicing System" webpage at <http://www.transportation.gov/cfo/delphi-einvoicing-system.html>. The training is linked on the right side of that page under the heading "Web-Based Training (WBT)." The Recipient should click on "Grant Recipient WBT" to access the training, which is also available directly at [https://www.transportation.gov/sites/all/dot\\_assets/DOT\\_GR\\_04-24-2012/lessons/index.html](https://www.transportation.gov/sites/all/dot_assets/DOT_GR_04-24-2012/lessons/index.html).
  - (2) A username and password is not required to access the on-line training.
  - (3) The training is currently available and will be accessible 24/7.
  - (4) The training will take approximately 1 hour to complete.
- (e) After the Recipient completes training on using iSupplier, the Recipient shall request and complete the External User Access Request form to receive a username and password. The Recipient can request the form by sending an email to: Judy Bowers at [judy.bowers@dot.gov](mailto:judy.bowers@dot.gov).
- (f) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at <https://www.marad.dot.gov/wp-content/uploads/pdf/SF270-V1.0-1.pdf>) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.

## **11.2 Buy American Requirements.**

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The project is a public work of the Federal Government under 41 U.S.C. § 8301.

- (b) This Section 11.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
- (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the U.S.;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under Section 11.2(d).
- (c) If the Recipient uses foreign construction material in violation of Section 11.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Section 8.1 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under Section 6.1, if the USDOT determines that:
- (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 11.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under Section 11.2(d). If the Recipient makes a request under this Section 11.2(e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:
- (1) a description of the foreign and domestic construction materials;
  - (2) unit of measure;
  - (3) quantity;
  - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);

- (5) time of delivery or availability;
  - (6) location of the construction project;
  - (7) name and address of the proposed supplier; and
  - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for a waiver under Section 11.2(d);
  - (9) if the Recipient requests authorization under Section 11.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that (1) this agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In this Section 11.2, the following definitions apply:

**“Commercially available off-the-shelf (COTS) item”**

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item as defined by 48 C.F.R. § 2.101;
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**“Construction material”** means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**“Cost of components” means—**

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

**“Domestic construction material” means—**

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
  - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
  - (ii) The construction material is a COTS item.

**“Foreign construction material” means a construction material other than a domestic construction material.**

**“United States” means the 50 States, the District of Columbia, and outlying areas.**

**11.3 Final Section.** There are no other special grant requirements for this project.

## **ARTICLE 12. EXECUTION**

**12.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties shall execute this agreement in triplicate and intend each countersigned original to have identical legal effect.

**12.2 Effective Date.** This agreement is effective when fully executed by authorized representatives of the Recipient and the USDOT. The Recipient shall execute this agreement and then submit three original signed copies of the agreement to the USDOT for execution. This instrument constitutes a FY 2016 TIGER Discretionary Grant when it is signed and dated by the authorized official of the USDOT.

**EXECUTION BY THE USDOT**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of USDOT's Authorized Representative

\_\_\_\_\_  
Name of USDOT's Authorized Representative

\_\_\_\_\_  
Title



**EXECUTION BY PORT AUTHORITY OF GUAM**

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of Recipient's Authorized Representative

\_\_\_\_\_  
Name of Recipient's Authorized Representative

\_\_\_\_\_  
Title

## **ATTACHMENT A STATEMENT OF WORK**

### **Rehabilitation of H-Wharf – Port Authority of Guam**

The proposed construction involves two major components: 1) Replacement of H-Wharf structures and adjacent upland facilities, and 2) Reconstruction of the access roadway, Highway 11.

#### **1) Replacement of H-Wharf with a new bulkhead with a modern mooring and fendering system, utilities, and pavement.**

**Demolition** - Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structures including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavement, and the partial demolition of existing bulkheads and concrete caps.

**Wharf Construction** - New wharf construction consists of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface. The new sheet pile bulkhead retaining wall will be approximately 3-ft outside of the existing sheet pile bulkhead wall and is approximately 500 feet along the pier head line with approximately 100-foot returns on each side. This would increase the wharf footprint within the water by approximately 2100 S.F. Wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile "deadman" walls, batter piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pier head line in the ship-unloading zone. Structural fill will be placed in the area between the existing and new bulkheads. The concrete pavement within the ship unloading zone will be designed for 750 psf. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems.

**Utilities** - Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, storm water with oil-water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in manholes to support future construction. Electrical lines from the load center will feed low mast perimeter wharf security lighting and site power requirements. Conduit and manholes will be positioned to support future construction at both the northwest and northeast corners of the wharf adjacent to the access road.

**Upland Pavement** - The upland surface will be impervious with the area inboard of the 100-foot ship unloading zone consisting of asphalt pavement with a design load of 1500 psf. The area of asphalt pavement is approximately 2.5 acres.

#### **2) Highway 11 Roadway Reconstruction**

**Roadway Reconstruction** - The roadway utilized to access the wharf will be reconstructed for approximately 4200 feet, and paved with slight adjustments to the typical section, alignment, profile, ditches, and drainage structures. The roadway section will consist of two 11-foot lanes and one 2-foot unpaved shoulder section. Work includes new pavement striping and signage. Utilities under the roadway will include water line replacement, storm water piping, and empty data transmission conduit. Surface runoff from the new access roadway will be collected in bio-swales for natural filtration prior to out-falling in Apra Harbor. New roadway lighting is not required.

**ATTACHMENT B**  
**ESTIMATED PROJECT SCHEDULE**

Actual Start of Preliminary Engineering: 08/28/2017

Actual End of Preliminary Engineering: 11/17/2017

Actual Completion of NEPA: 07/17/2019

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	
National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture- Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture- Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

Actual Start of Final Design: 11/17/2017

Actual Completion of Final Design: 04/20/2018

Start of Right of Way Acquisition: N/A

End of Right of Way Acquisition: N/A

Actual PS&E Approval 04/30/2018

Planned Construction Contract Award Date: 10/31/2019

Planned Construction Start Date: 01/01/2020

Planned Construction Substantial Completion Date 07/30/2021

**Period of Performance End Date**

**11/30/2021**

**Planned Project Closeout Date:**

**02/28/2022**

**ATTACHMENT C  
ESTIMATED PROJECT BUDGET**

<b>Activity</b>	<b>FY16 TIGER Funds</b>	<b>Local Funds</b>	<b>Project Cost</b>
<b>A. Replacement of H-Wharf</b>			
1. Electrical	\$792,644.74	\$311,320.26	\$1,103,965.00
2. Fencing	\$86,216.49	\$33,862.51	\$120,079.00
3. Fire System	\$505,211.45	\$198,427.55	\$703,639.00
4. Marine Structures	\$6,120,267.98	\$2,403,805.02	\$8,524,073.00
5. Paving Wharf	\$775,827.07	\$304,714.93	\$1,080,542.00
6. Potable Water	\$345,073.46	\$135,531.54	\$480,605.00
7. Sanitary Sewer System	\$15,626.51	\$6,137.49	\$21,764.00
8. Storm Water System	\$435,721.44	\$171,134.56	\$606,856.00
9. Utility Building	\$335,294.33	\$131,690.67	\$466,985.00
<b>SUBTOTAL A:</b>	<b>\$9,411,883.47</b>	<b>\$3,696,624.53</b>	<b>\$13,108,508.00</b>
<b>B. Reconstruction of Access Roadway, Highway 11</b>			
1. Conduit Along Access Road	\$103,352.95	\$40,593.05	\$143,946.00
2. Access Road Paving	\$355,485.15	\$139,620.85	\$495,106.00
3. Forced Main Water Utility	\$55,112.81	\$21,646.19	\$76,759.00
4. Access Road Signing & Pavement Markings	\$25,384.10	\$9,969.90	\$35,354.00
5. Traffic Control	\$48,781.52	\$19,159.48	\$67,941.00
<b>SUBTOTAL B:</b>	<b>\$588,116.53</b>	<b>\$230,989.47</b>	<b>\$819,106.00</b>
<b>CONSTRUCTION TOTAL</b>	<b>\$10,000,000.00</b>	<b>\$3,927,614.00</b>	<b>\$13,927,614.00</b>
15% Contractor General Conditions		\$2,089,142.00	\$2,089,142.00
15% Contractor's Overhead & Profit		\$2,402,513.00	\$2,402,513.00
5% Mobilization		\$920,963.00	\$920,963.00
10% Contingency		\$1,934,023.00	\$1,934,023.00
<b>Construction Management Services</b>		<b>\$2,500,000.00</b>	<b>\$2,500,000.00</b>
<b>PROJECT TOTAL COST:</b>	<b>\$10,000,000.00</b>	<b>\$13,774,255.00</b>	<b>\$23,774,255.00</b>

**ATTACHMENT D**  
**PERFORMANCE MEASUREMENT TABLE**

**Study Area: Rehabilitation of “H” Wharf, Cabras Island, Piti Guam 93925**

**Pre-project Measurement Date:** Twelve months of data covering data between **January 1, 2019** and **December 31, 2019** for each Measure listed below.

**Pre-project Report Date: March 1, 2020**

**Project Outcomes Measurement Date: October 1, 2021 through September 30, 2024**

**Project Outcomes Report Date: December 30, 2024**

**Table 1: Performance Measurement Table**

<b>Measure</b>	<b>Description and Category of Measure</b>	<b>Measurement Period</b>	<b>Reporting Period</b>
<b>Gross Tons</b>	<p><b>This performance measure will report the movement of gross tons for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Shall mean the gross tons used by the carrier according to the vessel’s manifest to assess the carrier’s freight charges to Guam and the Micronesian Region</b></p>	<p><b>Baseline Measurement:</b> Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p><b>Interim Performance Measures:</b> Accurate as of <b>October 1, 2021</b></p>	<p><b>Baseline Measurement:</b> Pre-project Report Date <b>March 1, 2020</b></p> <p><b>Interim Performance Measures:</b> <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>
<b>Vessel Calls</b>	<p><b>This performance measure will report the vessel calls for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p>	<p><b>Baseline Measurement:</b> Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p>	<p><b>Baseline Measurement:</b> Pre-project Report Date <b>March 1, 2020</b></p> <p><b>Interim Performance Measures:</b> <b>Quarterly, for a</b></p>

	<b>Vessels calling to the Guam and the Micronesian Region</b>	Interim Performance Measures: Accurate as of <b>October 1, 2021</b>	<b>period of 3 years. The first measured quarter beginning October 1, 2021.</b>
<b>Cargo Lifts</b>	<p><b>This performance measure will report the cargo lifts for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Goods, wares, materials, merchandise or any other objects that is, or to be, transported on Guam and the Micronesian Region</b></p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p>Interim Performance Measures: Accurate as of <b>October 1, 2021</b></p>	<p>Baseline Measurement: Pre-project Report Date <b>March 1, 2020</b></p> <p>Interim Performance Measures: <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>





UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
WASHINGTON, DC 20590

GRANT AGREEMENT UNDER THE  
CONSOLIDATED APPROPRIATIONS ACT, 2016  
(PUB. L. 114-113, DECEMBER 18, 2015)  
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS  
DISCRETIONARY GRANT PROGRAM  
(FY 2016 TIGER DISCRETIONARY GRANTS)

PORT AUTHORITY OF GUAM

REHABILITATION OF "H" WHARF

MARAD FY 2016 TIGER Grant No. DTMA91G1600007

7069M81430 2019 1RHW160007 0000150002 41010 61006600 – \$10,000,000.00

This agreement is between the United States Department of Transportation (*the "USDOT"*) and Port Authority of Guam (*the "Recipient"*). It reflects the selection of the Recipient for an award under the provisions of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113, December 18, 2015), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2016, 81 FR 9935 (February 26, 2016) (*the "NOFO"*). In this agreement, "FY 2016 TIGER Discretionary Grant" means an award under those provisions.

**ARTICLE 1. AWARD TERMS AND CONDITIONS**

- 1.1 **Operating Administration.** The Maritime Administration ("**MARAD**") will administer this agreement on behalf of the USDOT. In this agreement, the "**Administering Operating Administration**" means MARAD.
- 1.2 **Purpose.** The purpose of this award is to advance capital investments in surface transportation, infrastructure that will have a significant impact, on the nation, a metropolitan area, or a region. The parties will achieve that purpose by completing the project that was described in the Recipient's technical application, titled Rehabilitation of "H" Wharf, as modified by the negotiated provisions on the project's material terms and conditions, including the attachments referenced in Section 1.8.
- 1.3 **Federal Award Amount.** The USDOT hereby awards a FY 2016 TIGER Discretionary Grant in the amount of Ten Million Dollars (\$10,000,000.00) for the period of performance. The USDOT shall not provide funding greater than this amount under this

agreement. The Recipient acknowledges that USDOT is not liable for payments that exceed this amount.

1.4 **Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on the period of performance end date that is listed in Section 2.2. Under 2 CFR 200.309, the Recipient shall not charge to this award costs that are incurred after the period of performance.

1.5 **Urban or Rural Designation.** Based on information that the Recipient provided to the USDOT, including the technical application, the USDOT hereby designates the project to be a project in a rural area, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

1.6 **Fund Obligation.**

This agreement obligates the total amount of funds stated in Section 1.3.

1.7 **Federal Award Identification Number.** The USDOT identifies this award with the following federal award identification number:

DTMA91G1600007

1.8 **Attachments.** This agreement includes the following attachments as integral parts:

Attachment A	Statement of Work
Attachment B	Estimated Project Schedule
Attachment C	Estimated Project Budget
Attachment D	Performance Measurement Table

## **ARTICLE 2. PROJECT AND RECIPIENT INFORMATION**

2.1 **Summary of Project's Statement of Work.** (See Attachment A for additional details).

The project will reconstruct and expand a wharf built in 1948, including a new sheet pile bulkhead retaining wall, and upgrade an access road. The project also includes demolition of surface facilities and construction of additional structural components.

2.2 **Summary of Project's Estimated Schedule.** (See Attachment B for additional details).

Actual Completion of NEPA:	07/17/2019
Actual Completion of Final Design:	04/20/2018
Actual PS&E Approval:	04/30/2018
Planned Construction Start Date:	01/01/2020

Planned Construction Substantial Completion Date: 07/30/2021

Period of Performance End Date 11/30/2021

Planned Project Closeout Date 02/28/2022

**2.3 Summary of Project's Estimated Budget.** (See Attachment C for additional details).

TIGER Grant Funds and Additional Sources of Project Funds:

TIGER Discretionary Grant Amount:	\$10,000,000	42%
<u>Local Funds (PAG):</u>	<u>\$13,774,255</u>	<u>58%</u>
Total Project Cost:	\$23,774,255	100%

**2.4 Recipient Cost Share Certification.**

As negotiated, the Recipient hereby certifies that not less than Thirteen Million Seven Hundred and Seventy-Four Thousand and Two Hundred and Fifty-Five dollars (\$13,774,255.00) in non-Federal funds are committed to fund the project.

**2.5 Project's State and Local Planning Requirements.**

Proposed project identified on the Jose D. Leon Guerrero Commercial Port of Guam Master Plan Update 2013 Report.

**2.6 Project's Environmental Approvals and Processes.**

Environmental Documentation Type, Titles and Date: Environmental Assessment, Hotel Wharf and access road maintenance and repair project in Apra Harbor, Guam, approved on July 5, 2019.

Environmental Decision Type and Date: Finding of No Significant Impact (FONSI), approved on July 17, 2019.

Name of Agency and Office Approving each Environmental Decision Document: MARAD, Office of Environment

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	

National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture-Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture-Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

## 2.7 Recipient's and any Subrecipient's Unique Entity Identifiers.

Dun and Bradstreet Data Universal Numbering System No. (the "**DUNS No.**") of the Recipient: 779911338

Name of any First-Tier Subrecipients (if applicable – to be reported if/when identified. If not applicable please note is N/A): N/A

DUNS No. of First-Tier Subrecipient (if applicable – to be reported if/when identified): N/A

## 2.8 Recipient Contacts.

Name: Rory J. Respicio  
Title: General Manager  
Agency: Port Authority of Guam  
Mailing Address: 1026 Cabras Highway, Suite 201, Piti Guam 96925  
Phone Number: (671) 477-5931/35, ext. 302, 303  
Email Address: rjrespicio@portguam.com

## ARTICLE 3. GENERAL REPORTING TERMS

- 3.1 **Report Submission.** The Recipient shall send all reports required by this agreement to all the USDOT contacts who are listed in Section 9.1.
- 3.2 **Alternative Reporting Methods.** The Administering Operating Administration may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the Administering Operating Administration.
- 3.3 **Reporting as History of Performance.** Under 2 C.F.R 200.205, any Federal awarding agency may consider the Recipient's timely submission of the reports that this agreement

requires, or the Recipient's failure to timely submit those reports, when evaluating the risks of making a future Federal financial assistance award to the Recipient.

- 3.4 **Paperwork Reduction Act Notice.** Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (*the "OMB"*). Collections of information conducted under this agreement are approved under OMB Control No. 2105-0563.

#### **ARTICLE 4. PROGRESS REPORTING**

- 4.1 **Quarterly Project Progress Reports.** On or before the 20th day of the first month of each calendar year quarter and until Project Closeout, the Recipient shall submit to the USDOT a Quarterly Project Progress Report with the form and content described in Exhibit H. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report in the second calendar year quarter that begins after the date of this agreement.

4.2 **Annual Budget Review and Program Plan.**

- (a) From the date of this agreement until Project Closeout, on or before the 60th day before the end of each Agreement Year, the Recipient shall submit to the USDOT an Annual Budget Review and Program Plan that contains:

- (1) a detailed schedule of activities and milestones for the next Agreement Year;
- (2) an estimate of specific performance objectives, including forecasted expenditures, for the next Agreement Year; and
- (3) a comparison of the approved project budget with an updated estimate of the project costs.

In this agreement, "**Agreement Year**" means 12 months beginning on the date of this agreement or an anniversary of the date of this agreement.

- (b) If the Recipient's updated estimate of the total project costs exceeds the total project costs in the approved project budget, then the Recipient shall:

- (1) include in the Annual Budget Review and Program Plan either documentation of committed funds to cover the increased costs or a written plan describing how the Recipient will cover the increased costs; and
- (2) meet with the USDOT to discuss the Annual Budget Review and Program Plan.

- 4.3 **Closeout Reports.** No later than 90 days after the period of performance end date that is listed in Section 2.2, the Recipient shall:
- (1) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports; and
  - (2) provide a report comparing the final work, schedule, and budget to the statement of work described in Section 2.1, the schedule described in Section 2.2, and the budget described in Section 2.3.
- 4.4 **Project Closeout.** In this agreement, “**Project Closeout**” means the date that the USDOT notifies the Recipient that the project is closed out. Under 2 CFR 200.343, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in Section 4.3.

## **ARTICLE 5. PERFORMANCE REPORTING**

- 5.1 **Performance Measure Data Collection.** The Recipient shall collect the data necessary to report on each performance measure that is identified in the Performance Measurement Table in Attachment D.
- 5.2 **Pre-project Performance Measurement Report.** The Recipient shall submit to the USDOT, on or before the Pre-project Report Date that is stated in Attachment D, a Pre-project Performance Measurement Report that contains:
- (1) baseline data for each performance measure that is identified in the Performance Measurement Table in Attachment D, accurate as of the Pre-project Measurement Date that is stated in Attachment D; and
  - (2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.
- 5.3 **Interim Performance Measurement Reports.** After project completion, the Recipient shall submit to the USDOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in Attachment D, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table.
- 5.4 **Project Outcomes Report.** The Recipient shall submit to the USDOT, on or before the Project Outcomes Report Date that is stated in Attachment D, a Project Outcomes Report that contains:
- (1) a narrative discussion detailing project successes and the influence of external factors on project expectations;
  - (2) all baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and

- (3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

## **ARTICLE 6. AGREEMENT MODIFICATIONS**

- 6.1 **Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.
- 6.2 **Limited Unilateral Modifications.**
- (a) The Recipient may update the contacts who are listed in Section 2.8 (Recipient Contacts) by written notice to all of the USDOT contacts who are listed in Section 9.1.
  - (b) The USDOT may update the contacts who are listed in Section 9.1 (USDOT Contacts) by written notice to all of the Recipient contacts who are listed in Section 2.8.
- 6.3 **Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under Section 6.1 or Section 6.2. If an amendment, modification, or supplement is not permitted under Section 6.1 and not permitted under Section 6.2, it is void.

## **ARTICLE 7. STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 7.1 **Statement of Work Changes.** If the project's activities differ from the statement of work that is described in Section 2.1 and Attachment A, then the Recipient shall request a modification of this agreement to update Section 2.1 and Attachment A.
- 7.2 **Schedule Changes.** If the project's substantial completion date changes to a date that is more than three months after the substantial completion date listed in Section 2.2 or a schedule change would require the period of performance to continue after the period of performance end date listed in Section 2.2, then the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update Section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.
- 7.3 **Budget Changes.**
- (a) If any of the budget amounts that are listed in Section 2.3 change from the amounts listed in that Section, then the Recipient shall request a modification of this agreement to update Section 2.3 and Attachment C. For other budget changes, the Recipient shall request a modification of this agreement to update Attachment C unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.



- (b) If the actual eligible project costs are less than the “Total Project Cost” stated in Section 2.3, then the Recipient may reduce non-TIGER funds contributed to the project.

## **ARTICLE 8. TERMINATION AND EXPIRATION**

8.1 **USDOT Termination.** The USDOT may, in its sole discretion, terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (1) The Recipient fails to obtain or provide any non-TIGER Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with Sections 2.3 and 2.4;
- (2) The Recipient fails to begin construction before 03/01/2020;
- (3) The Recipient fails to begin expenditure of award funds by 02/15/2020;
- (4) The Recipient fails to achieve the Construction Substantial Completion Date by 10/30/2021;
- (5) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in Section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (6) The USDOT, in its sole discretion, determines that termination of this agreement is in the public interest.

8.2 **Closeout Termination.** This agreement terminates on Project Closeout.

8.3 **Fund Liquidation, Adjustment, and Cancellation.**

- (a) The Recipient shall liquidate all obligations under this award not later than 90 days after the period of performance end date that is listed in Section 2.2. The Recipient acknowledges that this period of availability for liquidation ends before the statutory expenditure deadline identified in Section 8.3(c).
- (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 CFR 200.343–.345.
- (c) Outstanding FY 16 TIGER Discretionary Grant balances are canceled by statute after September 30, 2024, and are then unavailable for any purpose, including adjustments and expenditures.

8.4 **Reporting Survival:** The reporting requirements set forth in articles 4 and 5 of this agreement survive the termination of this agreement and the expiration of award funds.

## ARTICLE 9. USDOT CONTACTS

- 9.1 **USDOT Contacts.** Except as authorized by the USDOT under Section 3.2, the Recipient shall send all notices, reports, and information required by this agreement to all of the following contacts:

Judy Bowers  
Grants/Contracting Officer, Office of Acquisitions  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE Washington, DC  
20590  
MAR 380  
W26-418  
Mailstop 5  
(202) 366-1913  
[Judy.bowers@dot.gov](mailto:Judy.bowers@dot.gov)

and

Robert Bouchard  
Director, Office of Infrastructure Development and Congestion Mitigation  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-308  
Mailstop 3  
(202) 366-5076  
[robert.bouchard@dot.gov](mailto:robert.bouchard@dot.gov)

and

David Bohnet  
Supervisor, Grants Management  
DOT – Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
MAR 510  
W21-226  
Mailstop 3  
(202) 366-0586  
[David.bohnet@dot.gov](mailto:David.bohnet@dot.gov)

and

OST TIGER Discretionary Grants Coordinator  
United States Department of Transportation  
Office of the Secretary  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
(202) 366-8914  
[TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov)

## **ARTICLE 10. ADDITIONAL TERMS AND CONDITIONS**

- 10.1 **Catalog of Federal Domestic Assistance Information.** This award is under the program titled “National Infrastructure Investments,” with number 20.933 in the Catalog of Federal Domestic Assistance.
- 10.2 **Research and Development Designation.** This award is not for research and development.
- 10.3 **Exhibits.** This agreement includes the following exhibits as integral parts located at: <https://maradpublicsp.marad.dot.gov>
- |           |  |
|-----------|--|
| Exhibit A | Legislative Authority                          |
| Exhibit B | General Terms and Conditions                   |
| Exhibit C | Applicable Federal Laws and Regulations        |
| Exhibit D | Grant Assurances                               |
| Exhibit E | Responsibility and Authority of the Recipient  |
| Exhibit F | Reimbursement of Project Costs                 |
| Exhibit G | Grant Requirements and Contract Clauses        |
| Exhibit H | Quarterly Progress Reports: Format and Content |
- 10.4 **Construction.** If a provision in the exhibits or the attachments conflicts with a provision in Articles 1 – 12, then the provision in Articles 1 – 12 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

## **ARTICLE 11. SPECIAL GRANT REQUIREMENTS**

### **11.1 Reimbursement Requests.**

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under Section 1.6 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement of a cost incurred as soon as practicable after incurring that cost. If the Recipient requests reimbursement of a cost more than 180 days after that cost was incurred, the USDOT may deny the request for being untimely.

- (c) The Recipient shall request reimbursement by completing forms in iSupplier, which is on-line and paperless. The USDOT may deny a payment request that is not submitted through iSupplier.
- (d) The Recipient shall complete training on using iSupplier before submitting a request for reimbursement. To encourage the Recipient to complete this training, the USDOT provides the following additional information, which may change after execution of this agreement:
  - (1) The Recipient may access the training from the USDOT "Delphi eInvoicing System" webpage at <http://www.transportation.gov/cfo/delphi-einvoicing-system.html>. The training is linked on the right side of that page under the heading "Web-Based Training (WBT)." The Recipient should click on "Grant Recipient WBT" to access the training, which is also available directly at [https://www.transportation.gov/sites/all/dot\\_assets/DOT\\_GR\\_04-24-2012/lessons/index.html](https://www.transportation.gov/sites/all/dot_assets/DOT_GR_04-24-2012/lessons/index.html).
  - (2) A username and password is not required to access the on-line training.
  - (3) The training is currently available and will be accessible 24/7.
  - (4) The training will take approximately 1 hour to complete.
- (e) After the Recipient completes training on using iSupplier, the Recipient shall request and complete the External User Access Request form to receive a username and password. The Recipient can request the form by sending an email to: Judy Bowers at [judy.bowers@dot.gov](mailto:judy.bowers@dot.gov).
- (f) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF-270 (available at <https://www.marad.dot.gov/wp-content/uploads/pdf/SF270-V1.0-1.pdf>) to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 510 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.

## **11.2 Buy American Requirements.**

- (a) The Recipient shall apply, comply with, and implement all provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. The project is a public work of the Federal Government under 41 U.S.C. § 8301.

- (b) This Section 11.2 implements 41 U.S.C. §§ 8301-8305, the Buy American Act, by providing a preference for domestic construction material. The Recipient shall not use foreign construction materials in performing this agreement, except that:
- (1) the Recipient may use a commercially available off-the-shelf item under 41 U.S.C. § 1907 regardless of its components if the item is manufactured in the U.S.;
  - (2) the Recipient may use information technology that is a commercial item;
  - (3) the Recipient may use foreign construction materials that are listed at 48 C.F.R. 25.104; and
  - (4) the Recipient may use foreign construction materials if the USDOT has authorized their use under Section 11.2(d).
- (c) If the Recipient uses foreign construction material in violation of Section 11.2(b), the USDOT may disallow and deny reimbursement of costs incurred by the Recipient and take other remedial actions under Section 8.1 and 2 C.F.R. 200.338.
- (d) The USDOT may authorize the Recipient to use foreign construction material, by modifying this agreement under Section 6.1, if the USDOT determines that:
- (1) applying the Buy American statute to the construction material would be impracticable or inconsistent with the public interest;
  - (2) the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
  - (3) the cost of domestic construction material is unreasonable.

The cost of a domestic construction material is unreasonable under Section 11.2(d)(3) if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent.

- (e) The Recipient may request that the USDOT authorize the Recipient to use foreign construction material under Section 11.2(d). If the Recipient makes a request under this Section 11.2(e), the Recipient shall provide adequate information for the USDOT to evaluate the request, including:
- (1) a description of the foreign and domestic construction materials;
  - (2) unit of measure;
  - (3) quantity;
  - (4) price, including all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued);

- (5) time of delivery or availability;
  - (6) location of the construction project;
  - (7) name and address of the proposed supplier; and
  - (8) a detailed justification of the reason for use of foreign construction materials identifying the specific basis for a waiver under Section 11.2(d);
  - (9) if the Recipient requests authorization under Section 11.2(d)(3), a reasonable survey of the market and a full price comparison measuring the relative costs of the available domestic and foreign construction materials; and
  - (10) if the Recipient submits the request after contract award, an explanation why the Recipient could not have, before contract award: (A) reasonably foreseen the need for the determination and (B) requested the determination.
- (f) The Recipient acknowledges that (1) this agreement is not a Government procurement contract; (2) acquisitions of supplies, services, or construction materials by the Recipient under this agreement are not acquisitions by the Government; and (3) the Free Trade Agreement exceptions to the Buy American Act as provided by 48 C.F.R. Part 25, Subpart 25.4 are inapplicable to this agreement.
- (g) In this Section 11.2, the following definitions apply:

**“Commercially available off-the-shelf (COTS) item”**

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item as defined by 48 C.F.R. § 2.101;
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under an agreement, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.

**“Construction material”** means an article, material, or supply brought to the construction site by the Recipient for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

**“Cost of components”** means—

- (1) For components purchased by the Recipient, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

- (2) For components manufactured by the Recipient, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

**“Domestic construction material” means—**

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
  - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
  - (ii) The construction material is a COTS item.

**“Foreign construction material” means a construction material other than a domestic construction material.**

**“United States” means the 50 States, the District of Columbia, and outlying areas.**

**11.3 Final Section.** There are no other special grant requirements for this project.

## **ARTICLE 12. EXECUTION**

**12.1 Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties shall execute this agreement in triplicate and intend each countersigned original to have identical legal effect.

**12.2 Effective Date.** This agreement is effective when fully executed by authorized representatives of the Recipient and the USDOT. The Recipient shall execute this agreement and then submit three original signed copies of the agreement to the USDOT for execution. This instrument constitutes a FY 2016 TIGER Discretionary Grant when it is signed and dated by the authorized official of the USDOT.

**EXECUTION BY THE USDOT**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of USDOT's Authorized Representative

\_\_\_\_\_  
Name of USDOT's Authorized Representative

\_\_\_\_\_  
Title



**EXECUTION BY PORT AUTHORITY OF GUAM**

By signature below, the Recipient acknowledges that it accepts and agrees to be bound by this agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature of Recipient's Authorized Representative

\_\_\_\_\_  
Name of Recipient's Authorized Representative

\_\_\_\_\_  
Title

## **ATTACHMENT A STATEMENT OF WORK**

### **Rehabilitation of H-Wharf – Port Authority of Guam**

The proposed construction involves two major components: 1) Replacement of H-Wharf structures and adjacent upland facilities, and 2) Reconstruction of the access roadway, Highway 11.

#### **1) Replacement of H-Wharf with a new bulkhead with a modern mooring and fendering system, utilities, and pavement.**

**Demolition** - Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structures including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavement, and the partial demolition of existing bulkheads and concrete caps.

**Wharf Construction** - New wharf construction consists of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface. The new sheet pile bulkhead retaining wall will be approximately 3-ft outside of the existing sheet pile bulkhead wall and is approximately 500 feet along the pier head line with approximately 100-foot returns on each side. This would increase the wharf footprint within the water by approximately 2100 S.F. Wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile “deadman” walls, batter piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pier head line in the ship-unloading zone. Structural fill will be placed in the area between the existing and new bulkheads. The concrete pavement within the ship unloading zone will be designed for 750 psf. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems.

**Utilities** - Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, storm water with oil-water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in manholes to support future construction. Electrical lines from the load center will feed low mast perimeter wharf security lighting and site power requirements. Conduit and manholes will be positioned to support future construction at both the northwest and northeast corners of the wharf adjacent to the access road.

**Upland Pavement** - The upland surface will be impervious with the area inboard of the 100-foot ship unloading zone consisting of asphalt pavement with a design load of 1500 psf. The area of asphalt pavement is approximately 2.5 acres.

#### **2) Highway 11 Roadway Reconstruction**

**Roadway Reconstruction** - The roadway utilized to access the wharf will be reconstructed for approximately 4200 feet, and paved with slight adjustments to the typical section, alignment, profile, ditches, and drainage structures. The roadway section will consist of two 11-foot lanes and one 2-foot unpaved shoulder section. Work includes new pavement striping and signage. Utilities under the roadway will include water line replacement, storm water piping, and empty data transmission conduit. Surface runoff from the new access roadway will be collected in bio-swales for natural filtration prior to out-falling in Apra Harbor. New roadway lighting is not required.

## ATTACHMENT B ESTIMATED PROJECT SCHEDULE

Actual Start of Preliminary Engineering: 08/28/2017

Actual End of Preliminary Engineering: 11/17/2017

Actual Completion of NEPA: 07/17/2019

Permit/Action	Application Date (Actual)	Application Date (Estimated)	Date Permit Approved	Permit No.	Expected Permit Approval Date
US Fish and Wildlife Service- Section 7 Endangered Species Act (Terrestrial)	9/14/18		4/05/19 4/12/19 (corrected letter issued)	2019-I-0127	
National Marine Fisheries Service-Section 7 Endangered Species Act (Marine)	9/14/18		3/12/19	PIR-2019-10507, I-PI-19-1722-AG	
Guam Department of Agriculture- Green Sea Turtle Habitat	2/09/19		4/19/18	n/a	
Guam Coastal Management Program/Bureau of Statistics & Plans-Federal Consistency Certification	6/04/18		8/24/18	FC2018-0011	
US Army Corps of Engineers	6/05/18		Pending	POH-2017-253	9/2019
Guam Department of Agriculture- Coral Relocation Permit		7/26/19	Pending	Pending	8/26/19
Guam Environmental Protection Agency-401 Water Quality Certification	6/04/18		Pending	GEPA18-1046	9/2019

Actual Start of Final Design: 11/17/2017

Actual Completion of Final Design: 04/20/2018

Start of Right of Way Acquisition: N/A

End of Right of Way Acquisition: N/A

Actual PS&E Approval 04/30/2018

Planned Construction Contract Award Date: 10/31/2019

Planned Construction Start Date: 01/01/2020

Planned Construction Substantial Completion Date 07/30/2021

**Period of Performance End Date**

**11/30/2021**

**Planned Project Closeout Date:**

**02/28/2022**

**ATTACHMENT C  
ESTIMATED PROJECT BUDGET**

<b>Activity</b>	<b>FY16 TIGER Funds</b>	<b>Local Funds</b>	<b>Project Cost</b>
<b>A. Replacement of H-Wharf</b>			
1. Electrical	\$792,644.74	\$311,320.26	\$1,103,965.00
2. Fencing	\$86,216.49	\$33,862.51	\$120,079.00
3. Fire System	\$505,211.45	\$198,427.55	\$703,639.00
4. Marine Structures	\$6,120,267.98	\$2,403,805.02	\$8,524,073.00
5. Paving Wharf	\$775,827.07	\$304,714.93	\$1,080,542.00
6. Potable Water	\$345,073.46	\$135,531.54	\$480,605.00
7. Sanitary Sewer System	\$15,626.51	\$6,137.49	\$21,764.00
8. Storm Water System	\$435,721.44	\$171,134.56	\$606,856.00
9. Utility Building	\$335,294.33	\$131,690.67	\$466,985.00
<b>SUBTOTAL A:</b>	<b>\$9,411,883.47</b>	<b>\$3,696,624.53</b>	<b>\$13,108,508.00</b>
<b>B. Reconstruction of Access Roadway, Highway 11</b>			
1. Conduit Along Access Road	\$103,352.95	\$40,593.05	\$143,946.00
2. Access Road Paving	\$355,485.15	\$139,620.85	\$495,106.00
3. Forced Main Water Utility	\$55,112.81	\$21,646.19	\$76,759.00
4. Access Road Signing & Pavement Markings	\$25,384.10	\$9,969.90	\$35,354.00
5. Traffic Control	\$48,781.52	\$19,159.48	\$67,941.00
<b>SUBTOTAL B:</b>	<b>\$588,116.53</b>	<b>\$230,989.47</b>	<b>\$819,106.00</b>
<b>CONSTRUCTION TOTAL</b>	<b>\$10,000,000.00</b>	<b>\$3,927,614.00</b>	<b>\$13,927,614.00</b>
15% Contractor General Conditions		\$2,089,142.00	\$2,089,142.00
15% Contractor's Overhead & Profit		\$2,402,513.00	\$2,402,513.00
5% Mobilization		\$920,963.00	\$920,963.00
10% Contingency		\$1,934,023.00	\$1,934,023.00
<b>Construction Management Services</b>		<b>\$2,500,000.00</b>	<b>\$2,500,000.00</b>
<b>PROJECT TOTAL COST:</b>	<b>\$10,000,000.00</b>	<b>\$13,774,255.00</b>	<b>\$23,774,255.00</b>

## ATTACHMENT D PERFORMANCE MEASUREMENT TABLE

**Study Area: Rehabilitation of “H” Wharf, Cabras Island, Piti Guam 93925**

**Pre-project Measurement Date:** Twelve months of data covering data between **January 1, 2019** and **December 31, 2019** for each Measure listed below.

**Pre-project Report Date: March 1, 2020**

**Project Outcomes Measurement Date: October 1, 2021 through September 30, 2024**

**Project Outcomes Report Date: December 30, 2024**

**Table 1: Performance Measurement Table**

<b>Measure</b>	<b>Description and Category of Measure</b>	<b>Measurement Period</b>	<b>Reporting Period</b>
<b>Gross Tons</b>	<p><b>This performance measure will report the movement of gross tons for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Shall mean the gross tons used by the carrier according to the vessel’s manifest to assess the carrier’s freight charges to Guam and the Micronesian Region</b></p>	<p><b>Baseline Measurement:</b> Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p><b>Interim Performance Measures:</b> Accurate as of <b>October 1, 2021</b></p>	<p><b>Baseline Measurement:</b> Pre-project Report Date <b>March 1, 2020</b></p> <p><b>Interim Performance Measures:</b> <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>
<b>Vessel Calls</b>	<p><b>This performance measure will report the vessel calls for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p>	<p><b>Baseline Measurement:</b> Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p>	<p><b>Baseline Measurement:</b> Pre-project Report Date <b>March 1, 2020</b></p> <p><b>Interim Performance Measures:</b> <b>Quarterly, for a</b></p>

	<b>Vessels calling to the Guam and the Micronesian Region</b>	Interim Performance Measures: Accurate as of <b>October 1, 2021</b>	<b>period of 3 years. The first measured quarter beginning October 1, 2021.</b>
<b>Cargo Lifts</b>	<p><b>This performance measure will report the cargo lifts for Breakbulk/Non-Unitized, Bulk, Bulk Scrap Metal, Hazardous, and Roll On- Roll Off Vessels.</b></p> <p><b>Goods, wares, materials, merchandise or any other objects that is, or to be, transported on Guam and the Micronesian Region</b></p>	<p>Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date <b>December 31, 2019</b></p> <p>Interim Performance Measures: Accurate as of <b>October 1, 2021</b></p>	<p>Baseline Measurement: Pre-project Report Date <b>March 1, 2020</b></p> <p>Interim Performance Measures: <b>Quarterly, for a period of 3 years. The first measured quarter beginning October 1, 2021.</b></p>



