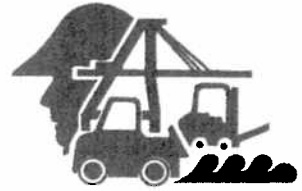




**PORT AUTHORITY OF GUAM
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FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, December 17, 2009**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 5:10 p.m., Thursday, December 17, 2009. Present at the meeting were:

Monte Mesa, Chairman
Jovyna Lujan, Vice Chairperson
Marilou Lacson, Board Secretary
Joseph Camacho, Member – *Telephonic Participation*
William Beery, Member
Glenn A. Leon Guerrero, General Manager
Enrique Agustin, Deputy General Manager
Atty. Rebecca Santo Tomas, Co-Counsel

Also present were Lea Santos-Senator James Espaldon's office; Jay Sunga-Senator Tom Ada's office; Paul Mafnas-Sherman Consulting; George Quinata-SAIC; AnnMarie Muna/Tricia Granillo-AM Insurance and Port Management staff.

II. APPROVAL OF MINUTES

a. **November 19, 2009**: Approval of minutes held in abeyance until submission of board action items.

III. CHAIRMANS REPORT

1. **Business Opportunities** – Met with two potential bidders interested in the PMC, company named Kamigumi Terminal Operators of Japan and Busan Port Authority in Korea. This is a good indication of interest by potential bidders; however, made note that upon issuance of the PMC request for proposal, all communications with potential bidders shall cease and adhere to the procurement process and procedures.

2. **Cruise Line Industry** – Parsons America had provided a preliminary update on the cruise line development. Short term strategy to accommodate passenger vessels will continue to be at port docks and long term plan location is being looked at Hagatna Marina. A final report is expected by January 2010.

3. MARAD-PMT – Contact was made with MARAD officials and is encouraged with the progress thus far in the awarding of the PMT which is slated for January 2010.

4. ARRA Funding – Understands that there may be an announcement made on the ARRA funding in January 2010.

5. Upcoming Conferences – There are two conferences the Port may be interested in attending, such as APP 2010 Mid-Year Conference in January 14-15, 2010 in Hawaii which involves networking, global economic forecasts, developing greener ports, port transportation planning, strengthening port security, infrastructure investments, cruise business, dredging project and practices. Also the SeaTrade Cruise Shipping in March 15-18, 2010 in Miami Beach, Florida.

IV. GENERAL MANAGERS REPORT

1. ARRA Funding – As mentioned earlier by the Chairman, the anticipated date to receive status of the Port's ARRA Grant Application was in January 2010; however, the Port had just learned through a letter received yesterday from Mr. John D. Porcari, Deputy Secretary of Transportation dated December 9, 2009 that almost 1,400 applications seeking Recovery Act funds are being evaluated and an announcement of grant recipients will be made no later than February 17, 2010.

2. Mobil Pipeline Replacement – Management is proceeding forward with the replacement of the Mobil pipeline and will provide the Board with a timeline.

At this time and without objections, the members agreed to entertain the following action items.

VI. OLD BUSINESS

a. Board Ratification

1. Arbitrator Services for Guam YTK matter: A memo dated December 14, 2009 was presented to the Board seeking approval to issue the Notice of Intent to Award for the arbitrator services. Mrs. Lacson made motion to approve and authorize management to move forward with the arbitrator services relative to the Notice of Intent of Award: RFP No. PAG-CORP-010-004 – Arbitrator Services, seconded by the Vice Chairperson. Motion was unanimously approved.

2. Consent to Assignment of Contract-PB International to PB Americas: Pursuant to Paragraph 13 of the Consultant Agreement between the Port Authority and PB International allows for PBI to assign its rights or interest under such agreement to any other entity, provided it has the express written consent of the Port. Presented before the Board for approval is the consent to assignment of contract in which the Port consents to the assignment of PBI to PB Americas of all its duties, obligations, rights and interest under the Consultant

Agreement. The Vice Chairperson made motion to approve the Consent to Assignment of Contract and Assumption of Liability relative to Parsons Brinckerhoff International, Inc. to PB Americas Inc, seconded by Mr. Beery. Motion was unanimously approved.

3. **Additional Funding for Personnel Services:** As directed by the Board, Mrs. Lacson presented the financial plan that identifies for additional funding to reallocate eight employees into the new Port Compensation Plan. Management met to review the existing budget and had determined where such funds can be identified and allocated. Mrs. Lacson mentioned that Board approval is being requested for those port employees who have yet to be reclassified into the port's new compensation plan for reasons that there was a shortfall in the budget, totaling \$48,914.74.

The Vice Chairperson clarified whether the funding for shortfall has come primarily from vacancies within these respective departments. The General Manager said there are vacancies within each department that are budgeted for within the approved fiscal year budget, but has not been filled with the exception of Marketing Division which shortfall amount of \$167.39 comes from their Dues and Subscriptions account to fund the reclassification. Mr. Camacho asked how many positions are vacant. The General Manager said the following vacant positions within respective divisions include: 1-Personnel Specialist IV, 1-Clerk I, 2-Cargo Checker Leader and 1-Accounting Technician Supervisor. Mr. Camacho asked why are vacant positions being addressed at this point. The General Manager explained that management had identified for additional funding to reallocate eight employees into the new port compensation plan using the funds from these vacant positions which are still within the budget. Basically the funding to allow for the reallocation will come from the budgeted vacant positions. Mr. Camacho asked does this mean that those vacant positions will not be filled within this fiscal year as its funding is being used to support the reallocation. The General Manager replied negatively, and said that these budgeted vacant positions can still be filled only for a certain period of the remaining fiscal year. The total reallocation amount needed is only \$48,914.74, impacting only a portion of the budgeted vacant positions for the fiscal year.

The Chairman pointed out that based on the October 2009 financial report, current cargo revenues is down 6% below budget forecast. He asked what is the total current expenses. The Vice Chairperson said October report shows a year-to-date actual of \$2.4M versus \$2.6M year-to-date, down 8.5% in expenditures. The Chairman expressed concern that the revenues are not tracking what was forecasted for this fiscal year and before this Board is another impact of \$48K. He suggested that none of the vacant positions identified be filled until after the revenues start tracking the projections and the annual net income is tracking the projections as well.

Mrs. Lacson made motion to approve additional funding for personnel services of employee(s) in Human Resource Division at \$28,116.73, Marketing/Public Relations at \$167.39, General Administration Division at \$337.35, Terminal Division at \$7,766.99, Finance Division at \$12,526.28 subject to the condition that all the vacant positions at this point will not be filled unless it is determined that the tracking of the revenues, total revenues and the bottom line forecast are tracking in line with the 2010 fiscal year budget. Motion was seconded by Mr. Beery and was unanimously approved.

b. **Notice of Intent to Award: RFP No. PAG-09-006 – Chief Labor Negotiator:**

The General Manager said the evaluation committee had selected the best qualified vendor to provide the service as chief labor negotiator using the competitive selection procurement method in accordance with the procurement regulations process. During the negotiations process, it was agreed to by the parties the following terms: four deliverables to be provided by the chief labor negotiator – union negotiations; training of management, supervisors, leaders; grievance; and arbitration. Compensation includes: monthly base salary of \$20K (not to exceed three months) which is inclusive of the union negotiations and training (such salary is applied until the union contract signing and training is completed); per diem rate of \$215.00 per day when on-island; air travel at cost economy fair; daily rate of \$750.00 for services rendered for arbitration and grievance and administrative assistant at \$15.00 per hour. It is now being recommended that the notice of intent to award be given to the best qualified vendor to provide for such service.

The Vice Chairperson made motion to approve and authorize management to move forward with the chief labor negotiator relative to the Notice of Intent to Award: RFP No. PAG-09-006 – Chief Labor Negotiator, seconded by Mr. Beery. Motion was unanimously approved.

c. **Proposed Easement Rates:** The General Manager said the port's appraiser has completed with the appraisal for the following: appraisal to determine fair market rent for Parcel 1-Lot 2 & Parcel 1-Lot 3A and associated pipeline easement right of way; appraisal to determine prevailing easement fee for the use of various lands below top for purpose of pipeline easement. He mentioned that in addressing the parcels with respect to South Pacific Petroleum Corporation is for Board's information at this time. Specific to SPPC, the appraisal concluded that for Parcel 1 – Lot 2 & Lot 3A; Pumphouse and Pipeline, the concluded rate per annum totaled \$640,260.06. The present rate per annum for SPPC is \$121,100.00; a difference of \$519,160.06. The General Manager mentioned that according to the existing contract, SPPC has the option to hire its own appraiser should they not agree with the Port's study; otherwise negotiations can commence. He also mentioned that in the event the numbers between both appraisers are inconsistent, then the remedy would be to hire a third appraiser.

With respect to Shell/Tri-Star Assignment, the port's appraiser had concluded that for various underground pipeline easements is as follows: within existing pipeline easements is at 25% fair market value, and not within right of way is at 50% fair market value. Currently, the rate per annum is at \$88,476.88. The proposed rate would now increase to \$298,615.68 which is a difference of \$210,138.80. He recommended for Board's approval on the easement rates which will be brought before the Public Utilities Commission for further process. Mr. Beery made motion to approve and authorize management to proceed with implementing the easement rates as prepared by the Port's appraiser, namely Captain Hutapea & Associates appraisal report of November 23, 2009. Motion was seconded by Mrs. Lacson and was unanimously approved.

VII. NEW BUSINESS

a. **Per Diem Request for Travel re IFB No. PAG/GSA-011-09 (Terminal Yard Tractors)**: The General Manager said in an added effort to ensure the acquisition of new equipment from off-island is within the specifications, this precautionary measure was included in the scope of work. The Port issued invitation for bid for terminal yard tractors and scope of work requires an off-site pre-inspection which the bidder has accepted. The bidder will accommodate for travel, hotel and transportation at no cost to the Port. It is being requested for the Board to approve for two port representatives to pre-inspect the equipment off-island to ensure its quality as well as per diem rate at \$61.00 per day for meals and incidental expense; totaling \$488.00. Travel arrangements are scheduled for January 18-21, 2010. Mrs. Lacson made motion to approve the travel authorization request for two port representatives at no cost to the Port Authority as well as per diem rate totaling \$488.00 for purposes of conducting off-site pre-inspection for Invitation for Bid No. PAG/GSA-011-09 – Terminal Yard Tractors. Motion was seconded by Mr. Beery and was unanimously approved.

b. **Legislation – Performance Management Contract Request for Proposal**: For Board's information, the Chairman said a meeting was held with the Port Oversight Chairman Tom Ada proposing to make amendments to the Port's existing PMC law – Public Law 29-43, specifically to allow the Attorney General to extend beyond the 150 days that it deems necessary. A recent enactment of Public Law 30-72 mandates the Attorney General to act as legal advisor to the government of Guam during phases of any solicitation or procurement process if award is estimated to be \$500K or more. The Chairman understands that the amendment to the PMC timeline is slated to be placed in the January 2010 legislative session.

c. **Memorandum of Understanding – Attorney General Representation re PMC**: Relative to item b under new business, the Chairman said the memorandum of understanding is an arrangement that the Port will engage with the Attorney General's office. He said the General Manager will be exploring with DPW as they have similar arrangements with the AG's office.

At this time, the members entertained items under Reports.

V. REPORTS

Committee Reports:

d. **Procurement Advisory Committee**: The Vice Chairperson said the Procurement Advisory Committee met this week and the items discussed centered mainly on the draft document PMC solicitation and ongoing development on regaining the Port's procurement delegation. There were substantial discussions on the PMC document as it relates to existing law and precedence, also concerns raised on whether the Port has authority to enter into agreement for which the Port would be asking a contractor to engage in procurement activities, in that such authority not being presently granted to the Port, but subject to the Chief Procurement Officer's determination. Members of the committee will continue to work with legal counsel and confirm some of those aspects. With regard to procurement, there have been meetings recently where the

Port had reopened dialogue with the Chief Procurement Officer. She yielded to the General Manager to explain. The General Manager said a meeting took place on December 11, 2009 that included himself, the Port Procurement Manager Bernard Lastimoza, Governor's Chief of Staff George Bamba and Chief Procurement Officer Claudia Acfalle. It was agreed that Ms. Acfalle will develop a timeline and milestones whereby the Port will get its procurement delegation back which she was to provide after the holidays. He said the Chief Procurement Officer also mentioned that one of the things she will develop is basically for GSA staff to communicate only with the Port's procurement staff to find out what the needs are for all bid processing. First test is to see how well the Port procurement staff handles the procurement process and ensure its accuracy and prove that the Port is capable of overseeing its own procurement issuances.

a. **Finance Committee:** With regard to the Public Utilities Commission, Mr. Jojo B. Guevara, Financial Affairs Controller said additional documents were provided to the PUC, such as the Ports appraiser summary report as mentioned earlier; and the draft notice to the customers for review. The notice to customers on the ports rates is expected to be issued next week. PUC has selected a PUC consultant, and is currently in the cost negotiation phase. The next PUC meeting is scheduled December 23, 2009 at which time the PUC Board will further address PUC consultant selection. From December 24 thru the third week of January 2010, management will be working with the PUC consultant on the port rates. The Port is required by the PUC to hold three public hearings – the first public hearing will be a presentation by the Port and PUC consultant on the interim rates which is slated on the last week of January 2010.

b. **Insurance Report:** As directed at previous meetings, Ms. AnnMarie Muna, AM Insurance presented the pending items as follows. (The insurance report for the month of November 2009 was provided for Board's information.)

1. **Wrap-Up Program (OCIP's)** – presented nine different insurance agents offering the Wrap-Up Program for property, liability and worker's compensation. Ms. Muna mentioned there are many interest for this type of program and it all depends on what insurance specification will be put together for the Port. Should the Port consider moving forward with this program, she suggested that a Risk Management Consultant be on board first as the consultant will be a significant part to this process.

2. **POLA Crane Liability Coverage** – the Port's policy covers for incidents arising from the use of these cranes owned by Matson and Horizon provided they are operated at all times by the Port's employees and also under direct instructions from management.

Ms. Muna asked whether management was able to obtain a copy of the insurance coverage for the POLA cranes from Matson and Horizon. The Chairman asked management to follow up with the carriers.

3. **Port Incident Comparison** – having researched how the Port measures up to incidents / accidental claims against ports of similar size, was a difficult task as each Port has its own unique circumstances and exposures. However, having compared incidences, it showed the Port's claims history is not out of the ordinary.

Mr. Beery asked what the status is on the Risk Management Consultant. Mr. Lastimoza said upon advisement of legal counsel, the offerors proposal was rejected. Further details unable to be made as it is currently under the procurement process.

Asuka II Passenger Cruise Vessel

Without objections, the Chairman advised the Deputy General Manager to arrange a meeting with all regulatory agencies (Guam Customs, USCG, Immigration, etc.) prior to Asuka II Passenger Cruise Vessel arrival on December 30, 2009 to ensure the preparedness and smooth process of cruise ship and passengers.

2010 Mid-Year Conference – Association of Pacific Ports

Without objections and as mentioned earlier, the General Manager said Association of Pacific Ports will be holding a 2010 Mid-Year Conference on January 14-15, 2010 in Hawaii. He requested for Board's approval to allow for two port representatives to attend. The General Manager mentioned that during this conference other meetings will be arranged with Ports of San Diego, Alaska and Hawaii forging a coalition with these ports with the Maritime Administration to promote the Port Authority's modernization for Guam and to gain their support. The Chairman added that this is to also gain federal agency support, especially for future funding allocation for the years 2012 and 2013 to accommodate the next \$200M port projects. Mr. Camacho asked for the cost of travel. The Chairman asked management to provide the information once it becomes available. Mr. Camacho asked how much of the travel budget for this fiscal year has been expended. The Chairman said travel budget for this fiscal year is \$50K of which \$20K has been expended thus far. Mr. Camacho expressed concern that given there are only two months into the fiscal year, wondered whether there is sufficient funds to support two participants. Mr. Guevara said a portion of the \$20K is reimbursable travel. Mr. Beery asked management to prepare an annual travel plan.

Mr. Beery made motion to approve travel authorization request for two port personnel to attend the APP 2010 Mid-Year Conference in Hawaii on January 14-15, 2010 subject to identification of funds and providing actual travel amount, seconded by the Vice Chairperson. Motion was unanimously approved.

The remaining items under reports were for Board's information.

VIII. PUBLIC COMMENT

- a. **Port Users Group Comment:** None.
- b. **General Public Comment:** Mr. Bert Unpingco, "Mr. Tourism" commented that he is encouraged the Port is moving towards a world class status and recommended for the Port to consider very seriously to putting the passenger terminal as close to Hagatna marina as possible. There are tour operators that express their desire to participate in the updating of the Port for more tourists to come by boat. Mr. Unpingco shared the Portraits of Guam – Volume II where it features the Port Authority that makes for great VIP gifts to business associates, guests and visitors. He expressed excitement to see Guam become a world class destination. The Ports

potential is fantastic, but potential without development is worthless. Mr. Unpingco made note that the Port is on the right track and to continue forward with what is being planned.

- c. **Employee Comment:** None.

IX. EXECUTIVE SESSION

At this time, the Board went into executive session. Executive Session ended at 7:00 p.m. The Board is now back in regular meeting session.

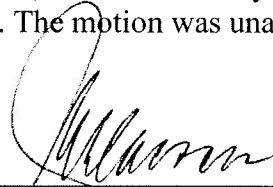
1. Civil Case No. CV0817-08 Mariana Express Lines and M/V Ratstor - Mr. Beery made motion to authorize management to move forward with the resolution as discussed in executive session relative to Marianas Express Lines Ltd and M/V Ratstor vs Port Authority of Guam CV0817-08, seconded by Mrs. Lacson. Motion was unanimously approved.

2. Guam YTK – The Vice Chairperson made motion to authorize the General Manager and Legal Counsel to move forward with the arbitration as it relates to the Guam YTK matter. Motion was seconded by Mr. Beery and was unanimously approved.

3. Watts Constructors Cargo Operation – Mrs. Lacson made motion for the General Manager to prepare an executive summary report to the Board relating to the Watts Constructors Cargo Operation matter, seconded by Mr. Beery. Motion was unanimously approved.

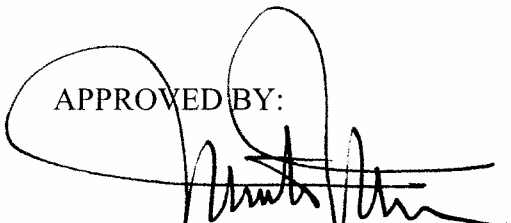
X. ADJOURNMENT

There being no further business to discuss, it was moved by Mr. Beery and seconded by Mrs. Lacson to adjourn the meeting at 7:05 p.m. The motion was unanimously passed.



MARILOU LACSON, Board Secretary, Board of Directors

APPROVED BY:



MONTE MESA, Chairman, Board of Directors

