



FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ
Lieutenant Governor

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MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, November 19, 2009

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 5:08 p.m., Thursday, November 19, 2009. Present at the meeting were:

Monte Mesa, Chairman
Jovyna Lujan, Vice Chairperson
Marilou Lacson, Board Secretary
Joseph Camacho, Member
William Beery, Member
Glenn A. Leon Guerrero, General Manager
Atty. Ike Aguigui, Legal Counsel
Atty. Rebecca Santo Tomas, Co-Counsel

Absent was Enrique Agustin, Deputy General Manager. Also present were Lea Santos-Senator James Espaldon's office; Jay Sunga-Senator Tom Ada's office; Nira Ratnathicam/Matthew Smith-PBI; Eloy Hara and Port Management staff.

II. APPROVAL OF MINUTES

a. **October 22, 2009:** Before the approval of minutes, the Chairman asked the status of the following items:

- Rate changes for easement/leases: will be reported under Finance committee.
- Clarified whether Task Order No. 7-2 PMC RFP, Proposal Evaluation & Negotiation at \$290,602.00 is inclusive of the Corporate Services Manager travel accommodations relative to the industry consultant sessions. – Response made was on the affirmative.
- OAE Task Orders – will be reported under old business.
- Pipeline Replacement – General Manager said work has not commenced. Will be scheduling meeting with Mobil to address this item as well as Area A renovation/exploring early termination possibility.
- Clarified whether trip to Seattle, Washington took place relative to EDA financial grant support. – General Manager replied negatively, and will follow up with front office on funding status with EDA for the years 2011, 2012 and 2013.

- Research on claim and accident experience compared to other ports of similar size – will follow up with AM Insurance.
- Palau Government interest in mobile harbor crane – asked management to follow up with Palau Government to determine the seriousness of this consideration.
- Boat removal at Hagatna marina – directed Commercial division to remove the asset (Ocean Star) as it poses a liability and hazard.
- Top ten repair/improvement priorities of Hagatna/Agat marina – need to submit status to Board prior to next Board meeting.
- Coin Pressure Washer Machine – Procurement staff identified two coin pressure washer machines; however will consult with end users (Fishermen's Co-op) to determine which is preferred.
- Energy Savings Initiative Status – management to follow up with Maintenance division as to status.
- TriStar Pipeline situated through the container yard – advised management to consider as task to OAE consultants to look into mitigating this matter prior to actual construction of the terminal yard.
- TWIC office – still work in progress. Port Police personnel undergoing training. Port Police Building does not meet structural requirements of TWIC specifications; therefore TWIC office remains.
- Clarified whether Construction Management Services is for dock C repair in Hagatna marina – General Manager replied negatively, and said the CMS is for the sheet pilings. RFP submission deadline is November 30, 2009.

Mr. Camacho asked management to provide the members with status of Board action items to avoid time spent on these matters during the meeting.

Without further follow ups, Mr. Camacho made a motion to approve the minutes of October 22, 2009 subject to correction. The motion was seconded by the Vice Chairperson and was unanimously passed.

b. **November 7, 2009:** The Vice Chairperson made a motion to approve the minutes of November 7, 2009 subject to correction. The motion was seconded by Mrs. Lacson and was unanimously passed.

At this time and without objections, the members addressed items under new business.

VIII. NEW BUSINESS

a. **Department of Agriculture efforts on Marinas – Joe Torres, Director:** Mr. Glenn B. Nelson, Commercial Manager said a meeting was held November 4, 2009 with Mr. Joe Torres, Director of Agriculture regarding federal funds available under the Boating Access Fund to the Port Authority. Based on such meeting, Mr. Torres is supportive of the Port being sub-grantees with federal funds DOA has access to and focus was made on the \$250K as the deadline to utilize these federal funds is September 30, 2010; otherwise such funds reverts back to the funding source. Mr. Nelson proposed for the Port to pursue a design/build concept of the

Hagatna marina at no cost to the Port which is an attempt to determine cost to reconstruct/rebuild dock A and dock B. The Chairman recalled there were several initiatives the Board approved based on management's recommendation to coordinate with DOA relative to this funding source and address the needs of the marinas, more particularly the Hagatna marina. He advised Mr. Nelson to follow up with DOA Director and get this project underway as he is aware that there are federal funds available now for the Port Authority. The General Manager reminded the Board that there is a Port matching share of 17.5% under this grant. Mr. Camacho commented that there appears to be a sense of disinterest in aggressively pursuing this federal grant as he too recalled this item being in discussion for quite some time now. Mrs. Vivian C. Leon, Corporate Services Manager said that is not the case and explained that early part this year a meeting was held with officials from DOA and Department of Public Works wherein the design/build scope of work was provided to them and they had indicated that the Port will be informed when the bid will be issued. Port followed up in May 2009 and learned that between both agencies, the design/build scope of work could not be found, which another copy was provided. She mentioned that all this time, the Port was under the impression that the bid was issued for this project and in October 2009 another follow-up was made and it was discovered that the bid was never issued. Ms. Dorothy P. Harris, Chief Planner said with the existing memorandum of understanding between the Port Authority and Department of Agriculture indicates that DOA sub-grants the Port, and suggested to incorporate language for the Port to tender those documents on the procurement process as the Port has delegation of authority with Department of Public Works. There were no objections. The General Manager designated Ms. Harris as the point-of-contact for DOA grant funding.

b. **DPW Route 11 Work Update – Larry Perez, DPW Director:** The Chairman met with DPW Director on the status of Route 11 and was informed that CoreTech Company was awarded bid for the seawall project which is to protect Route 11 and other road improvements. The ground-breaking ceremony is slated for January 2010.

c. **YTK proposed resolution – Atty. Philip Torres, GYTK counsel:** The Chairman said Atty. Philip Torres was scheduled to attend this meeting to present a proposed resolution relative to hotel wharf issue; however, was advised that he requires more time and may make the presentation for another time.

d. **Taiwan Delegation Visit – Port Host Luncheon:** The General Manager said the Taiwan Construction Mission Delegation is slated to arrive Guam on November 22-25, 2009 which is coordinated by the Governor's office and GEDA. The request being made is for the Port Authority to host a luncheon for about 65 attendees at a cost of \$1,300.00. The proposed event will be held on Tuesday, November 24, 2009 at 12pm and the suggested venue is at Proa Restaurant. The Chairman said these are possible bidders for Port projects, so this presents interest. He also understands that the 35-member delegation may want to tour the Port. Mrs. Lacson made motion to approve the Port Authority to host a luncheon on November 24, 2009 of up to \$1,500.00 for the Taiwan Construction Mission Delegation, seconded by Mr. Beery. Motion was unanimously approved. The Chairman encouraged that the venue be at Port Authority.

At this time and without objections, the members entertained items under old business.

VII. OLD BUSINESS

a. **PAG 09-001 Owner's Agent/Engineer Services – Contract Extension:** Mrs. Leon said Parsons Brinckerhoff International, Inc. submitted a request to exercise its option to extend its contract as the Owner's Agent/Engineer Services for another year. She mentioned that this is allowable under the contract agreement. Mr. Beery made motion to authorize management to extend the contract of PAG 09-001 Owner's Agent/Engineer Services with Parsons Brinckerhoff International, Inc. from February 18, 2010 to February 18, 2011. Motion was unanimously approved.

Mrs. Leon also mentioned that Parsons Brinckerhoff International, Inc requests to assign all of its interest and rights under the Prime Agreement of the Owner's Agent/Engineer Services contract agreement to PB Americas, Inc. The draft of the 'consent to assignment of contract' will be forwarded to counsel for review and then presented to the Board for approval.

b. **Board Ratification-OAE Task Orders:** Mrs. Leon said the following task orders have been vetted by the designated port management team and is therefore being presented for Board approval.

She mentioned that Task Order No. 5 - JGPO Draft Environmental Impact Statement which the consultant will review to ensure the Port's interest is adequately represented and that the draft will be available on November 20, 2009. The amount is \$79,355.00, to be funded by the Port. The Chairman asked whether a federal funding source can be identified. The General Manager said it was originally intended to be funded by OEA; however, such funds were restructured to accommodate other task orders. He understands that Mr. Gary Kuwabara from OEA is slated to arrive on Guam first week of December 2009 and will request an addendum to increase the Port Fact-Finding Grant for this purpose and will also look into the Department of Interior grant funding as an alternative. The Vice Chairperson suggested that perhaps Port staff first review the draft, then determine whether there is a need to seek consultant review for a more technical, thorough assessment. Mr. Herman T. Paulino, Planning division said he attended the EIS Training held recently on this matter and understands there are 10 volumes: 1 thru 8 is believed to have been prepared for an average reader, volumes 9-Appendices and 10-Public Comments. He commented that the volumes will eventually be reviewed by port staff; however, felt it best for consultants to review for the technical aspect overall.

Mr. Beery made motion to approve Owner's Agent/Engineer Services Task Order No. 5 – JGPO EIS Review at \$79,355.00 subject to identifying a federal funding source, seconded by Mrs. Lacson. Motion was unanimously approved.

Mrs. Leon said Task Order No. 7 (Amendment 4) – PMC Advertisement Support is to place advertisements in magazines, journals and on-line locations. The amount is \$20,666.00, to be funded by OEA. Mr. Beery made motion to approve Owner's Agent/Engineer Services Task Order No. 7 (Amendment 4) – PMC Advertisement Support at \$20,666.00 funded by Office of

Economic Adjustment. The motion was seconded by Mrs. Lacson and was unanimously approved.

Mr. Beery said Task Order No. 28 – Project Management is where the consultant provides for project management, contracts administration and cost management support for all task orders. For easy processing of this particular task, those already approved task orders and projects currently in progress that provides for this type of service, such amount is extracted and consolidated into this task order. The amount is \$710,567.00 funded by a shared cost between Port Authority and EDA.

Mr. Beery said Task Order No. 29 – Design Services is for purposes of civil and utilities design; security and communications design; and terminal building design. The amount is \$2,474,311.00 funded by a shared cost between the Port Authority, EDA and DOI-OIA.

Mrs. Leon said Task Order No. 30 – Cargo Forecasting is to update the master plan forecast of port cargo over a 20-year timeframe by way of organic growth; Department of Defense military buildup; and other infrastructure driven by the military buildup. The amount is \$313,255.00 funded by OEA. Mr. Camacho asked what approach will be taken on cargo forecast as there still exist these unknowns as to timing, the Japanese government and Presidential office is still unsettled, so how does one determine forecast on military cargo volume based on these uncertainties. Mr. Beery said it would be based on assumptions. The Chairman asked what is wrong with the current forecast information that it can't be used. Without objections, the members recognized the presence of Mr. Nira Ratnathicam, PB consultant and allowed him to speak. Mr. Ratnathicam thanked the members and said the current forecast was done in 2007 which was based on composite organic growth forecast in demographics, plus a component cargo forecast information provided by military defense, since then two years has gone by and understands the 2007 forecast is now obsolete. Mr. Camacho reiterated that given the unknowns, how much better would the forecast be as opposed to what was provided then. Mr. Ratnathicam said he appreciates the concern of member Camacho; however the 2007 forecast is not appropriate given the current information that DoD and JGPO can provide at this point which will be a grave improvement on the numbers. Mr. Camacho asked how critical is it to have this cargo forecast done now and can it wait until the end of the year. Mr. Ratnathicam recommended that this component be performed at this time because it is a financial issue in terms of what the reality is at this point, also this will assist with the performance management contract. He said this time around would be a much greater assumption than the 2007 numbers. Mr. Ratnathicam said work will include a medium, high and a low end that will address the different scenario perspectives and consequences, for instance, to be able to calibrate the number of cargo handling equipment needed; and assist in the Public Utilities Commission rate setting to have a rationale basis of making sure that both the labor and capital expenditure is properly fostered. Mr. Camacho asked for the completion time of the cargo forecast. Mr. Ratnathicam replied twelve weeks.

Mr. Beery made motion to approve the Owner's Agent/Engineer Services following task orders:

- Task Order No. 28 – Project Management at \$710,567.00, a shared funding cost with Port Authority and Economic Development Administration.
- Task Order No. 29 – Design Services at \$2,474,311.00, a shared funding cost with Port Authority, Economic Development Administration, and Department of Interior-Office of Insular Affairs.
- Task Order No. 30 – Cargo Forecasting at \$313,255.00 funded by Office of Economic Adjustment.

Motion seconded by Mrs. Lacson and was unanimously approved.

c. **Watts Cargo Operation:** As directed by the Board at the previous emergency meeting relative to certification of Watts Constructors cargo operation at Guam Shipyard, Mr. Jose B. Guevara, Financial Affairs Controller said the initial billing for their Brusco barge was \$88,803.03 which represents the thru-put of the break bulk and container cargos, plus other charges based on the cargo vessel information. Secondly, when the initial billing was submitted to Norton Lilly (shipping agent of Watts Constructors) and Watts Constructors, they were informed that there will be possible storage charges based on the number of days the cargo was processed on Guam Shipyard and from the time it should have been staged at the port terminal yard before the vessel arrived. He mentioned that there was no mention by Watts Constructors during the meetings with Port management that they intend to lease a space as a temporary staging area. Port personnel cleared a space that would be used for Brusco 401 Vessel Voyage 209 starting July 16, 2009. Port informed the shipping agent that the Port is ready to accept the cargo from the agreed timeframe by both parties. Based on the manifest received from Norton Lilly, the cargo would start to be brought inside the yard in July 18, 2009, so assuming that 100% of the cargo are in the yard as of July 20, 2009, if the cargo were already staged at the Guam Shipyard at the similar fashion then these cargos will accumulate demurrage/storage charges after the free period of seven working days. He said what is being presented before the Board is a spreadsheet that provides for the type of charges assessed and balance due. The July 20-29, 2009 is the seven day free period, excluding holidays and weekends. The date of departure of the vessel was August 14, 2009, and calculating that there was a 16 day chargeable storage demurrage. The following includes:

Date of Arrival	Arrival Time	Date of Departure	Departure Time	Number of days
July 31, 2009	8:52am	August 14, 2009	10:27am	14.5

Category	Quantity	Rate	Number of days	Amount
Demurrage/Breakbulk	2798.1	\$10.00	16	\$447,696.00
20' Container	1	\$21.00	16	525.00
Total Demurrage				\$448,221.00
Vessel operation billing	74704			\$ 88,808.03
Payment-Check# 20607696 190773				(88,808.03)
Violation Fee				2,500.00
2 container Ships Stores				(598.10)
Agency Discount				159.27
Balance Due				\$450,282.17

Mr. Camacho said there is enough factual background to demonstrate that the Port had the capacity to handle this cargo operation in the same way it was handled at Guam Shipyard and there was no attempt in the part of Norton Lilly or Watts Constructors to find a lay down lease from the Port. So the assessment was based in the same fashion Watts Constructors cargo has been processed at Guam Shipyard and therefore these charges should apply. He asked whether the remaining cargo of the second cargo operation of Watts Constructors is included in this amount. Mr. Guevara replied negatively, and said the second cargo operation is still ongoing. The Chairman understands the charges to be from the first operation and payment should be sought.

Mr. Camacho made motion to authorize management to issue invoice and charge the amount of \$450,282.17 to Norton Lilly/Watts Constructors for the Brusco 401, Voyage 209 commercial cargo operation at Guam Shipyard, seconded by the Vice Chairperson. Motion was unanimously approved.

The General Manager asked whether it would be necessary for management to come before the Board regarding the billing for the second cargo operation of Watts Constructors. The Chairman said that would not be necessary, management is to apply the same procedures where applicable and that the barge on the second cargo operation of Watts Constructors is not to leave the harbor until payment is collected. The Chairman expressed that the statement is clear that the Port is the only commercial port on the island. He asked whether the public announcement was issued to the public on this notice. The General Manager said such notice has been issued to the shipping agents, and press releases sent to the media. It is also on the Port's website. Mr. Frank Santos, Harbor Master informed the Board the only authorized personnel to hold a vessel/barge from sailing is the US Marshall. The Chairman requested that the necessary documents are appropriately filed. The Port is to exercise full authority on this particular cargo. The General Manager said in doing so, counsel would have to go to the courts for this purpose. Mr. Camacho commented that if Watts Constructors does not want to be held up, then they need to make the necessary payment.

d. **Proposed Organizational Chart:** Without objections, the Chairman said this item will be addressed in a working session.

At this time, the members entertained items under Committee Reports.

Committee Reports:

d. **Property Leasing/Port Development Committee:** The Chairman said a Notice of Availability No. PAG 010-001 was issued on November 9, 2009 and closed on November 13, 2009 for purposes of property lease located at Pier Foxtrot 3 referred to as Shell Guam Bunkering Facility. There were a total of five packets issued, having only one respondent, namely Shell Oil Guam. As a result, the recommendation is to enter into a lease agreement with Shell. He understands that an appraisal is currently ongoing by the Port's appraiser, so the charge will be based on the current fee; and should the appraised value be greater than the existing rate, then the higher rate is to apply. Mrs. Leon clarified that the consultant has

completed the appraisal of the property alone at a rent of \$40,000.00; and is currently working on the various easement areas which is expected to be completed by Monday. The completion of the easement appraisal will be in addition to the rent of the property. Mr. Nelson added that Shell's proposal submitted is specific to the fee structure for the 900 square meters of property as well as the actual thru-put activity which does not involve the actual easement for the bunkering lines. He said although the consultant has recommended a \$40,000.00 property rent, the passage of Public Law 30-19 provides for approved rates for the leasing of port property, which in this case is at \$0.46/sq/mo for open space rate, which would be the higher rate.

The Vice Chairperson made motion to authorize management to enter into lease agreement for up to 5 years with Shell on Pier F3 at the current rate and if there are any rate adjustments as approved by the Public Utilities Commission thereafter, the higher rate will be charged and adhered to accordingly, seconded by Mr. Beery. Motion was unanimously approved.

a. **Finance Committee:** Mr. Camacho said the Finance committee recommended approval of the following items: funding for the unfunded capital improvement projects and acquisition of 2 side-lifters and 3 forklifts.

Mr. Camacho made motion to approve funding in the total sum of \$128,374.00 for the following unfunded capital improvement projects:

- Agat Marina design/build project with Department of Agriculture at \$75,000.00
- Replacement of two damaged branch slip along B dock in Agat Marina at \$8,000.00
- Various air-conditioning in several port locations at \$31,874.00

Motion was seconded by Mr. Beery and was unanimously approved.

Mr. Camacho made motion to authorize management to procure and purchase two side-lifters at \$800,000.00 and three 10K lbs forklifts at \$180,000.00 funded by USDA Guaranteed Loan, seconded by the Vice Chairperson. Motion was unanimously approved.

Relative to the Public Utilities Commission, Mr. Guevara said the Port submitted a letter date October 27, 2009 to PUC Chairman Jeffrey Johnson requesting to conduct investigations of the Port's rates and port tariff and to establish interim rates starting January 1, 2010. Supporting documents have been provided to PUC which includes financial schedules, master plan studies, and audited financial statements. Request to set interim rates includes: terminal tariff of cargo handling charges at 3.6%; bunkering/fuel thru-put fees/waste oil fees; wharfage rates-transshipment of other cargo utilizing pipelines and hoses; easement leases; facility maintenance fees; and marina fees.

Mr. Guevara said management attended a PUC Board meeting on November 13, 2009 and the board unanimously approved for Port Authority to commence the investigation of the rates and reviews and to start sending notices to tenants/customers informing them of the rates increases and to conduct three public hearings. Mr. Guevara said the next step is to work with

counsel and PUC consultant for the Port Authority. So the PUC Board has now approved the notice to proceed to the Port relative to the rate process.

b. **Maintenance/Equipment Committee:** The October 2009 Cargo Handling Equipment Maintenance/Repair Cost Report which outlines the equipment, downtime, discrepancies, corrective action, work order and parts/labor cost was provided for Board's information.

c. **Human Resources Committee:** Mrs. Lacson said the consultant, Mr. Alan Searle met with management on the performance management tool and key performance indicators. Training for Human Resource staff is scheduled for November 23, 2009. She mentioned that management is currently reviewing a proposal on services Mr. Searle is offering for consideration by the Port Authority. Mrs. Lacson said the committee also discussed matters on additional funding for personnel services. She yielded to Mrs. Leon to explain. Mrs. Leon said prior to the implementation of the port classification and compensation plan, the consultant recommended that classification reviews be conducted on eight (8) employees to determine whether their positions would need to be reallocated. This recommendation was based on his review of the position descriptions which revealed such employees may be performing beyond their official position's duties and responsibilities. In October 2009, the classification review revealed that these employees were found to be misallocated and reclassification or promotion actions are to be made. During the personnel action process it was found that the funding for the reclassifications were not budgeted in this Fiscal Year 2010 budget. As a result, reallocation of these employees from the Hay Plan to the new Compensation Plan was held in abeyance until funding has been identified. The current personnel services budget did not include possible lapses which would allow payment for the misallocation of positions found through their classification review. Mrs. Leon mentioned to ensure that all employees are reallocated into the new compensation plan, it is requested that additional funding of \$41,757.26 be approved for the seven (7) employees who are to be reclassified. Such funding includes retroactive payments due to these employees from October 13, 2009 to present. The Chairman asked whether this amount includes funding of those reclassification positions for the entire fiscal year. Mrs. Leon replied positively, which includes benefits and salaries. The Chairman asked where is the funding going to come from. He mentioned that management is aware that any funding requests need to be identified or a revenue source that would generate such amount. The Chairman commented that there was an opportunity provided to the port employees through this exercise and sufficient time was also given to ensure review was in order. He said this Board had approved at recent board meetings the compensation and classification plan with the understanding from management that all port employees are covered and all concerns were addressed. Mrs. Francine T. Rocio, Personnel Services Administrator expressed that even without the compensation study in place, the personnel rules and regulations provides for desk audits of positions of employees to be conducted every two years. She stated if those findings justify reclassification or promotions to be made, funding for these possible scenarios has to be considered and anticipated within the fiscal year budget review process. She said each division has to have within their budget a supplemental funding that would support these types of situations. The Chairman said the predicament then is that the fiscal year 2010 budget has already been board approved which includes funding for the compensation and classification plan. Mrs. Leon expressed with the

exception of the seven employees. The Chairman reiterated that Board, management and staff has gone through this compensation exercise at length to ensure that all employees are covered and addressed accordingly. He said with respect to those seven employees that were missed for whatever reason, this can either be addressed in the next fiscal year budget or unless management can come up with an action plan that would generate revenue to support and identify funding for this purpose. Mrs. Leon clarified that the reclassification was completed after the fiscal year 2010 budget was approved. The existing budget does cover those employees in their existing positions, but because the reclassification was approved by the General Manager prior to the implementation of the compensation and classification plan, places those employees in a higher salary level and position than what was originally budgeted for in their existing position. Mrs. Leon recommended that the funding be identified using salaries from positions that are currently vacant. These vacant positions are approved and funded in the fiscal year 2010 budget. She said that she will take responsibility for this oversight; but the fact remains is that these employees have not been allocated or transitioned into the new compensation and classification plan which shouldn't be the case. The Chairman said management just needs to come up with an action plan or revenue source for this purpose. Mrs. Leon requested that in the meantime, those seven employees be allocated into the new compensation plan and at the next Board meeting management will present to the Board the funding source. Mr. Camacho said management needs to present a plan to the Board at its next meeting for consideration then because there is no plan to show the Board at this point. He said it is just a month away until the next Board meeting and the impact to those employees will be retroactive. The Chairman expressed that the Board did not place management in this predicament, but has supported management in this compensation exercise. There should be a solution and management just needs to present it to the Board at the next meeting. Mrs. Leon asked that if a solution is provided to the Board next week, requested for Board to consider it then for purposes of expediting this matter. The Chairman said the Board had already provided management with consideration to provide a plan. Now this matter can be brought before the executive committee for consideration and ratified by the Board at its next meeting.

e. **Procurement Advisory Committee:** Report on request for proposals and invitation for bids status was provided to the Board for information.

f. **Building Facility Committee:** None.

Other items of General Manager's report; Communications; and Reports were provided for Board's information.

Next Board Meeting Date

Without objections, the next regular Board meeting of the Board of Directors is moved to Thursday, December 17, 2009 in consideration of the holidays.

IX. PUBLIC COMMENT

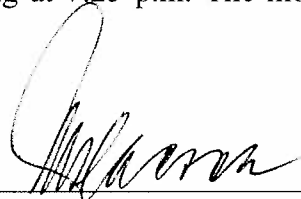
- a. **Port Users Group Comment:** None.
- b. **General Public Comment:** None.
- c. **Employee Comment:** None.

X. EXECUTIVE SESSION

No executive session discussed.

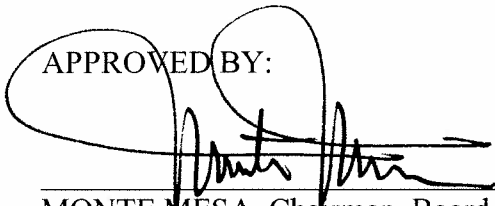
XI. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairperson and seconded by Mr. Camacho to adjourn the meeting at 7:25 p.m. The motion was unanimously passed.



MARILOU LACSON, Board Secretary, Board of Directors

APPROVED BY:



MONTE MESA, Chairman, Board of Directors





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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.

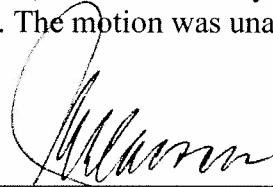
1. Civil Case No. CV0817-08 Mariana Express Lines and M/V Ratstor - Mr. Beery made motion to authorize management to move forward with the resolution as discussed in executive session relative to Marianas Express Lines Ltd and M/V Ratstor vs Port Authority of Guam CV0817-08, seconded by Mrs. Lacson.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

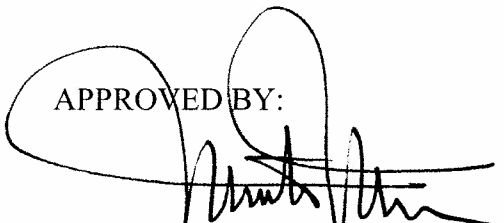
X. ADJOURNMENT

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

