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Public Utilities Commission
GUAM

BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE:	)	**PAG DOCKET 14-02**
REVIEW OF PAG'S LEGAL SERVICES CONTRACT	)	**ALJ REPORT**

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the "PUC") pursuant to the Petition filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam ("PAG") on January 9, 2014, whereby PAG requests review and approval of its contract for legal services with the Law Offices of Phillips & Bordallo, P.C. (hereinafter referred to as either "Phillips & Bordallo" or the "Law Firm").

BACKGROUND

On March 1, 2011, PAG began the solicitation process for professional legal services through publication of RFP No. PAG-011-002 Legal Services. The RFP sought professional legal services for representation in litigation matters, legal opinions, legal research, along with other services and duties.[1] The selected firm would act as legal counsel to the Port, review contracts, lease agreements, bid invitations, among other tasks required by PAG.[2] The RFP provided that the contract would be for a term of one year, with three one-year options for renewal.[3]

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1 RFP No. PAG-011-002 Legal Services ("RFP"), "Attachment 1," p. 12 (Mar. 2011).
2 RFP, "Attachment 1," p. 12.
3 RFP, pp. 3-4.

On March 14, 2011, PAG held a Pre-Proposal Conference.[4] Proposals were accepted through March 23, 2011.[5] Thereafter, PAG's Evaluation Committee met and reviewed the proposals submitted pursuant to the RFP.[6] Two law firms submitted proposals.[7] The Evaluation Committee ultimately selected Phillips & Bordallo pursuant to the members' evaluation and ranking of the submitted proposals.[8]

On April 6, 2011, PAG Procurement and Supply Manager, Alma Javier, provided the General Manager with the Evaluation Analysis and Recommendation related to the legal services procurement. Alma Javier indicated that Phillips & Bordallo ranked the highest and was the best qualified firm to perform the required services . . ." and, therefore, recommended that Phillips & Bordallo "be given the opportunity to negotiate a cost for the Legal Services."[9]

On April 7, 2011, PAG's Board of Directors approved the recommendation and authorized PAG Management to enter into cost negotiations with the Law Firm.[10] Further, On April 28. 2011, the Board of Directors approved the contract with the Law Firm.[11]

DISCUSSION

A. Regulatory Review

Under 12 G.C.A. §12004, the PUC must expressly approve any contractual agreements or obligations which could increase PAG's rates and charges. In addition, under

[4] Petition, p. 1.
[5] Petition, p. 1.
[6] Petition, Exhibit 1 (Evaluation Analysis and Recommendation), p. 2 (Apr. 6, 2011).
[7] Petition, Exhibit 1 (Evaluation Analysis and Recommendation), p. 2 (Apr. 6, 2011).
[8] Petition, Exhibit 1 (Evaluation Analysis and Recommendation), p. 2 (Apr. 6, 2011).
[9] Petition, Exhibit 1 (Evaluation Analysis and Recommendation), p. 2 (Apr. 6, 2011).
[10] Petition, p. 1; Petition, Exhibit 2 ("Minutes of the Regular Meeting of the Board of Directors"), p. 4 (Apr. 7, 2011).
[11] Petition, p. 1.

PAG's Contract Review Protocol, "[a]ll professional service contracts in excess of $1,000,000" "shall require prior PUC approval . . . ."[12]

B. Petition

In its Petition, PAG requests that the PUC review and ratify the Professional Services Agreement entered into between the Law Firm and PAG. PAG maintains that the subject agreement is instrumental to PAG's mission.[13] Submitted with the Petition is the Professional Services Agreement, which is attached hereto as "Exhibit A" for the Commissioners' convenience.

PAG indicates that the funding source for the subject agreement is its Operating and Maintenance fund. The August 22, 2013 Board Minutes submitted by PAG indicate that the average monthly cost for legal services is $60,000 per month.[14] PAG further indicates that the cost of its legal services since 2011 to the present is $1,144,092.16. Moreover, PAG also indicates that the projected cost of the subject contract through the end of the current term could potentially amount to $420,000. PAG further projects the cost for the final term of the contract to be about $720,000. The subject agreement terminates on April 30, 2015.

C. Professional Services Agreement

The Professional Services Agreement indicates that the Law Firm shall provide the services required and identified pursuant to the RFP. As required under the RFP, the initial contract term is for one calendar year, with three one-year options for renewal. The agreement provides for an automatic extension of the contract unless terminated by one of the parties. In addition, the agreement initially required that the amount of the contract would not exceed $499,999.

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[12] Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).
[13] Petition, p. 2.
[14] Minutes of the Regular Meeting of the Board of Directors, p. 6 (Aug. 22, 2013).

The Professional Services Agreement further indicates the following fees: $200 per hour for "Shareholders"; $175 per hour for Associates; and $100 per hour for Paralegals, Law Clerks, and Special Assistants. The effective date of the agreement, as executed, is April 28, 2011. The agreement further bears the signature of the Attorney General of Guam, Leonardo Rapadas, dated May 4, 2011.

D. First Amendment to the Professional Services Agreement

On April 4, 2013, the Law Firm submitted a request to amend the Professional Services Agreement by removing the provision related to the total amount of the contract, particularly Paragraph 3.7 of the agreement.[15]

In its request, the Law Firm indicated that "in light of recent events," presumably events related to the dismissal of certain PAG employees, that the RFP did not contain any cap on fees, that prior legal counsel for PAG was not subject to such a cap, and therefore, the $499,999 limit on legal fees should be lifted.

On April 5, 2013, the parties executed the amended agreement deleting the subject provision; and on April 22, 2013, the Attorney General of Guam approved the amended contract. On August 22, 2013, PAG's Board of Directors ratified PAG Management's amendment to the agreement.

CONCLUSION

The ALJ hereby finds that based on the information provided by PAG, the terms and conditions of its contract for legal services appear commercially reasonable and not burdensome. Further, the ALJ also finds that the cost of the subject contract is reasonable, and not uncommon for a large government entity, given that the Law Firm acts as PAG's general

[15] Section 3.7 provided the following: "The total of the compensation, costs and expenses earned, incurred or paid under this Agreement shall not exceed $499,999. If the amount earned, incurred or paid under this agreement reaches $499,999, then a new contract must be procured before additional work is performed."

counsel and, therefore, handles all in-house legal issues, as well as matters in litigation, including personnel matters before administrative tribunals. For instance, based on media reports, other large agencies have budgeted, or have incurred, legal fees between $360,000 and over $1 million per year.[16] The ALJ further notes that the current form of the contract was approved by the Office of the Attorney General.

Accordingly, based on the record before the Commission in the instant docket, and for the other reasons set forth herein, the ALJ finds that the subject contract for legal services, with its costs, terms and conditions, are reasonable, prudent, and necessary in order for PAG to successfully operate.

RECOMMENDATION

The ALJ hereby recommends that the PUC approve and ratify the existing Professional Services Agreement between PAG and the Law Offices of Phillips & Bordallo, P.C. The ALJ further recommends that should the parties exercise their option to renew for another term, PAG should be required to file with the PUC a cost estimate for the final term of the contract by March 1, 2014. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 24th day of January, 2014.

JOEPHET R. ALCANTARA
Administrative Law Judge

P143011.JRA

[16] *See, e.g.*, http://www.kuam.com/story/23623089/2013/10/07/mixed-feelings-about-bill-to-curb-govguams-legal-expenses

11-0399

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), is made and entered into, effective as of the "Effective Date" (as such term is defined in Section 10.7, below), by and among the JOSE D. LEON GUERRERO COMMERCIAL PORT, a public corporation and autonomous instrumentality of the government of Guam (the "Port") and PHILLIPS & BORDALLO, P.C., a Guam professional corporation ("P&B"), with reference to the following facts:

RECITALS:

A. The Port is authorized to directly procure professional legal services pursuant to 5 GCA §5121(a), and in connection therewith, the Port recently issued a Request for Proposal RFP No: PAG-011-002 for Legal Services (the "RFP"), a copy of which is attached to this Agreement as EXHIBIT A;

B. P&B is a full-service law firm operating on Guam for more than 20 years;

C. On March 23, 2011, P&B submitted its Proposal to perform the services described in the RFP and the Port selected P&B as the most qualified offeror; and

D. The Port desires to retain P&B as an independent contractor on the terms and conditions set forth in this Agreement and P&B has agreed to accept such retainer and perform the services described in the RFP and this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. STATEMENT OF WORK TO BE PERFORMED

1.1 SCOPE OF WORK. P&B shall furnish legal services pursuant to and in accordance with the services identified in Section III of the RFP and the Scope of Services described in Attachment 1 of the RFP. P&B shall provide status reports on the services performed and required under this Agreement upon request by the Port. P&B recognizes that failure to perform all services required under this Agreement constitutes a material breach of this Agreement.

1.2 PROVISIONS OF RESOURCES. P&B agrees to furnish all qualified personnel, materials and transportation to perform the legal services provided for in this Agreement. P&B represents that it and its employees possess the professional and technical expertise necessary to perform the services required by this Agreement in a competent and professional manner. Attorney Michael F. Phillips will have the primary role and responsibility in performing the services required by this Agreement. Attorney Phillips will be supported by two (2) associates, Attorney Darleen E. Hiton and Attorney Ricardo D. Bordallo.

1.3 **OTHER WORK.** The Port acknowledges and agrees that P&B may provide legal services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the P&B is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, P&B must immediate cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement.

1.4 **LOCATION OF SERVICES.** P&B may perform the services under this Agreement at its office in Hagatna, Guam or at such other suitable location as approved by the Port.

2. **TERM AND TERMINATION.**

2.1 **TERM.** Unless sooner terminated pursuant to Section 2.2, below:

(a) Initial Term. The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of one (1) calendar year; and

(b) Automatic Extensions. The term of this Agreement shall be automatically extended for up to three (3) additional periods of one (1) calendar year each, unless either party provides written notice to the other party within thirty (30) days prior to the expiration of the initial term or each extended term, as applicable.

2.2 **TERMINATION.** This Agreement may be terminated by the Port, with or without cause, at any time upon written notice to P&B. Subject to the Guam Rules of Professional Conduct, this Agreement may be terminated by P&B, with or without cause, upon thirty (30) days' written notice to the Port. Following any termination of this Agreement, P&B shall be entitled to payment for legal services rendered in accordance with this Agreement up to the effective date of such termination.

3. **COMPENSATION.**

3.1 **COMPENSATION.**

(a) Hourly Rates. For the initial one-year term of this Agreement, the Port shall compensate P&B for legal services performed at the hourly rates set forth in **EXHIBIT B** to this Agreement. During the (30) day period prior to the expiration of the initial term and each extended term, as applicable, the parties agree to negotiate the hourly rates applicable for the following one-year calendar period. In the event the parties reach agreement on such hourly rates, the parties shall enter into a written amendment to this Agreement, if necessary, setting forth a new Exhibit B.

(b) Time Records. Time records will be maintained based upon the applicable hourly rates. The hourly rate shall be computed for all time spent on matters assigned by the

Port, including, but not limited to, time spent on the telephone with Port officials and others on matters related to the Port, in negotiations, preparation of documents, court appearances, travel, legal research, and in consultation with the Port, other counsel and/or expert witnesses. P&B shall bill in minimum time increments of six (6) minutes or one-tenth ($1/10^{th}$) of an hour. For attorneys' time spent in court or in other formal proceedings requiring that attorneys be out of their office, P&B shall bill beginning at a minimum of one (1) hour.

3.2 **COSTS AND EXPENSES.** The Port agrees to pay to P&B, in accordance with this section, all costs and expenses incurred in performing the legal services required by this Agreement. Costs consist of all out-of-pocket expenditures including, but not limited to, photocopying and other reproduction charges, in office photocopying at twenty cents (.20) per page, fees fixed by law, long-distance telephone and facsimile charges, messenger and delivery services, postage, travel expenses such as mileage, parking, airfare, meals and hotel accommodations, which shall be in addition to the hourly rates for travel time, if any, and the like, charges for computer research and outside assisted legal research, fees of outside consultants, deposition and transcript expenses, service of process and filing fees, court reporter's fees, court fees or fees assessed by courts or other agencies, jury fees, witness fees, investigator's fees, expert's fees or consultant's fees, and other similar items. Costs will be itemized by category in monthly invoices to the Port. The Port hereby authorizes P&B to incur all reasonable costs necessary in P&B's reasonable judgment, provided that P&B shall obtain the Port's prior consent before incurring any costs in excess of Two Hundred Fifty Dollars ($250.00).

3.3 **BILLING STATEMENTS.** P&B shall send the Port periodic statements for fees and costs incurred. The Port shall pay P&B all fees and costs due within thirty (30) days after each statement's date. Statements will be deemed delinquent if payments are not received after thirty (30) days of the statement date. THE PAYMENT OF ALL FEES AND COSTS SHALL BE SUBJECT TO AVAILABILITY OF FUNDS FOR SUCH PAYMENT; provided, however, that P&B reserves the right to suspend services until payments are made current.

3.4 **NO COMPENSATION PRIOR TO APPROVAL OF AGREEMENT.** The Port shall not be liable to P&B for any services performed by P&B prior to the Effective Date of this Agreement, and P&B expressly waives any and all claims for services performed prior to the Effective Date in expectation of its full execution.

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

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

3.6 **CURRENCY.** All rates and prices and payments to P&B shall be in the currency of the United States.

3.7 **AMOUNT OF CONTRACT.** The total of the compensation, costs and expenses earned, incurred or paid under this Agreement shall not exceed $499,999. If the amount earned, incurred or paid under this agreement reaches $499,999, then a new contract must be procured before additional work is performed.

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

5. **RELATIONSHIP OF PARTIES.** The parties hereto expressly understand and agree that P&B is acting hereunder as an independent contractor and under no circumstances will the personnel of P&B be deemed employees of the Port for any purpose.

6. **COMPLIANCE WITH LAWS.** P&B shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. P&B represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

7. **DISPUTES.**

7.1 The Port and P&B agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then P&B shall request the Port in writing to issue a final decision within sixty days after receipt of the written request. If the Port does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then P&B may proceed as if an adverse decision had been received.

7.2 The Port shall immediately furnish a copy of the decision to P&B, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

7.3 The Port's decision shall be final and conclusive, unless fraudulent or P&B appeals.

7.4 For money owed by or to the Port under this Agreement, P&B shall make any appeal of the decision in accordance with the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) by initially filing a claim with the Claims Officer of the Office of the

Attorney General no later than eighteen months after the decision is rendered by the Port or from the date when a decision should have been rendered. For all other claims by or against the Port arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the Port. Appeals to the Office of the Public Auditor must be made within sixty days of the Port's decision or from the date the decision should have been made.

7.5 P&B shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

7.6 P&B shall comply with the Port's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where P&B claims a material breach of this Agreement by the Port. However, if the Port demonstrates in writing that continuation of services under this Agreement is essential to the public's health or safety, then P&B shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Port.

8. CLAIMS AGAINST THE GOVERNMENT. P&B expressly recognizes that the Government Claims Act applies with respect only to claims of money owed by or to P&B against the Port if the claim arises out of or in connection with this Agreement. P&B also expressly recognizes that all other claims arising by virtue of this Agreement by P&B against the Port are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

9. REPRESENTATIONS AND WARRANTIES.

9.1 REPRESENTATIONS REGARDING GRATUITIES AND KICKBACKS. With respect to this Agreement and any other contract that P&B may have or wish to enter into with any government of Guam agency, P&B represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

9.2 REPRESENTATION REGARDING CONTINGENT FEES. P&B represents that it has not retained any person or anyone to solicit or secure any territorial contract 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.

9.3 REPRESENTATION REGARDING ETHICAL STANDARDS. With respect to this Agreement and any other contract that P&B may have, or wish to enter into, with any government of Guam agency, P&B represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

9.4 SEX OFFENDERS. P&B warrants that no person in its employment or providing services on its behalf 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; and if any person employed by or providing services on its behalf is so convicted subsequent to the parties entering into this Agreement, that P&B will notify the Attorney General of the conviction within twenty-four hours of the conviction and will immediately remove such convicted person from providing services under this Agreement. If P&B is found to be in violation of any of the provisions of this paragraph, then the government shall give notice to P&B to take corrective action. P&B shall take corrective action within twenty-four hours of notice from the government, and P&B shall notify the Attorney General when action has been taken. If P&B fails to take corrective steps within twenty-four hours of notice from the government, then the Port in its sole discretion may suspend this Agreement temporarily.

10. MISCELLANEOUS

10.1 NOTICES. All notices, requests, demands or other communications permitted or required under this Agreement shall be effective only if in writing, and shall be deemed to have been given, received and delivered (a) when personally delivered; (b) on the third (3rd) business day after the date on which deposited in the United States mail system, postage prepaid; (c) on the date on which transmitted by facsimile, email, or other electronic means generating a receipt or other confirmation of a successful transmission; or (d) on the next business day after the day on which deposited with a public carrier regulated for overnight delivery (*e.g.*, Federal Express), with a return receipt (or equivalent thereof administered by such regulated public carrier) requested, in a sealed envelope addressed to the party for whom intended at the street address indicated below, or such other street address, facsimile number, or email address notice of which is given in a manner permitted by this Section 10.1.

Notice to the Port:

Jose D. Leon Guerrero Commercial Port
Attn: Mr. Pedro A. Leon Guerrero, Jr.
General Manager
1026 Cabras Highway, Suite 201
Piti, Guam 96925

Notice to P&B:

Michael F. Phillips, Esq.
Phillips & Bordallo, P.C.
410 West O'Brien Drive, Suite 102
Hagatna, Guam 96910

10.2 PARTIAL INVALIDITY. Each provision contained in this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any one provision, or portion thereof shall not affect the validity or enforceability of any other provision, or portion thereof.

10.3 BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto as well as their respective successors and assigns.

10.4 GOVERNING LAW. This Agreement shall be governed, construed, and interpreted in accordance with the laws of Guam.

10.5 ENTIRE AGREEMENT. This Agreement and the Exhibits attached hereto (a) represent the entire understanding of the parties regarding the subject matter hereof, and supersede and replace all prior and contemporaneous understandings, whether oral or written, regarding the subject matter hereof; and (b) may not be modified or amended, except by a written instrument executed after the Effective Date of this Agreement by the party sought to be charged by such modification or amendment.

10.6 ATTORNEYS' FEES. If any action is commenced to construe this Agreement or the rights and duties created herein, then the party prevailing in that action shall be entitled to recover its costs and fees in such action or proceeding, as well as all costs and fees incurred in enforcing any judgment entered therein.

10.7 EFFECTIVE DATE. The "Effective Date" of this Agreement shall be the date upon which this Agreement is fully executed by all parties identified on the signature page below.

[Signatures appear on the following page]

11-0399

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement on the applicable date set forth below.

PHILLIPS & BORDALLO, P.C., a Guam professional corporation

MICHAEL F. PHILLIPS, Sole Shareholder

Date: 4/28/11

JOSE D. LEON GUERRERO COMMERCIAL PORT.

PEDRO A. LEON GUERRERO, JR.
General Manager

Date: 4/28/11

ATTORNEY GENERAL OF GUAM

Signature

~~Printed Name~~ **LEONARDO M. RAPADAS**
Attorney General

Date: 5/4/11

CERTIFICATION OF AVAILABILITY OF FUNDS:

Jose B. Guevara, III
Financial Affairs Controller

Date: 4/28/11

RECEIVED
APR 28 2011
Office of the Attorney General of Guam
Civil/Solicitor Division

EXHIBIT A

TO

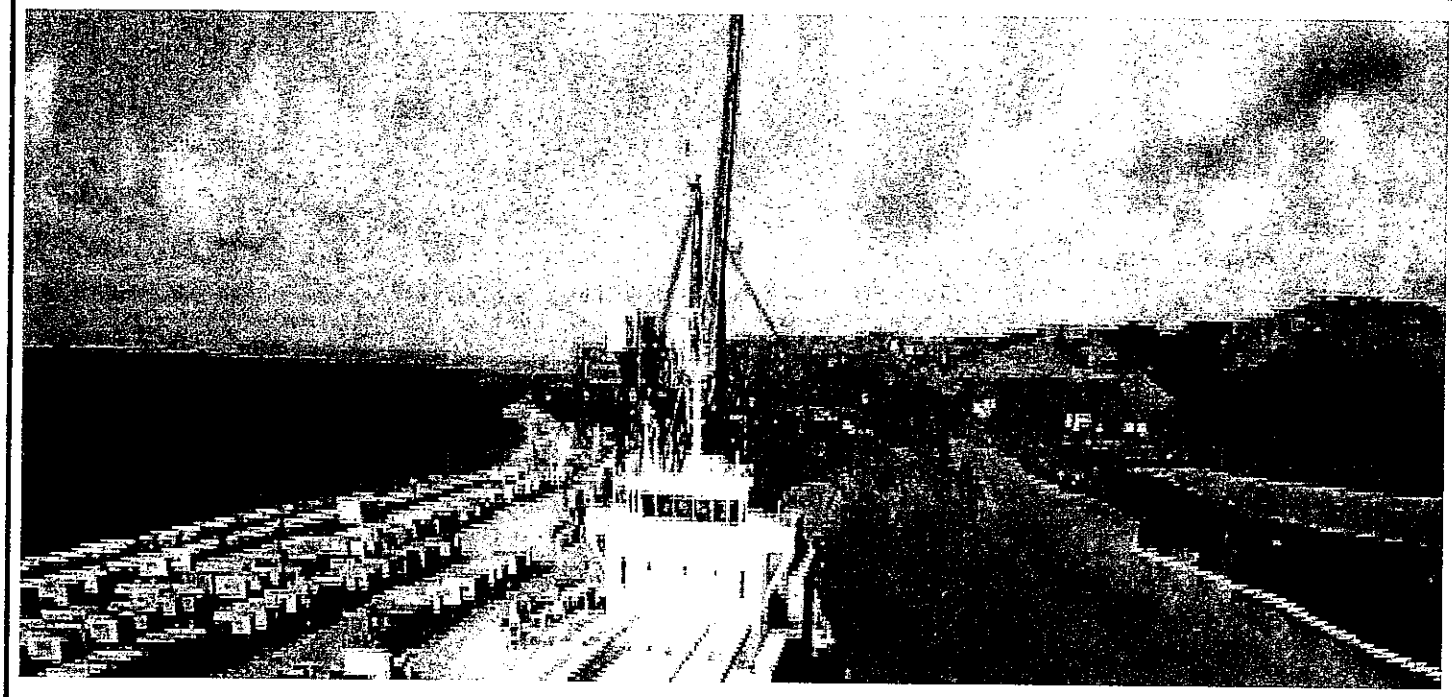
PROFESSIONAL SERVICES AGREEMENT

Request for Proposal RFP No: PAG-011-002 for Legal Services

[*Attached*]

EXHIBIT A

RFP PACKET



REQUEST FOR PROPOSAL
RFP No: PAG-011-002
FOR
LEGAL SERVICES

Port Authority of Guam
Jose D. Leon Guerrero Commercial Port
Government of Guam
1026 Cabras Highway
Piti, Guam 96925

Pedro A. Leon Guerrero, Jr.
General Manager

March 2011

Port Authority of Guam
Jose D. Leon Guerrero Commercial Port of Guam
REQUEST FOR PROPOSAL

RFP No. PAG-011-002

LEGAL SERVICES

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- Special Reminder to Prospective Offerors
- Affidavit Disclosure Ownership and Commission, Form 002
- Affidavit re Non-Collusion, Form 003
- Affidavit Non-Gratuity/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

PORT AUTHORITY OF GUAM

ATURIDAT I 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
Website: www.portguam.com

Eddie Baza Calvo
Governor of Guam

Ray Tenorio
Lieutenant Governor

REQUEST FOR PROPOSAL
RFP No. PAG-011-002
FOR
LEGAL SERVICES

The Port Authority of Guam (PAG), a public corporation and an autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified professional firms or individuals to provide legal services for, and behalf of PAG Management and Board of Directors.

A PRE-PROPOSAL CONFERENCE is scheduled on March 14, 2011 at 10:00 a.m. Chamorro Standard Time (Guam Time) at the Commercial Port Board of Director's Conference Room. Request for Proposal (RFP) packages may be obtained at the PAG Procurement and Supply Division anytime from Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A non-refundable fee of One-Hundred U.S. Dollars (**$100.00**) will be charged for each printed package or Seventy-Five U.S. Dollars (**$75.00**) for electronic file (in PDF format) in compact disc, payable in cash, cashier's check, or certified check payable to PAG.

DEADLINE FOR SUBMISSION of all proposals is March 23, 2011 10:00 a.m. Chamorro Standard Time (Guam Time). All proposals must be submitted to the attention of the PAG General Manager.

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

For additional information, contact Ms. Alma B. Javier, Procurement & Supply Manager at (671) 477-5931/35 ext. 369 **or email at: abjavier@portguam.com.**

PEDRO A. LEON GUERRERO JR.
General Manager

The Port Authority of Guam, Jose D. Leon Guerrero Commercial Port is an Equal Employment Opportunity Employer. Complaints of discrimination should be sent to the Human Resources Division

REQUEST FOR PROPOSAL
RFP No. PAG-011-002

LEGAL SERVICES

BASIC INFORMATION

I. BACKGROUND OVERVIEW:

A. The Jose D. Leon Guerrero Commercial Port ("Port") Port Authority of Guam (PAG) is a public corporation and autonomous instrumentality of the Government of Guam. It provides for the needs of ocean commerce, shipping, recreation, commercial boating, and navigation of the Territory of Guam. This is the only commercial port in Guam and as such, serves as a gateway for maritime commerce for Guam and the entire Micronesian region.

II. INTRODUCTION

A. The Jose D. Leon Guerrero Commercial Port (Port) Port Authority of Guam (PAG), an autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified firm whose principal focus will be to provide legal services for and on behalf of the Port Management & the Board of Directors.

B. The Port will use procedures prescribed by the Guam Procurement Act, 5 GCA §§5001-5805, and DEPARTMENT OF ADMINISTRATION General Services Administration Procurement Regulations to establish a contract. The website to review the Guam Procurement Act is www.guamcourts.org/CompilerofLaws/GCA/Title5.html and Guam Procurement Regulations is www.guamcourts.org/CompilerofLaws/GAR/02gar.html.

C. Firm/Individual(s) are expected to have and shall have sole responsibility for working knowledge of these laws and regulations with respects to the Port Authority of Guam.

D. Issuing Office: This Request for Proposals (RFP) is issued by Port Authority of Guam. 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 Firm/Individual.

III. SERVICES REQUIRED:

The Port requires the services of a qualified firm or firms to provide professional legal services and representations such as, but limited to, litigations; provide opinions, legal interpretations, research, and other miscellaneous duties.

At a minimum, the Firm/Individual(s) shall have the following knowledge and skill levels:

1. Presently in private practice of law and ten (10) years of private practice experience on Guam.

2. A minimum of 10 years experience in providing services to government public agencies with medium to large applicable law services.

3. Knowledge of the Maritime, Laws, Rules and Regulations as well as applicable knowledge to Port operations.

4. Background in and knowledge concerning personnel, the operation of commercial ports and marine terminals with facilities for loading and unloading commercial cargo or passengers onto and from ocean common carriers.

5. Familiarity or professional expertise in addressing a variety of Port related legal matters concerning operations of commercial ports and marine terminals with facilities, equipments for loading and unloading commercial cargo or passengers onto and from ocean common carriers and related services.

6. The Firm/Individual must have a solid financial base of gross revenues, supported by a diverse array of clientele ranging from major Guam and international corporations and entities government agencies and private businesses, to individual litigants.

7. The Firm/Individual must have the resources, personnel, equipment and facilities necessary to provide expeditious and professional legal services to PAG.

IV. DESCRIPTION OF THE WORK:

The Services Required in Section III as well as the Scope of Services referenced in Attachment 1 describes the work and services to be performed. Upon final selection of the best qualified Firm/Individual(s), the Scope of Services may be modified and refined during fee negotiations.

V. TIME AND DURATION OF THE WORK INVOLVED:

It is anticipated that the selected Firm/Individual will commence work on or about ***June 2011 or*** from the Agreement execution date. ***The term of the contract shall be for a period***

of one (1) year. This Agreement may be renewed annually, by written notice at the sole discretion of PAG, for additional one-year periods but not to exceed the total contract term of four (4) years.

The option to renew shall be at the sole discretion of the PAG. The Port is not obligated to renew the Agreement and does not have to give reason if the Port elects not to renew.

VI. TYPE OF CONTRACT:

A Professional Services Agreement will be consummated between the Firm/Individual (s) and the PAG. A sample agreement is attached herein as Attachment 2, for reference. The Port reserves the right to modify the sample Agreement during the proposal period or negotiation period. The Firm/Individual(s) elected shall be fully licensed to conduct business on Guam prior to execution of any contract resulting from this RFP.

VII. 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 2nd floor of the Port Authority of Guam (PAG) Administration Building, and shall be to the attention of the General Manager, *no later than 10:00 a.m., Chamorro Standard Time (Guam Time) Wednesday, March 23, 2011.* **No proposals shall be received after such date and time. Additionally, proposals transmitted via facsimile or email will not be accepted.**

Firm/Individual(s), must provide *seven (7) complete sets; one (1) original, five (5) copies and one (1) CD containing the electronic copy of the proposal in PDF format.* Each proposal in its entirety must be submitted in a sealed envelope bearing on the outside the name of the Offeror, address, and the name of the project for which the proposal is submitted. If forwarded by mail and packaged in a box, the proposal must be in a sealed envelope containing the same information as specified above.

VIII. PRE-PROPOSAL CONFERENCE:

A pre-proposal conference is scheduled on *Monday, March 14, 2011 at 10.00 a.m., Chamorro Standard Time (Guam Time)* at the Commercial Port Board of Directors' Conference Room. 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, questions, comments and suggestions.

All Requests for Information (RFI) (inquiries, clarifications, or questions) must be submitted *no later than 3:00 p.m. Chamorro Standard Time (Guam Time), Wednesday, March 16, 2011*. RFI shall reference the RFP number, project title and must be addressed to the attention of the Port Authority of Guam:

To:
General Manager
Pedro A. Leon Guerrero, Jr.
paleonguerrero@portguam.com

Or:
Procurement and Supply Manager
Alma B. Javier
abjavier@portguam.com

Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925
Tel: 671-477-5931/5 ext. 302 or ext. 369
Fax: 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.

IX. LATE PROPOSALS:

Proposals submitted after the above submission deadline will not be accepted.

X. TRADE SECRETS AND PROPRIETARY DATA:

Firm/Individual(s) may designate those portions of their proposal that contain trade secrets or proprietary data, which are to remain confidential. PAG 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 Firms/Individual(s).

XI. CONTENTS OF THE PROPOSAL:

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

A. Transmittal Letter:

1. A transmittal letter, prepared on the Offerors business stationary, is to accompany the original and required copies of the Submission.

2. The age of the Offerors business and the average number of employees over the past year; and

3. The letter must be signed by an individual who is authorized to bind the Offeror to all statements contained in the submission.

4. The transmittal letter must make reference to the RFP number and RFP title that the Offeror is responding to.

5. The Transmittal letter must state that the proposed services will be valid for 60 days.

6. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform the services contained in Attachment 1 and the Services Required.

B. Statement of Qualifications:

The proposal should demonstrate the ability of the Offeror to perform and provide the professional legal services enumerated in the Preliminary Scope of Services attached herein as Attachment 1. The Statement of Qualifications must be current, accurate, and complete; thus, shall include the following:

1. The name of the Offerors, the location of the principal place of business and, if different, the place of performance of the proposed services, the age of the Firm/Individual(s) business, the average number of employees over the past year; and the current workload of the Offerors .

2. The abilities, qualifications, experience and the role of the key person(s) that would be assigned to perform ~~the~~ required in Section III of RFP as well as the scope of work 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 Offerors has substantially performed or accomplished as the Prime Individual 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) contracts that provide positive assurance that professional legal services were provided for the client.

4. A list of Attorneys in the firm who will be assigned to work on PAG's matters. Complete resumes of these attorneys must be included shall contain, at a minimum legal work history and type of work legal to be performed.

5. A plan giving as much detail as is practical explaining how the services will be provided, including but not limited to, tasks or activities, deliverables, timeline, etc.

6. A statement that the Offerors has established and implemented an Affirmative Action Plan.

7. A letter affirming the existence of a Drug Free Workplace Program and Policy at the firm.

8. A statement of agreement with the Port's General Terms and Conditions and the Special General Provisions, which are made part of this RFP documents.

9. A statement from the Offerors or certification from the Guam Bar Association stating that the Offeror is in a good standing member of the Guam Bar Association.

10. Copies of Financial Statements for the period of four (4) years (2007, 2008, 2009, 2010) prepared and certified by a Certified Public Accountant or a licensed accounting firm. Should a licensed accounting firm will be used, a copy of the firm's license must be submitted with the proposer's financial statement.

XII. SELECTION OF BEST QUALIFIED PROPOSER AND PROPOSAL:

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

   In the event of a tie between two or more evaluation scores, Firm/Individual(s) proposers shall be invited to appear before the evaluation committee for further interviews for the purpose of breaking this tie.

2. **Selection:** The selection of the best qualified responsible, responsive Firm/Individual(s) shall be the highest ranked Firm/Individual(s) Proposers. A "Short Listing" will be established based on the ranking results of the evaluation process. The PAG reserves the right to short-list to a maximum of five (5) qualified Firm/Individual(s) Proposers.

   The highest ranked proposer 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 Offerors based on the established short list.

XIII. EVALUATION CRITERIA:

The following factors and their relative importance that will be used in the evaluation of the proposals are:

1. The plan for performing the required services. **(Maximum 15 points)**

2. The ability to perform the services as reflected by technical training, education, general experience, specific qualifications and abilities of key personnel proposed to be assigned to perform the required services. **(Maximum 25 points)**

3. The personnel, equipment and facilities to perform the services currently available or demonstrated to be available at the time of contracting **(Maximum 10 points)**

4. The firms' reputation for personal, professional integrity and competence record of past performance of similar work based on references **(Maximum 10 points)**

5. The firms' demonstration of the ability to meet schedules or deadlines **(Maximum 10 points)**

6. The record of past performances as it relates to the services identified in the Attachment 1. **(Maximum 10 points)**

7. The degree of interest and understanding of the existing issues, anticipated military build-up, and the mission of the Port Modernization of facilities, operations and other potential PAG entities. **(Maximum 15 points)**

8. Compliance to specific requirements, **(Total of 15 points)**;

   a. Evidence that the Firm has established and implemented an Affirmative Action Plan **(5 points)**;

   b. Evidence of establishment and implementation of a Drug Free Workplace Program **(5 points)**;

   c. Copies of Financial Statements as identified in Section XI. **(5 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.

XIV. FEE PROPOSALS:

Firm/Individual(s) 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.

XV. REQUIRED FORMS:

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

1. Special Reminder to Prospective Offerors: This form is the checklist of the required Forms to be submitted accompanying the proposals. By completion and submittal of this form, the Offeror acknowledges and understands its intent and implications. Offerors are held responsible for ensuring that all documents required in this RFP, which may not appear on the checklist, are submitted with their proposal.

2. Affidavit Disclosure Ownership and Commission, AG Form 002 : 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.

3. Affidavit re: Non-Collusion, AGForm 003

4. Affidavit re: No Gratuities or Kickbacks, AGForm 004

5. Affidavit re: Ethical Standards, AGForm 005

6. Declaration re Compliance with U.S. DOL Wage Determination, AGForm 006

7. Affidavit re: Contingent Fees, AG Form 007

XVI. ADDITIONAL RESPONSIBILITIES OF SELECTED OFFEROR:

Compliance to Public Law 28-98: Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.

The final contract between PAG and the selected Offeror 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 who is listed on the Sex Offenders 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.

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

ATTACHMENT 1

ATTACHMENT 1

SCOPE OF SERVICES
LEGAL SERVICES

Description Of Work Involved: A Preliminary Scope of Services describes the work to be accomplished. Upon final selection of the best qualified Offeror, the Scope of Services may be modified and refined during the fee negotiations.

1. Act as Counsel to the Port.

2. Have particular expertise in and prepare opinions, resolutions, and reports at the request of the Board of Directors or General Manager or their designee(s) in:

    a. Matters of a commercial and business nature.
    b. Matters in the maritime transportation industry.
    c. Matters pertaining to federal, regulatory or local statutes
    d. Matters relating to personnel rules, regulations and procedures.

3. Undertake such legal research as shall be requested by the Board or the General Manager or their designee as described in section 2.

4. Represent the Authority in litigation matters as described in section 2.

5. Upon Port's authorization, represent the Port in connection with matters before the Legislature, Boards and other agencies of Guam or the United States as described in Section 2.

6. Review contracts, leases, bid invitations and other documents for work as described in section 2.

7. Provide legal assistance and advice during any negotiations with the Port's tenants, concessionaires and contractors for work as described in Section 2.

8. Provide special services as requested by PAG and/or the Board of Directors.

9. Other Tasks: Port may require other related tasks not specified above.

GENERAL TERMS & CONDITIONS AND SPECIAL GENERAL PROVISIONS

Port Authority of Guam (PAG)

REQUEST FOR PROPOSALS (RFP)
GENERAL TERMS AND CONDITIONS

1. **AUTHORITY:**

This Request for Proposal (RFP) solicitation is issued subject to all the provisions of the Guam Procurement Act (Public Law 16-124) and the Guam Procurement Regulations (copies are available for inspection from the following website: www.guamcourts.org/CompilerofLaws/GCA/Title.html
www.guamcourts.org/CompilerofLaws/GAR/02gar.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 as 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 Offerors and its receipt by the Offerors should be acknowledged on the proposal form.

3. **METHOD OF AWARD:**

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

4. **REJECTION:**

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

5. **TAXES:**

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

6. **LICENSING:**

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

7. **COVENANT AGAINST CONTINGENT FEES:**

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

8. **JUSTIFICATION OF DELAY:**

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

9. **EQUAL EMPLOYMENT OPPORTUNITY:**

Section 3.01 of the Executive Order 10935 dated March 7, 1965 requires the proposer not to discriminate against any employee or applicant for employment because of race, creed, color, age, marital status, ancestry, persons with disabilities or national origin. The Offeror will take affirmative action to secure that applications are employed and that employees are treated equally during employment without regard to their race, creed, color or national origin.

10. **ASSIGNMENT:**

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

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

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

END OF GENERAL TERMS AND CONDITIONS

SPECIAL GENERAL PROVISIONS

1. **PROPOSALS:**

The Offeror is required to read each and every page of the RFP documents 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 alternations or items not called for in the Proposal, or irregularities of any kind shall be rejected by the PAG as being incomplete.

2. **GENERAL INTENTION:**

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

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

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

a. Name of Authorized Person
b. Title of the Authorized Person
c. Contact Numbers: Office, Fax, etc.
d. Email Address, if any.

4. **DISCUSSIONS:**

The PAG may conduct discussions with all qualified Offerors who are prepared to discuss their proposals for the purpose of clarifying questions regarding the Proposal content and to afford Offerors an opportunity to further explain or clarify Proposal details. All qualified Offerors will be provided full and equal treatment with respect to any opportunity for

discussion. During discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

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

5. **PAYMENT:**

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

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

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

7. **WITHDRAWAL OF PROPOSALS:**

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

Negligence on the part of the proposer in preparing the proposal grants no right for the withdrawal of the proposal after it has been opened.

All items submitted in response to the RFP become the property of the PAG and none will be returned.

8. **LATE PROPOSALS:**

Late proposals will not be accepted.

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

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

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

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

11. **CONTRACT PROVISIONS:**

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

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

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

By submitting a proposal, the Offeror specifically understands and agrees that it has a duty to explain and clarify any and all conditions imposed on or included in its responses and

questions in this RFP. The Offeror further understands that it has an affirmative duty to inquire about and clarify any section of the RFP that the Offeror does not understand or that the Offeror believes may be susceptible to more than one interpretation.

12. SPECIAL PERMITS AND LICENSES:

The Offeror shall, at his 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 manner 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)

(a) 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, shall work for his employer on the property of the government of Guam other than a public highway.

(b) 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 of 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.

(c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Request for Proposals shall state all the conditions in §5253(b).

(d) Any contractor found in violation of §5253(b), after notice from the contracting authority of such violation, shall, within twenty–four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

C. Port Security Guidelines: Any Offeror performing work on PAG property shall be required to comply with any applicable law, regulation, or policy regarding Port security, including but not limited to 33 CFR 105 and the following conditions:

(a) 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.

(b) No contract 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.

(c) The PAG Police Division currently issues identification cards to Port Authority employees, tenants, users and other persons authorized to enter the Commercial Port compound. Temporary I.D.s are without photo however bear a controlled number and must be signed out to requestor in exchange for an acceptable valid photo I.D. and each issued identification card must be worn and displayed on the exterior of the bearer's clothing. Lost/misplaced temporary I.D. must be reported immediately to Commercial Port Police Division. Failure to report and/or return the issued temporary I.D. constitutes a security breach and shall disallow holder to enter the terminal compound for the entire contractual period.

(d) 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.

(e) Upon clearance of company vehicle/equipment documents submission, temporary passes will be issued by the Commercial Port Police Division. In instances where Contractors/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 in advance is required.

D. Transportation Workers Identification Credential ("TWIC")

(a) TWIC is a common identification credential for all personnel requiring unescorted access to secure 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.

(b) 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.

(c) It will be the responsibility of the successful Offeror to comply with TWIC Program. For additional information you can 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/CSOs are encouraged to seek directly from the local Captain of the Port.

14. STATUS OF OFFEROR:

Offeror and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the PAG, and are not employees of either the Port or the Government of Guam. Offeror and its officers, agents, servants and employees shall not accrue vacation or sick leave; participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees. Offeror agrees that Offeror and its employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the PORT at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in any contract pursuant to this RFP or any action taken pursuant to this RFP shall be deemed or construed in any manner or for any purpose to evidence or establish as between Offeror and the PAG a relationship of partnership, agency, association, joint, venture or representative, nor authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the PAG for the Offeror.

15. INSURANCE:

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

16. OWNERS RIGHT TO REJECT PROPOSAL:

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

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

17. CONFIDENTIAL OR PROPRIETARY INFORMATION

Proposals of Offerors who are not awarded the contract shall not be opened to public inspection, but will be part of the official procurement record. After award, the proposal of the Offeror receiving a contract will become available for public inspection. If the Offeror selected for award has requested in writing the non-disclosure of trade secrets or other proprietary data so identified, the PAG shall examine the designated information to determine whether such information shall be considered proprietary. If the PAG and Offeror are unable to agree as to the disclosure of certain portions of Offeror's proposal, the PAG shall inform the Offeror in writing what portion of the proposal will be disclosed and that, unless the Offeror withdraws the proposal or protests under 5 GCA Article 9 (Legal and Contractual Remedies) of the Guam Procurement Act, the information may be so disclosed. (Refer to Title 2, Guam Administrative Regulations, Division 4, Section 3114(h)(2)).

18. ETHICAL STANDARDS

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 5 GCA Sections 5601-5677.

19. PROHIBITION AGAINST GRATUITIES AND KICKBACKS

The respondents represents that it has not violated, is not violating, and promises that it will not violate, the prohibition against gratuities and 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 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 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 any person associated therewith, as an inducement of the award of a subcontractor or order.

20. 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 2

AGREEMENT

BETWEEN

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

Consultant:_____

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

WHEREAS, the Port issued a Request for Proposal ("RFP") RFP No. 011-002 seeking to retain a consultant to perform Legal Services.

WHEREAS, the Consultant responded to the RFP through submitting a proposal ("Proposal") to provide services in accordance with the RFP, and was selected as the most qualified offeror;

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

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

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

I. Statement of Work to be Performed.

A. Scope of Work. The Consultant shall furnish legal services pursuant to and in accordance with the Scope of Services as identified in the RFP, Consultant's Proposal and Projects agreed to by both parties. A copy of the RFP, and Consultant's Proposal are attached as Exhibits 1 and 2, incorporated as part of this Agreement. Consultant shall provide status reports on the services performed and required under this Agreement upon request by the Port. Consultant recognizes that failure to perform all the services required under this Agreement constitutes a material by the Port. Consultant recognizes that failure to perform all services required under this Agreement constitutes a material breach of this Agreement.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for

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

C. Other Work. The Port acknowledges and agrees that Consultant may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Consultant is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Consultant must immediate cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement.

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

II. Term of Agreement. The contract period shall be for one (1) year and may be extended annually, for an additional one-year period, but not to exceed the total contract term of four (4) years. The extension of this agreement after the initial term shall be at the sole discretion of the Port, if reasonable and justified and subject to price adjustment and availability of appropriated and/or budgeted funds. If no funds are appropriated and/or budgeted in the next fiscal year, the contract may be terminated upon giving of a minimum of thirty (30) days prior written notice to the beginning of the next fiscal year.

III. Compensation.

A. Compensation. In consideration for the Legal services performed under this Agreement, the Port shall pay Consultant a total of, in accordance to the negotiated rates to be attached as Exhibit 3 of this agreement.

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

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

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

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

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

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

IV. Early Termination.

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

(i) Termination without Cause: The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Consultant at least thirty (30) days prior to the intended date of termination;

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

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

Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.

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

B. By Consultant.

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

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

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

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

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

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

IV. Confidentiality.

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

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

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

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

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

VII. Conflicts of Interests/Ethics

A. The Consultant warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

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

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

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

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

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

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

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

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

//

//

CONSULTANT:

_____
President/General Manager

Date: _____

Port Authority of Guam
JOSE D. LEON GUERRERO COMMERCIAL PORT

_____
PEDRO A. LEON GUERRERO, JR.
General Manager
Port Authority of Guam

Date: _____

ATTORNEY GENERAL OF GUAM:

_____
Office of the Attorney General of Guam

Date: _____

CERTIFICATION OF AVAILABILITY OF FUNDS:

_____
JOSE B. GUEVARA, III
Financial Affairs Controller
Jose D. Leon Guerrero Commercial Port

Date: _____

REQUIRED FORMS

(MUST BE SUBMITTED CONTAINING THE PROPOSAL)

REQUEST FOR PROPOSALS (RFP) NO. PAG-011-002

PROJECT DESCRIPTION: LEGAL SERVICES

SPECIAL REMINDER TO PROSPECTIVE OFFERORS

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

(x) STATEMENT OF QUALIFICATIONS (See Section XI)

(x) AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS (AG Form 002)

(x) AFFIDAVIT RE NON-COLLUSION (AG Form 003)

(x) AFFIDAVIT RE NO GRATUITIES OR KICKBACKS (AG Form 004)

(x) AFFIDAVIT RE ETHICAL STANDARDS (AG Form 005)

(x) DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (AG Form 006)

(x) AFFIDAVIT RE CONTINGENT FEES (AG Form 007)

(x) OTHER REQUIREMENTS: Valid Copy of Business License.

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

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

_____
Signature of Authorized Representative

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

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF _____)
) **ss.**
ISLAND OF GUAM)

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

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

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

Name	**Address**	**% of Interest**
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Name	**Address**	**Compensation**
_____	_____	_____

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

_____
Signature of one of the following:
Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me
this ____ day of _____, 201__.

_____
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 _____, 201__.

_____
NOTARY PUBLIC
My commission expires _____, ____.

AFFIDAVIT re NO GRATUITIES or KICKBACKS

CITY OF _____)
) ss.
ISLAND OF GUAM)

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

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

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

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

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

_____
Signature of one of the following:
Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this _____ day of _____, 200__.

_____
NOTARY PUBLIC
My commission expires _____, _____.

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
) ss.
ISLAND OF GUAM)

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

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

_____
Signature of one of the following:
Offeror, if the offeror is an individual;
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me
this _____ day of _____, 201__.

_____
NOTARY PUBLIC
My commission expires _____, _____.

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby **certify under penalty of perjury**:

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

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

§ 5801. Wage Determination Established.

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

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

§ 5802. Benefits.

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

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

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

_____
Signature

EXHIBIT B

HOURLY RATE SCHEDULE

EXHIBIT B

TO

PROFESSIONAL SERVICES AGREEMENT

Hourly Rate Schedule for the Initial One-Year Term

Shareholders:	$200 per hour
Associates:	$175 per hour
Paralegals, Law Clerks, Special Assistants	$100 per hour

13-0324

FIRST (1ST) AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(dated May 4, 2011)

The undersigned hereby agree to DELETE Paragraph 3.7 in its entirety effective April 4, 2013.

IN WITNESS WHEREOF each of the parties hereto have executed this Amendment on the applicable date set forth below.

PHILLIPS & BORDALLO, P.C.,
a Guam professional corporation:

MICHAEL F. PHILLIPS
Sole Shareholder

Date: 4/4/13

JOSE D. LEON GUERRERO
COMMERCIAL PORT:

JOANNE M.S. BROWN
General Manager

Date: 4/5/13

ATTORNEY GENERAL OF GUAM:

LEONARDO M. RAPADAS
Attorney General

Date: 4/22/13

CERTIFICATION OF AVAILABILITY OF FUNDS:

JOANNE CONWAY
Acting Financial Affairs Controller

Date: 4/8/13

OFFICE OF THE ATTORNEY GENERAL OF GUAM
RECEIVED
Civil / Solicitor
APR 9 2013
1:07

13-0324