



**REQUEST FOR PROPOSAL
RFP No: PAG-021-002**

**MANAGEMENT AND OPERATIONS SERVICES OF
GOLF PIER FACILITY**

**PORT AUTHORITY OF GUAM
1026 Cabras Highway
PITI, GUAM 96925**

**RORY J. RESPICIO
General Manager**

September 2021



PORT OF GUAM
ATURIDAT / PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

Request for Proposal No. RFP-PAG-021-002

MANAGEMENT AND OPERATIONS OF THE GOLF PIER FACILITY

The Port Authority of Guam (PORT), a public corporation and an autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified firm or professional individuals licensed to conduct business on Guam, to provide Management and Operations Services for the Golf Pier Facilities for the Commercial Port of Guam.

A Pre-Proposal Conference will be held on Thursday, September 9, 2021 at 10:00 a.m. (Chamorro Standard Time/Guam Time) in the PORT Board of Directors Conference Room

Request for Proposal (RFP) packages may be obtained at the Procurement and Supply Division, 1st floor PORT Administration Building, from Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. RFP packages can also be downloaded for free from the Port Authority of Guam website: www.portofguam.com.

A Site-Visit is scheduled for Tuesday, September 14, 2021 at 10:00 a.m. (Chamorro Standard Time/Guam Time), the Site-Visit will be coordinated with current Manager and Operator of Golf Pier to ensure all safety requirements are adhered to. All policies, procedures, rules and regulations in order to participate in Site-Visit will be discussed at Pre-Proposal conference.

Deadline for Questions and Concerns is Friday, September 17, 2021 no later than 4:00 p.m. (Chamorro Standard Time/Guam Time) All questions should be submitted to General Manager Rory J. Respicio at rjrespicio@portofguam.com, Attn: Steven P. Muna at spmuna01@portofguam.com, Except to the above persons named, direct or indirect contact with Port Management, Staff, Board Members, or any person participating in the selection process is prohibited.

Deadline for submission of all proposals is Thursday, September 23, 2021 no later than 4:00 p.m. (Chamorro Standard Time/Guam Time), All proposals must be submitted to the attention of the PORT General Manager; with the identification of the RFP project number. **No late submittals will be accepted.**

PORT 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 PORT and/or for whatever reason allowed by law and/or regulation. This right to reject and/or cancel is also 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. 340 or email at: spmuna01@portofguam.com.

LUIS R. BAZA
Acting General Manager

This advertisement is paid with Port Authority of Guam funds.

PORT AUTHORITY OF GUAM (PORT)
Request for Proposal: RFP NO. RFP - PAG-021-002

MANAGEMENT AND OPERATION SERVICES OF GOLF PIER FACILITY

TABLE OF CONTENTS

RFP Announcement
Basic Information
General Terms and Conditions
Special General Provisions

ATTACHMENTS

Attachment No. 1 Scope of Services

Attachment No. 2 Sample Contract

Attachment No. 3 Required Forms

- Special Reminder to Prospective Offerors
- Affidavit Disclosing Ownership and Commissions, *Form 002*
- Affidavit re Non-Collusion, *Form 003*
- Affidavit Re No Gratuities/Kickbacks, *Form 004*
- Affidavit re Ethical Standards, *Form 005*
- Declaration re Compliance with U.S. DOL Wage Determination, *Form 006*
- Affidavit re Contingent Fees, *Form 007*

REQUEST FOR PROPOSAL No.: RFP-PAG-021-002
MANAGEMENT AND OPERATION SERVICES FOR GOLF PIER FACILITIES

BASIC INFORMATION

I. INTRODUCTION

- A. The Jose D. Leon Guerrero Commercial Port ('Port') is soliciting proposal from qualified firm or individuals licensed to conduct business on Guam to submit proposal to provide for the management and operation of the Golf Pier Facilities.
- B. The proposal should demonstrate the ability of the Offeror to perform and provide services enumerated in the Scope of Services set out below (Attachment No. 1).

The Individual/Firm selected will work closely with the General Manager or his/her designee.

- C. 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 and Guam Procurement Regulations is www.guamcourts.org/CompilerofLaws/GAR/02gar.html.
- D. Offerors are expected to have and shall have sole responsibility for working knowledge of these laws and regulations.
- E. 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,
Email: rjrespicio@portofguam.com

or Mr. Steven P. Muna
Contract Management Administrator,
Email: spmuna01@portofguam.com

Address: Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Tel: (671) 477-5931/35 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.

II. GENERAL INFORMATION:

The Golf Pier Facility comprises of a dock and associated facilities constructed on submerged land located adjacent to the fingertip portion of the Cabras Island Industrial Park, which import, exports and bunkers approximately 2,600,000 million barrels of petroleum products through Guam every year.

Offerors Qualifications/Eligibility: Offerors must be in the business of providing management and operation services. The Offeror must be licensed to conduct business on Guam

Proposals will be considered only from Offeror who regularly engaged in the service specified. Offerors shall have a minimum of five (5) years of experience providing the services contained in the RFP. All Offerors shall provide the Port with credentials to support prior experience and ability to provide the services as contained in the RFP specifications.

III. **DESCRIPTION OF THE WORK:**

A Preliminary Scope of Services, describing the work to be performed, is detailed in Attachment 1. Upon final selection of the best qualified Offeror, the Scope of Services may be modified and refined during fee negotiations.

IV. **PROPOSAL INSTRUCTIONS**

This section describes the minimum requirements to be submitted in response to this RFP. Offerors may include any additional information necessary to better explain his or her proposal, provided that such information is current, accurate, concise and complete.

A. **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 1st floor of the Port Authority of Guam (PAG) Administration Building, and shall be addressed to the attention of the General Manager on **Thursday, September 23, 2021, no later than 4:00 p. m. (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 of the complete proposal, five (5) copies of the complete proposal and one (1) CD or USB containing electronic file copy of the complete proposal in PDF format.** All items should be sealed in one package bearing on the outside, the name of the Offeror/Firm, address, and the title of the project for which the proposal is submitted and shall be submitted no later than the deadline mentioned above.

B. **PRE-PROPOSAL CONFERENCE:**

A Pre-Proposal Conference will be held in the Commercial Port Board of Directors' Conference Room on Thursday, September 9, 2021 at 10:00 a.m. (Chamorro Standard Time/Guam Time). No oral statements made at the Pre-Proposal Conference by Port personnel shall be relied upon. The Port will respond in writing to all inquiries, comments, and suggestions.

C. **QUESTIONS & CONCERNS (Q&C) / REQUEST FOR INFORMATION (RFI)**

All requests for information, inquiries, clarifications, or questions, must be submitted in writing on **Friday, September 17, 2021, no later than 4:00 p. m. on (Chamorro Standard Time/Guam Time).** Q&C/RFI shall reference the RFP number, project title and must be addressed to the attention of the General Manager, Port Authority of Guam.

D. **LATE Q&C / RFI and/or PROPOSAL SUBMITTALS**

Any Request for Information (RFI) and/or Proposal(s) submitted after the above deadlines **will not be accepted.**

V. **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.

VI. **CONTENTS OF THE PROPOSAL:**

This section describes the minimum requirements to be submitted in response to this Request for Proposal. Offerors may include any additional information necessary to support his or her proposal, provided such information is current, accurate, concise and complete.

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 the 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 Services attached herein as Attachment I. 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 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 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. The list shall include at least three (3) most recent contracts involving such services.

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 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.
5. A statement that the Offeror has established and implemented an Affirmative Action Plan.
6. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.
7. 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.

VII. TYPE OF CONTRACT:

A Service Agreement will be consummated between the Offeror and the Port and shall be for a period of five (5) years. The Port reserves the right to modify an Agreement during the proposal period or negotiation period. The Offeror selected shall be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

VIII. 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 of 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 PORT 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 to a reasonable fee, 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.

IX. EVALUATION OF PROPOSALS:

A. Qualifying Proposals:

1. Delivery of one (1) original and five (5) copies and one (1) CD or USB containing the PDF file of the technical proposal in a sealed envelope;
2. Proposal and transmittal letter are signed by an individual authorized to bind the company or firm;
3. Proposal is valid for ninety (90) days from the deadline or close of the RFP;
4. Proposal is presented in the required format;
5. Compliance with Disclosure of major Shareholders and Non-collusion affidavits; and
6. Statement of agreement to conditions set out in the RFP.

- B. Failure to comply with any of the aforementioned formal requirements may disqualify the proposal submitted. The committee reserves the right to waive minor irregularities in proposals that are immaterial or inconsequential in nature whenever it is deemed in the best interest of the Port.

C. Technical Evaluation:

1. All Proposals found to be in compliance with the mandatory features or requirements of this RFP will be subject to an evaluation based on technical merits of the proposals.
2. The criteria that will be used by the Committee for the technical evaluation of the proposal are listed below.
3. The process will consist of the receipt and evaluation of sealed offers for technical services. At the conclusion of the evaluation process, the highest rated firm/individual will be selected to negotiate a fee for the management and operation of Golf Pier and Associated Pipeline Fuel Facility with the Port.
4. Technical Proposals received in response to this Request for Proposal will be evaluated on the basis of the criteria listed below. Each item will be assigned a score as designated, with a maximum possible score of 100 points. All proposals submitted shall be the property of the Port.
5. The following evaluation criteria will be used in the evaluation of the proposals:

- i. The Offeror's plan for performing the services and how it will meet the objectives of the RFP; what resources the Offeror will allocate to the project; and how the Offeror will meet the desired quality and timeliness of deliverables. **(25 Points)**.
- ii. The ability of the Offeror to perform the requisite management and operations services as reflected by the proposed project team's corporate and individual member training and education; their general, professional and specific work experience in providing the requested services and/or services of a related or similar nature pertaining to the management and operations of a bunkering pier facility and/or associated industry. **(15 Points)**.
- iii. The ability of the Offeror to demonstrate past successful performance of operating a bunkering pier facility and/or projects of a related or similar nature. **(15 Points)**.
- iv. The previous and existing compliance by the Offeror with laws and regulations relative to operating a pier bunkering facility as may be demonstrated through the Offeror's discussion on previous experience with public and/or private operations of like or similar nature. **(15 Points)**.
- v. The ability and capacity of personnel, equipment and facilities to perform the services currently available and demonstrated to be made available at time of contracting. **(20 points)**.
- vi. The good moral character, integrity, credible reputation and demonstrated effectiveness of the offeror to perform the required scope of services, as may be attested to and evidenced by written testimonials on the same from former project clientele, corporate and individual references which may be included in the Offeror's proposal. **(10 Points)**.

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

D. Ranking and Cost Proposal Review

- i. After the Technical Evaluation, each Committee member will assign a final score to each proposal. Scores for all proposals from all Committee members will be averaged and the proposals will be ranked from the highest to the lowest score.
- ii. The Committee will forward the highest ranked offeror as their final recommendation to the General Manager for review and approval.
- iii. Following completion of the technical evaluation, the Cost proposal shall be submitted by the highest ranked Offeror upon notification by the Port as a qualified highest ranked Offeror and will be distributed to the Committee members for review and discussion and subsequently to cost negotiation. If no agreement is reached, the Committee shall proceed to notify the next highest ranked Offeror to submit their Cost proposal to the Port. This process will continue until an acceptable agreement is reached.
- iv. Once the Committee decides to proceed to the next highest ranked offeror, the previous Offeror shall not be considered for further negotiations.

E. Final Award

Upon satisfactory completion of the cost negotiations, the Committee will recommend to the General Manager the selected Offeror

X. 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.

XI. REQUIRED FORMS:

Offerors must submit all forms required in this solicitation, (Attachment 3). 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:

- A. 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.
- B. 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.
- C. Affidavit re Non-Collusion
- D. Affidavit re No Gratuities or Kickbacks
- E. Affidavit re Ethical Standards
- F. Declaration re Compliance with U.S. DOL Wage Determination
- G. Affidavit re Contingent Fees

***** 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/GAR/\)/@gar.html](http://www.guamcourts.org/CompilerofLaws/GAR/)/@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 PORT reserves the right to waive any minor informality or irregularity in proposals received. The PORT shall have the prerogative to award, amend, or reject proposals in whole or in part. It is the policy of the PORT to award contracts to selected Offerors duly authorized and licensed to conduct business in Guam.

4. REJECTION:

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

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 PORT 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 PORT 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 an authentic established commercial or selling agencies maintained by the contractor for the purpose of securing business.

8. IUSTIFICATION 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 PORT in writing explaining the cause and reason of the delay.

9. EQUAL EMPLOYMENT OPPORTUNITY:

In compliance with the 14th 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.

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- *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 PORT. 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 PORT 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 other changes in a proposal must be explained or noted over 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 PORT 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 PORT 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/Officer
- b. Title of the Authorized Person/Officer
- c. Contact Numbers: Office, Facsimile, Mobile Phone
- d. E-mail address.

4. DISCUSSIONS:

The PORT 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 PORT 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 will 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 PORT. 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 PORT at any time prior to the conclusion of any discussion that may take place between PORT 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 shall become the property of the PORT and none will be returned.

8. LATE PROPOSALS:

Late proposals will not be accepted.

9. LIABILITY FOR COST TO THE PROPOSAL:

The PORT 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 PORT for any expenses incurred in proposal preparation. Submitted proposals become the property of the PORT and will be a part of the official procurement record. Offeror's request for the return of specific proprietary material may be considered by the PORT.

10. RIGHT TO AMEND, CANCEL OR REISSUE:

The PORT 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 PORT.

11. CONTRACT PROVISIONS:

The PORT 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 PORT 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 PORT the right to terminate clarifying discussion or pre contract negotiations or immediately terminate any contact that has been executed pursuant to this RFP.

The PORT will conduct negotiations with the best qualified Offeror. If the best qualified Offeror and the PORT are unable to agree on the terms and conditions of a contract, then the PORT may, at its sole and absolute discretion, terminate negotiations. In such instance, the PORT 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 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 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 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 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 PORT 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 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 PORT 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 Commercial 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 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/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 secured areas of 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 individuals.
- 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. 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.

E. STATUS OF OFFEROR:

Offeror 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. 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 PORT 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 PORT for the Offeror.

F. 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 PORT.

G. OWNERS RIGHT TO REJECT PROPOSAL:

The PORT may make such investigation as deem necessary to determine the ability of the Offeror to perform the work and the Proposer/Manager shall furnish to the PORT all such information and data for this purpose as the PORT may request. The PORT reserves the right to reject Offeror if the evidence submitted by, or investigation of such Offeror fails to satisfy the PORT 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 PORT whenever it is deemed in the best interest of the PORT.

H. 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 PORT shall examine the designated information to determine whether such information shall become proprietary. If the PORT and the Offeror are unable to agree as to the disclosure of certain portions of the Offeror's proposal, the PORT 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)]

I. 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.

J. 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.

K. 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 SERVICES

SCOPE OF SERVICES

INTRODUCTION

The Golf Fuel Pier Facility serves as a petroleum handling facility under a management agreement with a private operator who is responsible for the safe and efficient operation of the facility. The facility consists mainly of a fueling pier with pile supported trestle, dock and dolphins for berthing and securing vessels. Port-owned fuel lines run the length of the pier and lead to private petroleum fuel tank facilities.

The pier is suitable for use by other tenants and shippers for unloading cement, jet fuel, unleaded gasoline and diesel. Cementon Micronesia LLC has rights to use the pier to off-load cement that is stored in their facility adjacent to the pier.

While Golf Pier is operational, concrete spalling has been observed in previous inspections at the interface of the steel piles and the concrete pile caps. The catwalks for the facility need upgrading as the graphite walking surfaces do not meet U.S. Coast Guard requirements. The dolphins are no longer connected by catwalks and therefore not easily usable for vessel mooring. Vessels have been mooring to shore side bollards since the dolphins are inaccessible.

During the contractual period of the management agreement, the Port intends to issue a procurement on the repair and rehabilitation of Golf Pier. The project involves repairs to the concrete pile caps, substantial spall repairs of slab underside, beams and steel piles that require replacement of the sections extending from the pile caps to several feet below MLLW water surface, plus replacement of existing fendering system and upgrading the graphite walking surfaces, installation of catwalk to mooring dolphins, and replacement of the security fendering. Such repairs must be made to the facility to meet the federal/local regulations and IBC 2009 requirements.

Construction duration is estimated to be 18 to 24 months. During this period, the pier must be accessible to Cementon every ____ months for about ____ days to off-load their cement product

DESCRIPTION OF WORK

A. OPERATION OF THE GOLF PIER

1. Receive imports of fuel oil, jet fuel, diesel, motor gasoline and liquid petroleum products;
2. Delivery of fuel for export of jet fuel and diesel;
3. Bunker fuel oil and marine gas oil;
4. Maintain and ensure product quality by conducting field quality checks and maintaining fuel samples for dock customers;
5. Coordinate with ship masters and harbor pilots to ensure safe dockage.

B. MAINTAIN THE GOLF PIER

1. Provide preventive maintenance to the jetty, breasting dolphins, dredging and other safety equipment needed to operate the GOLF Dock;
2. Conduct maintenance repairs to ensure operational availability of this fuel dock;
3. Provide Quality Assurance inspections and controls schedule.

C. SECURE THE GOLF PIER

1. Ensure compliance with the American Petroleum Standards, ISGOTT, and all applicable Federal and Territorial laws.

D. MANAGE THE GOLF PIER AND ASSOCIATED FUEL FACILITY MANAGEMENT AGREEMENT

1. Provide operational access by scheduling operations of the facility for the co-use of same for the purpose other than petroleum;
2. Report and collect appropriate Port user fees;
3. Cite Best Management practices and methods for fee recovery.

E. RESPOND TO EMERGENCIES

1. Respond to Tier 1 spills and participate with Tier 2 and off-island Tier 3 responders,
2. Prepare and secure facility in the event of an anticipated storm or weather disturbance and maintain operational capabilities for post storm recovery.

F. ASSOCIATED DUTIES

1. Perform related bunkering pier duties as may be required in addition to those mentioned above.

****** *END OF SCOPE OF SERVICES* ******

ATTACHMENT NO. 2 SAMPLE AGREEMENT

GOLF FUEL PIER FACILITY MANAGEMENT AND OPERATIONS AGREEMENT

THIS AGREEMENT is entered into by and between _____ a Guam corporation whose address is _____, (hereinafter referred to as the “**Manager**” or “_____”), and the **JOSE D. LEON GUERRERO COMMERCIAL PORT** (also known as the **PORT AUTHORITY OF GUAM**), a public corporation and autonomous instrumentality of the Government of Guam (“**PAG**”), whose address is Suite 201, 1026 Cabras Highway, Piti, Guam, 96915.

WITNESSETH

In consideration of the mutual promises and covenants herein contained, PAG and Manager agree:

1. Appointment of Manager.

PAG appoints the Manager as the exclusive operator of the Facility and Manager accepts such appointment. This Agreement is the result of the **PAG's Request for Proposal No. 021-002** for the **Management and Operation of the Golf Fuel Pier Facility**.

2. Term.

The term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date. After the expiration of said term, Manager shall be entitled to use the Facility in common with all other Facility users in accordance with PAG rules and regulations. At the expiration of the term, _____ may remain as the Manager under the same terms and conditions herein, on a month-to-month basis, subject to the written consent of the parties.

3. Scope of Agreement.

This Agreement, RFP, Manager's Proposal and Payment Terms 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 Manager and the PAG 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 one or more of the documents collectively comprising this Agreement, RFP, Manager Proposal and Payment Terms 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 Manager Proposal and Payment Terms (as they may be clarified or amended from time to time).

4. Manager's Duties.

During the term hereof, Manager shall perform the following services:

A. Operation.

Manager shall be responsible for the safe and efficient operation of the Facility. Manager shall oversee the operation of the loading and unloading of petroleum and non-petroleum products through the Facility so that those activities are conducted in a safe and efficient manner in accordance with the American Petroleum Industry Standards. Manager shall at all times be cognizant of and observe all federal and Guam laws and regulations applicable to the operation of the Facility.

At any time that there exists any inconsistency between said Federal and Guam provisions having to do with aspects of the Facility operation that could affect the health, safety or welfare of the people of Guam, Manager shall observe the standard which imposes the higher standard of care.

The parties agree that the Facility has a common use and that Manager must make the Facility available to third-party users for loading and off-loading of petroleum and non-petroleum products on a nondiscriminatory basis; provided, however, that Manager shall be authorized to establish, consistent with Sections 6 and 7 below, operating procedures for the use of the Facility by third-party users. Manager shall, from time to time, provide such trade fixtures as are necessary to fulfill its duties.

B. Routine Maintenance.

i. Standard of and Manager's Duty to Perform.

Routine maintenance shall be that maintenance reasonably necessary and consistent with general petroleum industry standards of the United States to ensure continuing utility and operational safety of the facility and the property on which it is situated. All routine maintenance shall be performed by Manager on behalf of PAG. Manager shall provide on a semi-annual basis to PAG a written description of all routine maintenance performed by Manager during the preceding six (6) months.

ii. Description and Compensation.

Routine maintenance to be performed by Manager is set forth in **Exhibit "B"** to this Agreement. PAG shall reimburse Manager up to a maximum amount of _____ per year for the term of this Agreement, which amount is intended to cover the cost of labor and materials incurred by Manager for routine maintenance. Each month Manager shall submit its request for reimbursement for the previous month's routine maintenance expenses supporting the same with payroll records, receipts, invoice; and other records, to substantiate the labor and material expenses incurred by Manager for routine maintenance.

Should Manager identify required maintenance which is in addition to that described on **Exhibit "B"**, then Manager shall notify PAG of such need in writing. PAG, in its sole discretion, may either approve or disapprove the requested additional maintenance and shall not reimburse Manager for the additional maintenance unless it is approved; provided, however, that in the event PAG denies any such request for recommended additional maintenance, then Manager shall have no responsibility for any damage or injury which may result from the failure to perform such additional maintenance. PAG may, from time to time, identify additional maintenance which Manager shall complete and for which PAG shall reimburse Manager.

PAG shall reimburse Manager, within thirty (30) days of its receipt of a reimbursement request for routine maintenance and for approved additional maintenance including (a) materials used in the performance of such maintenance; and (b) the actual cost of labor expended for such maintenance. "Actual cost of labor" shall mean gross wage plus thirty percent (30%) thereof for reimbursement payments which are not paid within thirty (30) days of submission, the PAG shall pay interest to the Manager in accordance with the provisions of the Prompt Payment Act, 5 GCA §§ 22502-22506.

C. Replacement and Renovation of Capital Improvements.

i. The parties recognize that portions of the existing Facility may from time to time need to be replaced or substantially renovated. Examples of possible replacements or renovations of capital improvements to the Facility are set forth in **Exhibit 'C'**. The cost of these replacements and substantial renovations shall be subject to an associated service fee not to exceed ten percent (10%), and shall not be considered "routine maintenance" as provided for in Section 4(b) above.

ii. In the event Manager determines that existing elements of the Facility should be replaced or substantially renovated or if Manager should desire to install new capital improvements to the Facility, Manager shall submit to PAG a written request for approval and for payment of such work.

iii. PAG shall promptly review and respond to Manager's requests to renovate, replace or add to the existing capital improvements at the Facility. PAG will authorize, subject to funding availability, to maintain the Facility in a condition consistent with America Petroleum Industry Standards.

iv. Manager shall also have the right, at its option, (but not the duty) to install new or to renovate any existing capital improvements of the Facility at Manager's sole cost and expense. Manager shall give PAG written notice of any such improvements prior to the commencement of their construction.

D. Expenses. Except as otherwise provided herein, Manager shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

5. Manager's Compensation.

A. The Manager's Compensation for liquid fuel through-put activity at pier for the unloading of petroleum product over pier shall be calculated as follows:

- i. The first four (4) million barrels of petroleum product offloaded will be at the rate of \$_____ per barrel for Years 1 and 2 with an annual increase of three percent (3%) for each additional year thereafter for Years 3 through 5 (for the purpose of "Year" shall be contractual year).
- ii. ____/Defense Logistics Agency (DLA) related product through-put in excess of the first 1.2 million barrels of ____/DLA activity shall be at the rate of \$_____ per barrel.
- iii. All product in excess of four (4) million barrels, excluding that identified in Item 5.ii above shall be at the rate of \$_____ per barrel.
- iv. In any event the PAG's tariff rate for liquid fuel should increase, the Manager's Compensation is hereby capped and shall not exceed \$_____ per barrel up to the prevailing tariff rate of \$_____ per barrel. Should the prevailing tariff rate exceed \$_____ both parties agree to renegotiate a revised Manager's Compensation commensurate to the level of increase that is "fair and reasonable."

B. Effective date of commencement through total term, the Manager's Compensation fees for the exporting of petroleum products shall be calculated at the rate of \$_____ per barrel.

C. Effective date of commencement through total term, the through-put fees for the bunkering of petroleum products shall be calculated at the rate of \$_____ per barrel.

6. Facility User Fees.

A. PAG has required and Manager has agreed, as a term for Manager's continued use of the Facility, that Manager and its customers, which store petroleum products at Manager's Agat tank farm, or other users of the Dock, commencing from the effective date of this Agreement shall be charged the following Facility User Fees:

- i. A fee of _____ Cents (\$_____) per barrel for all petroleum products which are off-loaded at the Facility by Manager, its customers or other users.
- ii. A fee of _____ Cents (\$_____) per barrel for petroleum products which are on-loaded to vessels at the Facility for export by Manager, its customers or other users.
- iii. a fee of _____ Cents (\$_____) for bunkering of petroleum products.

B. Except to the extent otherwise provided in subsection (a) above, PAG may establish and modify Facility user fees in accordance with the requirements of Guam law.

C. It shall be the duty of the Manager, as agent for and on behalf of PAG, to collect from every Facility user, including Manager, all Facility user fees imposed by this Agreement. All fees assessed by Manager on behalf of PAG, less Manager's compensation as provided in Section 4 above, shall be remitted to PAG, or to the paying agent designated by PAG, no later than the thirtieth (30th) day of the month following the month in which the fees are accrued and no later than the 5th of the next month. It is the intention of the parties that no gross receipt or other business privilege tax shall accrue on Facility user fees because all said fees are PAG's property. In the event that the Department of Revenue & Taxation should rule that Manager is liable to pay a gross receipts tax or other

business privilege tax on the user fees it collects on PAG's behalf, excluding, however, Manager's compensation, then PAG shall reimburse Manager for this expense.

D. It is understood that the fees which are established by Section 6(a) shall have no application to the fees which Manager may establish and charge for the use of its pipeline network which connects to the Facility.

7. Third Party Use.

Any importer or exporter of petroleum and non-petroleum products ("**User**") may off load or on load petroleum and non-petroleum products at the Facility provided that it enters into a Facility user agreement in form and substance as set forth in **Exhibit "D"**, as the same may be amended from time to time by PAG and Manager. The user agreement shall contain the following requirements:

A. The User shall secure appropriate and adequate insurance coverage for potential liabilities, including loss of its own inventory, in accordance with the requirements set forth in **Exhibit "D"** hereto. All insurance policies relating to F-1 Fuel Pier Facility shall name Manager and PAG as co-insured, and provided that the insurer shall notify Manager and PAG of any policy changes or termination not later than thirty (30) days prior to such change or termination. Certificates of insurance evidencing such coverage shall be provided to Manager and PAG prior to the user's use of the Facility.

B. The user shall agree to indemnify PAG and Manager (relating to liabilities arising out of its use of the Facility) in a form consistent with the requirements set forth in **Exhibit "D"** hereto. Such agreement shall include provisions that:

- i. All damages to the Facility caused by such use may be repaired by Manager and user shall be liable for all such expenses:
- ii. User shall indemnify, defend and hold Manager and PAG harmless from all claims, injury, demands and liability arising out of the use of the Facility by user, its agents, and employees or representatives, whether such liability arises directly or from claims by third parties:
- iii. User shall indemnify and hold Manager and PAG harmless from all liability arising from product contamination or air or water pollution including claims made by subsequent users of contaminated products and fines and penalties imposed by government authorities unless such contamination or pollution results from an intentional act or omission by Manager;
- iv. Interest shall be paid to Manager on the unpaid portion of amounts due hereunder at the rate of one percent (1%) per month; and
- v. Manager shall be reimbursed by user for reasonable attorneys' fees incurred in enforcing the terms of the Facility user agreement. Such agreement may require, at Manager's discretion, a bond or other form of financial assurance acceptable to Manager be provided to ensure that sufficient funds will be available to cover all liabilities of user arising out of the use of the Facility.

C. The user shall agree to pay fees for such use as are established by PAG, such fees to be paid to Manager as agent for PAG no later than the fifteenth (15th) day of the calendar month following the month in which such fees are incurred.

D. The Facility shall be made available to vessels subject to the priorities set out in the operating procedures which are contained in **Exhibit "D"** hereto, or as the same may be amended from time to time by Manager and PAG. Scheduling of vessels calling at the Facility shall be done in coordination with PAG's Harbor Master. With respect to all fees payable by user, no allowance, deduction or set off shall be allowed to any user

who elects to employ its own personnel in connection with the loading or unloading of any vessel, such personnel being at all times subject to Manager's supervision in the carrying out of such activities and Manager shall in such eventuality remain responsible for the operation of the Facility.

E. A User may not transfer any interest in or right to use the Facility.

8. Personal Property, Trade Inventory and Trade Fixtures.

A. Attached hereto is **Exhibit E** which identifies the current property located at the Facility and to whom each item belongs.

B. All personal property, product inventory and trade fixtures which Manager purchases with its own funds and installs at the Facility shall be the sole property of Manager who shall have the right to remove them not later than sixty (60) days after the expiration or termination of this Agreement. PAG may elect to purchase any such trade fixture or personal property (other than inventory) by giving Manager notice of its intent to do so within said sixty (60) day period. PAG shall pay the Fair Market Value thereof which shall be determined by mutual agreement of the parties, or if they are unable to agree within thirty (30) days of the notice, then by dispute process as set forth in Section 12. Trade fixtures are defined as those items of personal property brought to the Facility by Manager which are necessary either to carry on Manager's obligations hereunder or for the operation of Manager's own pipelines. Trade fixtures include without limitation cargo hoses, forklifts and other vehicles, and office equipment.

C. PAG shall reimburse Manager for crane rental fixed at \$_____ per year.

- i. Manager shall further be enabled and designated to be the PAG's agent to spend for equipment and trade fixtures that are the responsibility of the PAG. Manager must obtain authorization and approval from the PAG prior to any purchase of trade fixtures or equipment.

9. Liability Insurance.

Manager shall maintain, with companies approved by PAG, insurance against liability arising from its management and operation of the Facilities in the amount of One Hundred Million Dollars (\$100,000,000.00) for both bodily injury and property damage liability. All premiums on such insurance shall be paid by Manager. Such policy or policies shall name PAG as an additional insured and certificates of insurance shall be deposited with PAG evidencing such coverage. The adequacy of the coverage afforded by said liability insurance shall be subject to review by PAG from time to time, and if it appears in such a review that a prudent business-person operating a similar facility would increase the limits of the liability insurance, then Manager shall, upon written notice from PAG, increase its coverage to that extent provided, however, that such coverage is reasonably available.

10. Environmental Conditions.

A. Definition. For the purpose of this Agreement, the term "**Hazardous Materials**" means and includes, without limitation, inflammable explosives, radioactive materials, asbestos, organic compounds (including polychlorinated biphenyl), pollutants, contaminates, hazardous wastes. Toxic substances or related materials and any substances defined as or including in the definitions for "hazardous substances", "**hazardous wastes**", "**extremely hazardous wastes**", "**hazardous materials**", or "**toxic substance**" under the following laws, ordinances and regulations ("**Hazardous Materials Laws**"): Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, any similar Guam and local laws, and regulations now adopted, accomplished and promulgated pursuant thereto applying to the Facility or any portion thereof.

B. Manager's Representations. Manager hereby represents to PAG that insofar as Manager is aware, as of the commencement date of this Agreement:

- i. The Facility is free of Hazardous Materials.
- ii. No enforcement, cleanup, remedial or other governmental or regulatory action has been instituted pursuant to any Hazardous Materials Laws affecting the Facility.

- iii. The Facility has not been nor is it now being used in any manner which violates any Hazardous Materials Laws.

C. In the event of any spill of petroleum products or hazardous materials at the Facility by a third-party user, Manager shall administer the cleanup, disposal and any other required corrective action and shall have full authority on behalf of PAG to pursue claims and rights against such third-party users and their insurers for the actual performance of such work. Manager shall have no responsibility for any damage or cleanup resulting from any petroleum product or hazardous materials spill caused by PAG's negligent acts or omissions.

11. Default and Termination.

A. Monetary Default. Manager shall be in default of this Agreement if it fails to pay when due a fee or charge owed to PAG pursuant to this Agreement ("**Monetary Default**"). In the event of a monetary default, PAG shall give Manager written notice of the total amount due, a detailed breakdown of the total amount due and the due date. Manager shall pay such fee or charge and the accumulated interest thereon within fourteen (14) days after having received written notice of such default. In the event that Manager fails to pay such fee or charge within fourteen (14) days of such notice, PAG may terminate this Agreement by written notice to Manager and take immediate control of the Facility. Manager may, however, pay a disputed charge or fee under protest and then adjudicate the dispute pursuant to Section 12 herein below.

B. Non-Monetary Default. In the event Manager fails to observe or perform any term, condition or covenant under this Agreement of any kind other than the nonpayment when due of a fee or charge owed to PAG ("**Non-Monetary Default**"), PAG shall give Manager written notice of the nature of the non-monetary default and Manager shall have thirty (30) days after receipt of PAG's notice to either cure the non-monetary default or to commence reasonable efforts towards the cure of any such default which cannot reasonably be cured within the thirty (30) day notice period. In the event Manager abandons the Facility, or fails to cure or commence to cure a material non-monetary default within thirty (30) days of notice, then PAG may terminate this Agreement by written notice to Manager and take immediate control of the Facility. A "**material non-monetary default**" means an act or omission which substantially impairs the safety of physical condition of the Facility, substantially impairs the use of the Facility by third party suppliers, or which exposes PAG to substantial potential liability.

C. Rights on Termination. All of Manager's rights as Manager shall terminate upon receipt of due written notice of termination from PAG, which PAG may issue upon Manager's failure to cure a default in the manner discussed in subsections (a) and (b) above. Notwithstanding any provision of this Agreement to the contrary, in the event of a termination under this Section 11(c), PAG may then assume or assign to a party of its choice all of Manager's duties under this Agreement. Termination shall not relieve Manager from the payment of any sum then due to PAG or from any claim for damages previously accrued, then accruing or resulting from the termination. Manager shall be liable to PAG for all such damages and the reasonable attorneys' fees expended by it in the enforcement of its rights under this Agreement

D. PAG Cure. PAG may cure any default on behalf of Manager, in which case Manager shall be liable to PAG for all such damages and the reasonable attorney's fees expended by it in the cure of the default and the enforcement of its rights under this subsection (d).

E. Title to Inventory. Notwithstanding Manager's failure to cure a default, title to all of Manager's products and inventory at the Facility at the time of the default shall remain with Manager, subject however, to any claim of lien lawfully asserted by PAG. In the event of Manager's default, PAG shall have a lien in all of Manager's equipment and fixtures located at the Facility for all amounts due it and the same shall be a set-off against any purchase price established pursuant to Section 8(b).

F. Trade Fixtures and Non-Inventory Personal Property. Subject to the provisions contained in Section 8(b) above, PAG shall have the right to use any trade fixtures and non-inventory personal property for sixty (60) days after the expiration or termination of this Agreement.

G. Remedies Cumulative. All of PAG'S remedies in the event of a default by Manager are cumulative and are in addition to any other remedy that may exist by law.

H. Prohibitive Insurance Costs. In the event the insurance, which is required to be maintained by Manager in Section 9 herein, becomes either (i) unavailable or (ii) the annual premiums for that insurance shall have increased by more than thirty percent (30%) from the average premiums incurred by Manager for the same insurance coverage, using the same deductibles, self-insurance provisions, exclusions, riders and other terms, for the prior calendar year, unless a change in limits or coverage is required by law, then the parties will use their best efforts to negotiate amendments to said sections in order to continue this Agreement in full force and effect and may reimburse Manager for the increased premium costs through either increased user fees or increased compensation to Manager. If a change in limits or coverage is required by law, then the premium shall reflect such change. If the parties are unable to agree within ninety (90) days of Manager's written request to negotiate, then Manager may, at its option, elect to terminate this Agreement. For the purposes of determining increased premiums under Section 11(h) above, the first calendar year shall end January 27, 2022 and, therefore, only those increases in Manager's insurance premiums which commence after that date shall give rise to Manager's rights under this Section 11(h). In the event of an occurrence described in either Section 11 (h) (i) or (ii), Manager shall promptly provide PAG with such insurance policies, communications and other documents as are necessary for a full disclosure.

I. Excessive Equipment Cost. In the event that additional equipment is required to be acquired by Manager for the Facility or to be kept at the Facility, by reason of the Oil Pollution Act of 1990, any rules or regulations thereunder, any plan adopted pursuant thereto, or future legislation, then the Manager shall promptly provide notice of the occurrence of that event to PAG and shall, in good faith, attempt to cooperatively share in the cost of acquiring such equipment with the other users of similar PAG facilities, whether by co-operative or otherwise. In the event that Manager shall reasonably determine that its share of the cost of participating in any oil pollution cooperative is commercially unreasonable, then PAG and Manager shall negotiate necessary amendments of this Agreement, including increased user fees or increased compensation to Manager. In the event the parties are unable to agree Manager may, on ninety (90) day notice, elect: to terminate this Agreement.

12. Disputes

A. All controversies between the territory and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within sixty (60) days after written request by the contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision, within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon the parties, then the contractor may proceed as if an adverse decision had been received.

B. The Procurement Officer shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence or receipt.

C. Any such decision shall be final and conclusive, unless fraudulent, or: (i) the contractor appeals the decision with the Office of Public Accountancy ("OPA").

D. The contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the OPA or Superior Court of Guam, of any controversy arising under, or by virtue of, this contract, except where there has been a material breach diligently with the performance of the contract where the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency has made a written determination that continuation of work under the contract is essential to the public health and safety.

13. Agreement Not an Interest in Real Property.

This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature against the Facility.

14. Termination.

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

- i. Termination without Cause: The PAG may terminate this Agreement, without cause, upon the delivery of written notice to the Manager at least thirty (30) days prior to the intended date of termination;
- ii. Termination in the Best Interest of the Government of Guam: The PAG 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 Manager and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Manager's successful completion of services under this Agreement to the satisfaction of the PAG.
- iii. Termination for Cause/Default: The PAG shall notify Manager in writing of deficiencies or default in the performance of its duties under this Agreement. The Manager shall have ten (10) days, which period may be extended by the PAG (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the PAG. The PAG shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Manager of said action. The action by the PAG 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 PAG. Failure of Manager to remedy said specified default in notice by the PAG 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 PAG 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 PAG: 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 Manager 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 PAG, the PAG shall pay the Manager for all satisfactory services rendered up to that point. The PAG 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. Termination/Modification for Lack of Funds. The PAG may terminate or modify this Agreement based upon a lack of funding. In such an event, the PAG shall promptly provide notice to Manager 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 14 of this Agreement as applicable.

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

D. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the PAG 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 defense with respect to rights to either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

E. By Manager.

- i. If Manager is unable to use any portion of the Cabras pipelines, easements and Golf Fuel Dock due to a Force Majeure event (as defined in Section 26 below); or
- ii. If Manager is unable to use their petroleum storage tanks, which loss of use is due to events outside of the Manager's control: or
- iii. If their petroleum storage tanks are closed and no longer operating as a fuel storage facility, and _____ the Manager gives the PAG six (6) month notice of its intent to close the facility; or
- iv. Pursuant to Section 4(c) hereinabove, the PAG fails to provide the necessary funds to pay for reasonably necessary capital improvements, and the parties are unable to reach a mutually acceptable solution within ninety (90) days; or
- v. If PAG defaults under this Agreement and fails to cure such default, Manager shall give PAG written notice of the nature of the default and the PAG shall have thirty (30) days after receipt of Manager's notice to either cure the default or to commence reasonable efforts towards the cure of any such default which cannot reasonably be cured within the thirty (30) day notice period.

15. Confidentiality.

A. Information. The Manager 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 Manager to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

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

The Manager shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the PAG, and then only if the Manager 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 Manager 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 Manager to liability, including all damages and injunctive relief.

16. Conflicts of Interests/Ethics

A. The Manager 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 Manager is a material breach of this Agreement and shall entitle the PAG to immediately terminate this Agreement. Manager agrees that in the event of a breach or violation of this Section, the PAG shall have the right to terminate this or any other Agreement with the Manager without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Manager 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 16 and shall require any subcontractor to execute a statement of no conflict of interests to the PAG and provide such statement to the PAG.

17. 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 subcontract or order.

18. Compliance with Laws.

A. **In General.** The Manager shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Manager 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 Manager 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.

19. Retention and Access to Records and Other Review.

The Manager, 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 PAG. The PAG agrees to comply with reasonable requests of Manager to provide access to all documents and PAG property reasonably necessary to the performance of Manager's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

20. Liability.

A. **Indemnification.** Manager shall indemnify and hold harmless the PAG 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 Manager or its employees, officers, directors, contractors, agents,

representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

B. The PAG Not Liable. The PAG assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Manager and/or the Manager'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 PAG. In addition, no Board member, officer, agent, or employee of the PAG shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the PAG assumes no liability for any accident or injury that may occur to Manager's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

21. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The PAG shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Manager. The PAG shall have the power to make changes in the Agreement and to impose new rules and regulations on the Manager 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 or due to a change in law. The PAG shall give the Manager notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Manager. In the event the PAG materially alters the obligations of the Manager, or the benefits to the PAG, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Manager, then the Manager or the PAG shall be entitled to an adjustment in the rates and charges established under the Agreement. Manager 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 PAG and the Manager 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 changes in law. When such modifications are made to the Agreement, the PAG and the Manager shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Manager directly and demonstrably due to any modification in the Agreement under this clause.

22. Manager and its Employees.

A. Status of Manager. The Manager and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the PAG or the Government of Guam. The Manager 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. Manager agrees that Manager and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the PAG 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 Manager and the PAG 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 PAG or the Manager.

B. Liability. The Manager 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. Manager 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 Manager and Manager's employees or agents under this Agreement or the compensation paid to Manager for services performed under this Agreement. Furthermore, Manager shall maintain at the Manager's expense all necessary insurance for its

employees including but not limited to Worker's Compensation, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Manager agrees to hold harmless and indemnify the PAG, 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 Manager or Manager's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Manager's failure to comply with terms of this subparagraph B.

23. Disclosure.

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

24. Employment of Persons Convicted of a Sex Offense.

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

25. Vetting of Third Party Vessels.

Manager shall have the right to require all vessels using or docking at F-I Pier to be subject to the _____ vessel vetting system. The vessel vetting system imposes the equivalent or higher standards than nationally recognized vessel vetting standards. In the event the PAG implements its own vessel vetting system, Manager agrees that the vessel vetting system implemented by Manager shall have equal or higher standards than the vessel vetting standards imposed by the PAG.

26. Force Majeure.

No failure or omission by Manager to carry out or observe any of the terms or conditions of this Agreement shall give rise to any claim against Manager or be deemed a breach of this Agreement if such failure or omission is from "force majeure." "Force majeure" shall mean and include the use by the United States Navy or other agency or department of the United States, of "H" Wharf: also known as Hotel Wharf, or any other loading facilities to load or unload explosives from any munitions vessel or other vessel or any related operations ("Ammo Operations") which in turn affect operations at the Facility. "Force majeure" shall mean and include:

- i. War, etc. War, hostilities, acts of public enemies or belligerents, sabotage, blockade, revolution, insurrection, riot, disorder, terrorism;
- ii. Restraints Arrest or restraint of princes, rulers or peoples, or seizure under legal process;
- iii. Confiscation. Expropriation, requisition, confiscation or nationalization;

- iv. Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- v. Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- vi. Acts of God. Act of God, fire, earthquake, typhoon conditions of category rated two or greater, lightning, tide, tsunami, or peril of the sea, accident of navigation or breakdown or injury of vessels:
- vii. Loss of Storage Tanks. Loss of storage tanks due to action by belligerents or to governmental taking whether or not by formal requisition:
- viii. Accidents. Accidents to vessels or to adjuncts of shipping navigation (unless within the scope of liability provided herein):
- ix. Disease. Epidemics or quarantine:
- x. Strikes. Strikes or combinations of workmen, lockouts, or other labor disturbances;
- xi. Explosions. Explosions, accidents by tire or otherwise to the Dock Facility, pipes, storage facilities, installations, machinery:
- xii. Naval Operations. Operations by the Navy, including, but not limited to, weapons operations, which require that the dock facility not be used;
- xiii. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth which by the exercise of due diligence that party concerned is unable to overcome, whether or not said occurrence is reasonably foreseeable. Each party shall promptly notify in writing the other upon the occurrence of any contingency excusing its non-performance or delay under this Section.

27. Attachments, Exhibits, Schedules, and Entire Agreement.

This 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.

28. Scope of Agreement.

This Agreement, RFP, Manager's Proposal and Payment Terms 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 Manager and the PAG 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.

36. Amendments/Modifications.

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

37. Assignment/Subcontractors.

It is expressly acknowledged that Manager is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Manager utilizes one or more subcontractors for such purpose. The right and interest of Manager under this Agreement (including, but not limited to, Manager's right to or interest in any part of or all 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 PAG. In the event of a permissive subcontract or assignment of this Agreement by Manager, Manager agrees that any subcontractors retained by Manager or assignees shall be subject to all provisions of this Agreement. As consideration for PAG's consent, Manager agrees to pay to PAG thirty percent (30%) of the assigned value of this contract immediately upon the transfer/assignment to its transferee/assignee.

38. 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.

39. Duty to Cooperate Upon Expiration or Termination.

Upon the expiration or termination of this Agreement, Manager shall cooperate with PAG and any third party designated in writing by PAG as caretaker or successor to Manager in the transition of responsibilities from Manager to the third party. Upon receipt of written notice from PAG of the designation of a caretaker or successor, Manager shall permit such third party to enter the Facility upon reasonable written notice to Manager for evaluation and testing and, when found to be necessary by PAG, construction, provided that such evaluation, testing or construction does not unreasonably interfere with Manager's obligations hereunder. Such third party shall enter into an indemnification agreement with Manager to indemnify Manager from all cost, loss or liability in connection with such third parties' activities at the Facility. On termination, the parties shall have those rights as set forth at Sections 14(c), (d), and (e).

40. Police Power of PAG, Right of Inspection of Facility.

The Facility being a part of the property of PAG, PAG shall exercise police powers over the Facility at all times. As provided by law, duly appointed peace officers employed by PAG or any other law officer working within his or her jurisdiction and in accordance with law shall be entitled at any time to enter the Facility, search any person or thing on, entering or departing the Facilities and to arrest any person pursuant to a warrant or probable cause of the commission of a felony, misdemeanor or violation. The General Manager of PAG or his or her designee may inspect the Facility at any time upon reasonable notice to Manager to assure its safe operation.

41. Manager to Provide Audit Information.

Manager shall provide PAG or other appropriate Government entity as authorized by law with such information as may be reasonably necessary for it to assure that Manager is faithfully complying with the provisions of this Agreement regarding the maintenance and capital improvement of the Facility and the imposition, collection and remittance of fees and charges due to PAG. Manager is aware that PAG is subject annually to its own examination by an independent auditor and that it is subject from time to time to examination by auditors of or employed by the Government of Guam, the Department of Interior, the Congress of the United States and other federal agencies. Manager agrees to cooperate with such agencies by disclosing to them such data as they may reasonably require as part of an examination of PAG.

42. Descriptive Headings.

The descriptive headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

43. Merger Provisions, Governing Law and Forum Selection.

This Agreement contains the entire agreement between the parties, supersedes all prior written and oral understandings and shall be governed by Guam law. 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.

44. Claims of Prior Years.

Nothing in this Agreement shall be construed or deemed a waiver of a party's rights, claims and defense; asserted or unnamed, with respect to any claims either party may have against the other. The parties hereby reserve all of their rights, claims and defenses.

***** ALL SIGNATURES APPEAR ON THE NEXT PAGE *****

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

JOSE D. LEON GUERRERO
COMMERCIAL PORT

MANAGER AND OPERATOR

RORY J. RESPICIO,
General Manager

John Doe
President

Date: _____

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

CHRISTINE K. CLAVERIA
Port Legal Counsel

JOSE B. GUEVARA, III
Financial Affairs Officer, Controller

Date: _____

Date: _____

EXHIBITS:

- A. Property Description
- B. Routine Maintenance List
- C. Capital Improvement List
- D. Facility User Agreement
- E. Personal Property, Trade Inventory (Equipment) and Trade Fixture

ATTACHMENT NO. 3

REQUIRED FORMS



REQUEST FOR PROPOSAL No. RFP-PAG-021-002

Project Description:

MANAGEMENT & OPERATIONS SERVICES FOR GOLF PIER FACILITY

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 of the complete proposal, five (5) copies, and one (1) CD or USB containing electronic file copy**, 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: Current Business License to be included in Proposal.

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 offeror 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.

CITY OF _____)
) SS.
ISLAND OF GUAM)

[] 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 venture 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]:

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

<i>Name</i>	<i>Address</i>	<i>Compensation</i>
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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.

NOTARY PUBLIC
My commission expires: _____

AFFIDAVIT RE NON-COLLUSION

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 company or individual is *[state name of company]*

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

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.

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: _____

AFFIDAVIT RE GRATUITIES OR KICKBACKS

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 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 § 111 07(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 _____, 20____

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 _____, 20____.

NOTARY PUBLIC

My commission expires: _____

CITY OF _____)

ISLAND OF GUAM

Name of Offeror Company: _____

Page 45 of 47

AFFIDAVIT RE CONTINGENT FEES

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 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 **111** 08(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 **111** 08(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 _____, 20____

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 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: _____

THIS SPECIAL PROVISION MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE PROPOSAL