FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

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MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS
Tuesday, February 3, 2009

I. CALL TO ORDER

There being a quorum, the special meeting of the Board of Directors was called to order at 2:10 p.m., Tuesday, February 3, 2009. Present at the meeting were:

Monte Mesa, Chairman
Jovyna Lujan, Vice Chairperson
Joseph Camacho, Member – ***Telephonic Participation***
Glenn A. Leon Guerrero, General Manager – ***Telephonic Participation***
Joaquin P. Cruz, Deputy General Manager
Atty. Rebecca Santo Tomas, Co-Counsel

Absent was Marilou Lacson, Board Secretary. Also present were Lea Santos-Guam Legislature, Cyrus Luhr-Senator Ada's Office, Fernando Santos-Seabridge, John Perez-Cementon Micronesia and Port Management staff.

II. OLD BUSINESS

a. **Mobil Easement Agreement:** The General Manager said Port management, Mobil representatives, counsel's of both parties have met on several occasions and had agreed to the following:

- Easement: Mobil will provide an easement at a cost of $3 million. A pipeline system of three up to 10" diameter. Port to own the one 8" pipeline to be used for fire fighting purposes.
- Rent: Mobil will pay the Port $6,000 a month and will also pay any fees transported through the pipelines which may become due and under the Port terminal tariff and subject to the terms of the management agreement.
- Term: The term of the agreement is for 5 years. Subject to legislative approval, the agreement is to be automatically renewed on the same terms and conditions for 3 extended terms of 5 years each unless Mobil declines to exercise any option in which case the agreement shall terminate at the end of the current term.
- Future Thru-Put Rates: There is no moratorium on the increase of thru-put fees.
- Utilities Easements: Port shall not grant any third party rights which impede or interfere with Mobil's construction, operation or maintenance of the pipelines.

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.

- Buy Back Clause: In the event legislative approval is not obtained, the Port shall, at Mobil's request and subject to applicable law, purchase the pipeline system for the sum of $2,846,000.

  Under the Management Agreement, the following per barrel was agreed upon:

Managers compensation:	Import - $0.072, Export - $0.034, Bunker - $0.10, Tank Truck Loading Rack - $0.06.
Golf Pier Thru-put fees:	Import - $0.16, Export - $0.075, Bunkering - $0.21

Third Party Fees for use of Mobil's pipelines shall be at the rates established by the management agreement and Port tariff during the term of the management agreement. Thereafter, Mobil may charge third party a fair and reasonable thru-put fee as provided in the easement agreement.

Additionally, the General Manager mentioned that by having Mobil invest in these pipelines, the Port benefits by: a) not paying maintenance fees of the pipelines; b) will receive an additional easement fee of $72,000 annually; c) avoid $300k to $340k in annual debt service.

Mr. Camacho asked whether the buy back is the depreciated value after 5 years and what is the length of depreciation? The General Manager said it is the unamortized value after 5 years which is for 20 years at 10%.

The Vice Chairperson recalled that there was a procurement implication regarding the pipelines and asked whether that issue is resolved. The General Manager said the issue was that the Port's enabling legislation did not allow for the Board to go beyond a 5 year lease term, but since the term of the agreement as presented provides for options subject to legislative approval for 3 extended terms of 5 years, there shouldn't be a procurement concern.

Mr. Camacho asked what is the difference in the offer being presented compared to what the Board previously approved at prior meetings, such as the easement fee, thru-put rates, etc. The General Manager said basically it's essentially the same, and that it was just a matter of clarification, such as adjusting the tariff rates which did not take place; went from 20 years to 5 years with the proviso that the Port seek legislative approval; managements compensation on imports went from $0.08 per barrel to $0.072.

Mr. Camacho asked whether a buy back clause can actually be placed in the agreement and what affect does that have on the procurement law. The Chairman said that page 4 of the agreement stipulates that: "If despite using its best efforts PAG is unable to obtain such legislative approval, PAG shall, at Mobil's request and subject to applicable law, purchase the pipeline system for the sum of $2,846,000..." Mr. Camacho understands, however he said a price is being set now for an asset the Port may potentially buy in the future and is unsure how the procurement law interprets this kind of arrangement. The General Manager said if for some reason this agreement does not extend beyond the 5 years, the Port will then go through the procurement process by way of an Invitation for Bid. Legal Counsel further explained that the phrase "subject to applicable law" as mentioned earlier indicates that the Port would not be able to carry out any action that is in violation of law at the time of purchase.

The Vice Chairperson recalled that the language was initially referred to 'buy back at book value'; then it was changed to 'buy back at fair market value' and now 'buy back at a fixed rate'. Mr. Camacho suggested that the clause be based on 'buy back at net book value' as there may be unforeseen change orders, for example, the asset purchase price might change and he felt that the Port should not lock itself to a number that could change. The Chairman asked that the language be changed to reflect member Camacho's concern.

Mr. Camacho made motion to approve this transaction and for management to proceed in finalizing the agreements with Mobil subject to changing from a 'fixed dollar amount' on the buy back provision to a 'net book value' based on a 20 year amortization and that Mobil provide the Port with proof of their easement construction cost, seconded by the Vice Chairperson. Motion was unanimously approved.

b. **Owner's Agent/Engineer Services:** The Deputy General Manager said the Cost Negotiation Team completed negotiations with the offeror on January 22, 2009. Offeror has been notified of the acceptance to their cost proposal for Task Order 1 – Mobilize Team and Kick-Off work; and Task Order 2 – Development Implementation Plan. On January 23, 2009, the Finance committee approved the cost associated with such task orders. It is now therefore being requested that the Board ratify the selection of the offeror and authorize management to begin with the contract negotiations.

Mr. Camacho said the points raised at the Finance committee meeting was that the Port ensure the scope of work provides for what is required to obtain legislative approval as the master plan was approved on conditions that include the implementation plan, financial strategy and economic impact statement. He stressed upon management that the implementation plan needs to be sufficiently laid out to satisfy approval from the Legislature.

The General Manager recommended that the Board authorize management to enter into contract negotiations with Parsons Brinckerhoff, Inc. (PBI) for RFP 09-001, Owner's Agency/Engineer Services, and for tasking purposes the Port will assign to PBI subject to the availability of funds, or if necessary, if the tasking does not have to be performed by PBI, then it will be executed by the Program Management Team (PMT). Motion made by the Vice Chairperson, seconded by Mr. Camacho and was unanimously approved.

III. EXECUTIVE SESSION

Mr. Camacho made motion to go into executive session, seconded by the Vice Chairperson. Motion was unanimously passed.

Executive Session ended at 3:05 p.m. Board members resumed back into regular session. Item discussed in executive session was Guam YTK.

The Vice Chairperson made motion to authorize management to negotiate with Guam YTK up to the amount discussed in executive session subject to final approval as required by applicable laws, seconded by Mr. Camacho. Motion was unanimously approved.

IV. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairperson and seconded by Mr. Camacho to adjourn the meeting at 3:10 p.m. The motion was unanimously passed.

MARILOU LACSON, Board Secretary, Board of Directors

APPROVED BY:

MONTE MESA, Chairman, Board of Directors