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MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, February 25, 2010

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 5:00 p.m., Thursday, February 25, 2010. Present at the meeting were:

Monte Mesa, Chairman
Jovyna Lujan, Vice Chairperson
Marilou Lacson, Board Secretary
Joseph Camacho, Member
Enrique Agustin, General Manager
Vivian C. Leon, Deputy General Manager, *Interim*
Atty. Rebecca Santo Tomas, Co-Counsel

Absent were Mr. William Beery, Board member. Also present were Ernst&Young-John Arroyo, Jason Katigbak, James Whitt, Renee Taguirigan; Lea Santos-Senator James Espaldon's office; PB-Jeff Peck, Matthew Smith, Jeff Schechtman; Jimmy Camacho-Senator Tom Ada's office; AnnMarie Muna-AM Insurance; PTG-Mike Sadwoski; PAG Chief Negotiator-Ken Tagawa and Port Management staff.

II. APPROVAL OF MINUTES

a. **January 28, 2010:** Mr. Camacho made a motion to approve the minutes of January 28, 2010 subject to correction. The motion was seconded by Mrs. Lacson and was unanimously passed.

III. CHAIRMANS REPORT

1. **Queen Mary II-Cruise Ship** - QMII arrived Guam early morning Monday, February 22, 2010. Thanked management and staff for an astounding success in the visit of QMII. Good response from Queen Mary officials, tour companies on the port staff coordination and working relationships, also taking care of passenger transportation needs and beautification of the port facility. Great job and congratulations to staff on highlighting Guam's culture, and providing a warm welcome at the port.

2. Cementon Micronesia – Ground Breaking Ceremony took place on February 22, 2010. Hopefully in a year, there will be an additional cement silo available to the community and also for the needs of the Department of Defense expansion.

3. DOT ARRA/Tiger Grant – Port Authority was advised on February 18, 2010 of not having been awarded the ARRA Tiger Grant of \$49.7M. The positive note is that Governor Felix Camacho is in Washington State at this time continuing dialogue with all federal agencies. There is encouraging news that there are some additional funds that may be tapped into for the military buildup. Chairman indicated he will follow up on additional information upon the return of Governor Camacho slated for next week.

4. Bill 333-30 – Management has been meeting with Oversight Chairman to finalize draft legislation relative to the Port Master Plan Update 2007 Report to allow the Port to secure funding source from any grant, USDA loan or other comparable loan for its modernization program. He understands the bill to be addressed in this week's legislative session.

5. U.S. Senator Jim Webb of Virginia – Had the opportunity to meet with U.S. Senator Jim Webb. The outcome of the meeting was encouraging as he supports the Port's project and the needs of the island community on how the military impacts the community of Guam.

6. Maritime Administration & JGPO – Had separate teleconferences with MARAD officials and JGPO representatives. Work continues to try to consolidate all federal monies that may be available in 2010 and 2011 to try to have the Port meet the required funding for the execution of the port modernization plan.

7. U.S. Department of Navy – The U.S. Department of Navy on its letter of February 17, 2010 signed by Rear Admiral Douglas Biesel officially approved the Port's master plan. He is hopeful this builds to getting the funds for this military buildup and port modernization.

8. Appointment of Port Authority General Manager – Enrique J.S. Agustin; and Appointment of Deputy General Manager – Mrs. Lacson made motion to ratify the appointment of Mr. Enrique J.S. Agustin to serve as the Port Authority General Manager, effective February 17, 2010; and to approve the appointment of Mrs. Vivian C. Leon to serve as the Port Authority (Interim) Deputy General Manager, seconded by the Vice Chairperson. Motion was unanimously approved. Everyone present congratulated the two individuals.

At this time and without objections, the members entertained item c. Fiscal Year 2009 – Audit Report under old business.

Mr. James Whitt, Ernst&Young representative conducted a brief presentation on the Port's FY09 Audit Report. Areas covered were audit scope and results; significant points of interest: major fluctuations-financial position, results of operations, cash flows. Mr. Camacho made motion to accept the Fiscal Year 2009 Audit Report, seconded by the Vice Chairperson. Motion was unanimously approved.

As the matter relates, the members moved into the Finance Committee report.

a. **Finance Committee**: The financial report for the month of January 2010 was for Board's information. Mr. Camacho said the Finance committee met yesterday and had addressed the following.

1. Shell Guam & IP&E GEDA Pipeline Easement and F3 Lease – Management is under negotiations with Shell & IP&E on the F3 bunker pit and the GEDA easement that serves these assets. Several issues on the negotiations were addressed and the Finance committee accepts the recommendation presented by management which is submitted for Board approval.

2. Capital Expenditure Application – The committee approves the following capital expenditure request: 1) replacement of glass door in board room and TWIC room at \$2,800.00; 2) metal roll-up door LC4 at \$5,700.00; 3) replace existing engine assembly for tractor at \$11,636.00.

Mr. Camacho made motion to approve replacement of the glass door at the Board Conference Room at \$2,800.00; acquisition of a metal roll-up door for LC4 at \$5,700.00; and acquisition of engine assembly for tractor equipment at \$11,636.00. Motion was seconded by Mrs. Lacson and was unanimously approved.

Management was advised to provide details as to why the two year old tractor equipment engine assembly needed to be replaced.

3. Hansen Revenue – Discussion took place on the revenue opportunity loss regarding Hansen Cement. Management is compiling the information to present to the Board.

4. Approval of Hiring Vacant Positions – HR committee submitted list of positions requesting to be filled: two Accountant II, one Budget Analyst, one Tariff Supervisor and one Safety Inspector I. Will defer this matter to HR committee to further explain.

5. PUC Meeting - The PUC Board is holding its board meeting this evening. The Commission will address the required policy for the implementation of the Port Facility Maintenance Fees.

6. Bill 317-30 – This bill reprograms and appropriates funds for various programs and projects and other purposes for FY10. If passed into law, this requires autonomous agencies to reimburse the general fund for the payment of the annual lump sum COLA for the past three fiscal years – 2007, 2008 and 2009. The impact to the Port is \$1,026,300.

7. Ernst & Young Additional Charges – E&Y submitted a request for additional charges on extra work performed during the Port's audit. E&Y proposes a fee increase of \$6K. The committee instructed the Ports' Financial Affairs Controller to negotiate with E&Y to a more reasonable level.

Route 11 Seashore Project

Without objections, the members recognized the presence of Mr. Mike Sadwoski, Deputy Construction Manager of Parsons Transportation Group. Mr. Sadwoski said he has been assigned as an advisor to Department of Public Works who is administering the construction project. The team for this project includes U.S. Army Corp of Engineers who is the design managers that retained the firm of AE Com to be the principal designer and in turn hired a specialist designer, SEA Engineering. The FHWA is the program administrator that is funding this project. DPW and PTG are working as a team to provide a construction administration and the entire staff assigned to this project is local. CoreTech is the local contractor. The funding is coming from FHWA Emergency Relief Funding and the budget is \$4,780,000.00 which is the bid amount for construction. The scope of work involves the seawall alongside Route 11, totaling 3100 linear feet towards the land side. The depth of the excavation varies. The width of the excavation is about 30 feet that will be filled with lime stones weighing 3500-5500 lbs with a specific gravity of 2.4. The stones to be used for the seawall come from northern Guam. The whole purpose of this project is to dissipate the wave energy and to protect the seawall which in turn protects Route 11 road. The schedule of work is about 240 calendar days and about 10% completed. Completion is scheduled for September 2010. Project does not appear to disrupt the port operations. The contractors will excavate 100 feet in length at a time to minimize liability, complete the fill, then progress to the next 100 feet until project completion. The General Manager asked whether the project includes an additional drainage system. Mr. Sadwoski said there is a plan to place a drainage system. Mr. Simeon Delos Santos, Engineer Manager asked whether the project is a 50 year storm surge protection or 100 year. Mr. Sadwoski said he does not have the information at this time and suggested perhaps a meeting with management be arranged to share ideas on the project while in construction. There were no objections. The members thanked Mr. Sadwoski for the information provided.

Port Master Plan Funding & Strategies

At this time, the members recognized the presence of representatives from PB Americas, Owner's Agent/Engineer consultant of the Port to provide information on the Port master plan funding and strategies. Mr. Jeff Peck, Project Manager said with the recent denial of the ARRA grant for the Port, the approach to obtaining funding for the master plan by all parties involved was not because a strong case was not put forward, but is more likely due on the part that there were 1400 applicants with a \$60B worth of requests for a \$1.5B ARRA Tiger Grant and 5% of those applicants received a positive response, while the rest did not. He presented the following recommendations in moving the modernization program forward.

- Stay unified and consistent with the message that the Port has been delivering to the federal community – Port project is caused by JGPO project.
- Have strong and continuing dialogue with JGPO and Department of Defense and find out what they can come forward with in terms of their Plan B. What do they foresee as the way to move forward.
- Maintain partnership with JGPO and DoD.

- Continue dialogue with MARAD.
- Execute on environmental studies and get the Port environmentally in the best position to move forward. Continue to maintain momentum and to be shovel ready on the NEPA process.
- Stay the course on the design currently underway – Design Phase 1A Project.
- There is a lot of opportunity or potential for the federal community through DoD to come up with federal money on 2011 thru 2015. Understands that the DEIS received a record low evaluation from USEPA in terms of its quality. There were thousands of comments that came in from Guam. There is a strong likelihood that is going to be set back a few phases and there is no reason to think the cargo is coming anywhere near as fast as it has been originally projected.
- Cash flow requirements of construction for Phases 1A and 1B would likely be such that Port will be in construction for 4 years at least through the two phases, so if there is funding in 2011-2014 it would line up well with the actual cash flow requirements. Communications need to take place with parties involved to find out what is possible in terms of funding, cash flow.
- CRC – Revisit/Deal with the issue on the capital recovery charge if in fact all fails in any other avenues in getting federal funds.
- The level of awareness of the Port's funding needs should continue through the Governors' office, Congresswoman, and any other contact with higher level officials.

Mr. Camacho understands there to be another \$600M funding and is uncertain of the chances Guam would receive any monies from that. Mr. Peck said the submission would just need to be accompanied by high level officials. Mr. Camacho pointed out dialogues have been made with General David Bice, JGPO, federal officials, US DOT Secretary Ray LaHood, US Secretary of Defense Dr. Robert Gates for the past couple of years. The Port has been using its monies on the modernization and Guam has not seen any funding assistance from the US Government for the real need of the project. He said there needs to be a timeline in place because the Port is mandated to go before the Legislature on this matter pursuant to Public Law 30-57 which might be extended through Bill 333 currently before the Legislature; however still at a limited time. He expressed if the federal government does not show their commitment by contributing the first \$50M which will help the Port to get the other \$50M, then the Board and management would seriously need to look at reprioritizing the current resources already committed to the Port and determine how to utilize those resources to do what's right for the Port, and not what's right for Phase 1A and 1B because those may not materialize. Mr. Camacho said the reality very well may be that a Plan B needs to be in place by prioritizing how the resources are used to optimize what benefits this Port and not for other entity needs.

IV. GENERAL MANAGERS REPORT

1. Queen Mary II-Cruise Ship – As mentioned earlier by the Chairman, the General Manager asked to extend the opportunity to the Port Marketing Administrator, Mrs. Bernadette Meno to share the coordination and operation experience of QMII. Mrs. Meno said the Port launched a Vendor Program which was assisted by port employees and volunteers who worked diligently until the completion of the program. Majority of the vendors were very pleased and

grateful of the program as some had almost sold all their items. Guam Visitors Bureau provided cultural dancing entertainment for passenger arrival and departure. She recommended that the agents provide more staffing on-site to ensure passengers are taken care of; GVB continue to provide welcoming performances and provide more than two staffers on-site. She understands there may be minor adjustments to be made, but the overall program was a success. It was suggested that a form of appreciation be made to those volunteers/port employees that assisted with the Vendor Program and because there were some concerns with taxi-cab services, it was also suggested that Commercial division look into the method of acquiring taxi-cab services on an as needed basis for purposes of passenger cruise line vessel. Mrs. Meno was asked to provide the Board with the passenger vessel date of arrival and passenger count on the other cruise line vessels calling port in the coming months. Management was asked to address the recommendations accordingly.

2. Maritime Administration re EDA Funding – Port received a response from MARAD dated January 13, 2010 regarding the Port's request that the \$2M EDA funding in the Port of Guam Improvement Enterprise Fund which is to be administered by MARAD be given directly to the Port. MARAD stated in accordance with the congressional legislation that establishes the Port of Guam Fund, such amounts appropriated or otherwise made available for an intermodal or marine facility shall be transferred to the Port of Guam Improvement Enterprise Fund to be administered by MARAD which made it mandatory for EDA to transfer such monies to the Fund. Therefore, after careful consideration and consultation, MARAD is unable to grant Port's request indicating in doing so will jeopardize the ability for MARAD to execute any substantial amount of work under the PMT contract. Selection of the PMT has completed its review by the Office of Management & Budget and currently before DOT Secretary Ray LaHood.

3. Bill No. 333-30 – An Act to repeal and reenact Section 4 of Public Law 30-57 relative to the Jose D. Leon Guerrero Commercial Port of Guam Master Plan Update 2007 Report. Port management and PB assisted Senator Ada's office with this piece of legislation.

V. REPORTS

d. **Marina Report:** Mr. Joe Ragasa, Building Maintenance Superintendent reported on the marina repair projects identified. Agat marina – Dock A: Replacement of main beam and cross section timber of main gangway, deteriorated planks on main gangway and finger slips and main center girder of 8' section ionized wooden plank. Realign float drums under main ramp; construct and install 1 ea 4'x60' finger slip with roller for steel pipe; install new gussets for finger slips. Repainting of guard rails for Hagatna marina. Mr. Delos Santos said the bid opening for design/build of Dock A is slated for tomorrow. Mr. Camacho expressed concern that management needs to show the community improvements are being made on the marinas. Mr. Delos Santos mentioned discussions are in the works relative to issuing out a bid for the sheet piling repairs for Hagatna marina, so repair activities are underway.

Committee Reports:

c. **Human Resources Committee:** Mrs. Lacson presented the following:

1. Request to Fill Port Positions – The Finance and Safety divisions are requesting consideration to fill the following positions: two Accountant II, one Tariff Supervisor, one Budget Analyst and one Safety Inspector I. Mr. Camacho said this matter was brought before the Finance committee and the importance of the Accountant positions is relative to control, the Budget Analyst is a recent vacancy and the Tariff Supervisor is required to assist the Public Utilities Commission that has oversight of the Port's rates. Mrs. Lacson added that the Safety Inspector I is also a recent vacated position.

Mrs. Lacson made motion to approve the filling of budgeted positions which includes: 2-Accountant II, 1-Tariff Supervisor, 1-Budget Analyst, and 1-Safety Inspector I. Motion was seconded by Mr. Camacho and was unanimously approved.

2. Drug-Free Workplace Policy and Procedures – Based on the previous meeting, management has completed the transparency process for the drug-free workplace policy and procedures and is before the Board for approval. Mrs. Lacson made motion to adopt the Port Authority Drug-Free Workplace Policy and Procedures, seconded by the Vice Chairperson. Motion was unanimously approved.

Mrs. Lacson made motion to approve Board Resolution No. 2010-02 relative to adopting and implementing a Drug-Free Workplace Policy and Procedure for all employees of the Jose D. Leon Guerrero Commercial Port. Motion was seconded by the Vice Chairperson and was unanimously approved.

3. Request for Above-Step Recruitment – Planner IV – As per the previous meeting, management has completed the transparency process for the above-step recruitment for Planner IV position and is before the Board for approval. Mrs. Lacson made motion to adopt the above-step recruitment for Mr. Jose G. Javellana, III to the position of Planner IV at a Pay Grade L, Step 7, Sub-Step A at \$59,028.00 per annum, seconded by the Vice Chairperson. Motion was unanimously approved.

Mrs. Lacson made motion to approve Board Resolution No. 2010-03 relative to approving the recruitment above the minimum step for Mr. Jose G. Javellana, III to the position of Planner IV as authorized under Title 4, Guam Code Annotated, Section 6205 and 6303.1 and the Port's Personnel Rules and Regulations. Motion was seconded by the Vice Chairperson and was unanimously approved.

4. Policy of Pay Grade Reassignment – Pursuant to the Port's personnel rules and regulations indicates that the Board of Directors is to adopt policies and procedures for pay grade reassignments. The purpose is to provide guidance and provisions on the approval or disapproval of the review and recommendations from the consultant on the reassignment of pay

grades for certain positions, as well as, change of position titles, to reflect the significant changes of these positions' functions, knowledge, experience or skills.

Mrs. Lacson made motion to adopt Board Policy Memorandum No. 10-01 of the Policy on Pay Grade Reassignment, seconded by the Vice Chairperson. Motion was unanimously approved.

5. Pay Grade Reassignments and Amendment to Job Specification – The Deputy General Manager said since the implementation of the Port's compensation plan, the Port's consultant has reviewed requests regarding current allocations of pay grades assigned to the CTP positions. As a result of this, four positions have been reviewed and recommendations are being made to adjust their current pay grades for the Administrative Aide, Buyer I, Buyer II and Facilities Maintenance Superintendent positions. In addition, the Consultant recommended that the job specification for the Building Maintenance Superintendent be amended to reflect the actual duties and job title. It was requested that the Board authorize management to proceed with the transparency process. Mr. Camacho said when these pay grades were assigned, didn't management look over the proposal from the Consultant and did not understand why several months afterwards consideration of reassignments are being entertained if the plans were already approved. The Vice Chairperson asked whether the reassignment is being motivated because of a desk audit of those positions and its result in classification was not consistent with the intent on the overall compensation change introduced or is this responding to the personnel appeals to the findings of that. Mr. Camacho understands the process to be that the consultant looks at every single job positions, classifications, and assignments and based on the complexity at that time – this is the assignment, this is where they should be. He reiterated that now several months later, request to change is before the Board and sensed this to mean that somebody didn't do their job, otherwise no changes would be necessary and asked whose responsibility was it to review those pay grades and assignments proposed by the consultant. The Deputy General Manager said reviews were made to the classification analysis provided by the consultant and several concerns were raised at that point. Upon further review by the consultant, it was determined that, for instance, the Building Maintenance Superintendent position had to change to Facilities Maintenance Superintendent to appropriately reflect the added responsibilities throughout the year. These pay grade reassignments were looked into prior to the implementation of the compensation plan, and the consultant had just completed its analysis and findings a month ago. The Chairman expressed concern that the implementation of the compensation plan just started this fiscal year which impacted the Port's finances by \$2.5M and with certain things not happening in the modernization plan and the expectation of all these cargo for the year 2010 schedule that is now moving back, this needs to be looked into carefully. He asked whether these are the only positions for the reassignment. The Deputy General Manager replied positively, but the possible submission to the Board on creation of positions is in the works. Mr. Camacho pointed out that the policy on pay grade reassignment indicates that the petition on the amendment shall include justification, essential details, analysis of the similarities or differences, etc. and asked for these details before any action is taken. Mrs. Lacson said the information is provided in the HR committee report. Mr. Camacho commented that those documents were just provided during the Board meeting which does not allow for sufficient review by this Board. He expressed a point that moving forward any matters requiring Board action should be in the Board

packet; otherwise will be tabled until the following meeting. He stated that there is no way for the Board to make an informed decision on these items without ample time to properly review such documents. There were no objections. Item tabled until the next Board meeting.

6. Performance Management Tool – KPI – Key Performance Indicators for managers and division heads will be reviewed by the port's consultant, then forwarded to the HR committee.

d. Property Leasing/Port Development Committee: Mr. Glenn B. Nelson, Commercial Manager presented the following:

1. Shell Oil Guam – F-3 Bunker Facility negotiations was presented to the Finance committee in order to elevate negotiations to the next level. One of the outstanding issue is a matter of general liability insurance limits to be assessed to the leasehold and staff is working with AM Insurance to provide the information. He stated that Shell's would like to enter into a separate easement agreement and subsequent assignment to IP&E for the lines servicing the bunkering facility. It is being requested for Board consent to authorize staff to negotiate easement matter simultaneously with bunker facilities lease.

2. Mobil Oil Guam – Mr. Nelson reported that Mobil and Port will be meeting on March 2, 2010 to discuss the pipeline replacement project. Port is still waiting from Mobil the final design plans. It was noted that Mobil has exercised its option to renew Lot 1 of their lease agreement.

3. Marinas – Staff was task to prepare a plan of action inclusive of drawings, estimates, M&R projects and associated actions incidental to improving the publicly held small boat facilities. Status: preliminary numbers have already been presented to the Board; Hagatna marina dock A design/build bid opening tomorrow; maintenance repair of Agat marina is on the rise. Additionally, the idea was posed to allow the Port real estate consultant to perform a valuation study of the marinas as this will provide detailed site assessment of both existing dock and upland conditions; involve like industry research to develop the cost recovery methodology that can be implemented. He requested Board consent to retain the services of Port real estate consultant to accomplish this task.

4. PUC – Port Interim Rates – Public Utilities Commission approved Port interim rates on January 29 to take effect February 1, 2010. Management seeks Board consent to amend any and all Management Agreement for the Golf Pier, associated pipelines and Area A Management Agreement; F1 Fuel Pier and Easement Agreements assigned to Tri-Star. Sufficient notice was provided to tenants advising them that effective February 1, the new rates will be implemented. He requested Board authorization to proceed with the amendments of the management agreements and easement agreements and other agreements entered into for other products, transported to and from pipelines, specifically Cementon Micronesia. The Chairman agreed the interim rates should apply; and if the Management Agreements allow for change in rates, management should enforce it. Also, with any new agreements or renewal agreements, management is to implement the interim rates. Mr. Camacho said if the Management Agreement

requires a lease amendment then the Board will execute that. He agreed with the Chairman and pointed out that the PUC Board has already approved the Port interim rates; therefore management should proceed forward to do what is necessary to effectuate the new rates as approved by the PUC Board. There were no objections.

As to Shell Oil Guam, Mr. Camacho said this matter was presented before the Finance committee and has accepted Mr. Nelson's recommendations. At this time, Mr. Nelson read the recommendations to the Board relative to Shell Guam and IP&E Holdings. On Item 7 of the recommendations (Rent structure negotiated thus far) Mr. Nelson asked that although such numbers were represented to the Finance committee, requested to withhold until conclusion of negotiations with Shell and IP&E Holdings. There were no objections.

Mr. Camacho made motion to allow management to negotiate with Shell Guam and IP&E Holdings regarding a new GEDA pipeline easement and F-3 lease (including pipeline easement) on the following recommendations as presented to the Board – *See Attachment A*, seconded by the Vice Chairperson. Motion was unanimously approved. (*Attachment A* is part of the February 25, 2010 Board minutes).

On the matter of the marinas, the Chairman said although staff approach is one to consider; the focus should be on the visual improvements of the marinas because of the criticisms made by boat users. There needs to be repairs done, especially with the identified funds through the Boating Access Fund from Department of Agriculture. He expressed any funding should be put into real repairs and improvements towards the marinas before any evaluation because the end result of the evaluation will speak to what is already known, that improvement is critical. Mrs. Dorothy P. Harris, Chief Planner recalled documents on federal funding that investigates and explores alternative management regimes for marinas to include public/private partnership; contractual services. She mentioned that she will look into this matter.

e. **Procurement Advisory Committee:** The Vice Chairperson presented the following items.

1. **Procurement Manager Recruitment** – Recruitment of a Procurement & Supply Manager has been made and will be onboard March 1, 2010.

2. **Procurement Delegation Authority** – The working draft of the procurement delegation via Governor's executive order is in motion and the proposed legislation for consideration will hopefully be completed next month.

3. **PMC-RFP** – Discussions took place on where the Port stands in light of the recent denial of its application with the ARRA Tiger Grant and how that impacts the PMC-RFP. The Chairman and Mr. Camacho interjected and asked why would that impact the PMC-RFP when in fact it should be moving forward and is independent of the port modernization construction phase. The Chairman expressed that the PMC is basically a tool to assist port employees on training and position them to world-class standards. Mr. Camacho mentioned that

the only connection to the financial strategy was the PMC to come up with up to \$4M which is negotiable, so the PMC needs to move forward regardless of whether the ARRA funding is secured. He recalled the involvement of the Attorney General in the PMC-RFP review process pursuant to Public Law 30-72 and asked whether such review is completed. The Deputy General Manager said the Attorney General is still reviewing the procurement acquisition aspect of the PMC. The Chairman commented that any procurement of equipment is to be owned by the Port, and not to depend on the PMC to purchase for the Port. The Deputy General Manager mentioned that the request for proposal was prepared whereby several references to the USDA loan and ARRA grant were made, so if it is the desire of the Board to issue the PMC-RFP, then a revision needs to be made to reflect existing circumstances. Mr. Camacho voiced his concern and did not understand why the committee felt it necessary to put a stop to moving the PMC forward when it is independent of the ARRA grant. The Vice Chairperson explained that the PMC-RFP was fashioned and grounded with the work that was going to be accomplished with Phase 1A. The idea was to allow Offerors to offer either the compliment of equipment in line with the strategy and plan and/or the capital improvement investment. She said no one is necessarily saying that the RFP would be halted, but the concern was raised and discussed amongst the committee absent the ARRA funding it would be difficult to give the offerors a perspective on what's in the horizon and how to respond properly to the RFP. Mr. Camacho felt the PMC-RFP needs to be issued and it should be assumed the Port will find federal funding and the PMC will respond providing their best proposal. He expressed that nothing should stop relative to the PMC and such process needs to move forward, so nothing needs to change. Mr. Camacho indicated that what is being asked of PB is to create a contingency plan in the event the funding doesn't come to fruition. The Deputy General Manager said the committee had discussed options available absent the ARRA funding, which include: a) delay the RFP issuance until substitute funding is secured; b) develop a hybrid, revising the RFP using alternative investment levels on the basis of varying cargo levels; c) issue the RFP on the assumption that the Port's funding gap would be filled. The Chairman and Mr. Camacho agreed to option c, and reiterated that the PMC-RFP move forward. The Vice Chairperson assured the Board that the committee does not want to delay the RFP for the PMC any more than anybody else, but simply sharing all the issues involved issuing an RFP of this complexity with these kinds of expectations and how the respondents in the RFP process would respond without the landscape being more confirmed, for instance the way Phase 1A is envisioned. Mr. Peck shares the concerns of the committee in that what was developed in the RFP document is not an accurate representation of the landscape. He mentioned the existing RFP package states the scale of the operation from construction phase to cargo volume, scheduling and so forth. Mr. Camacho expressed this issuance has been delayed for two years now and needs to be issued. The Deputy General Manager understands; however reiterated that as it stands now the RFP makes reference to the ARRA funding which needs to be revised given the denial of the Port's application. Mr. Camacho stressed all that needs to be done is to change 'ARRA' to 'federal'. He said when it is made known that despite all efforts federal funding assistance is not achievable, then that's when the option to terminate the RFP will be considered because the conditions have dramatically changed, then a new one will be re-issued, but the issuance of the PMC-RFP now should not be stopped because this just causes more delays. After some discussion, the Vice Chairperson mentioned that the committee was simply consulting for Board direction in light of how the ARRA grant fail through and how that funding serves as the basis for the rationale on how the

project was going to be laid out and the role conceived for this PMC Operator. She felt that if the Board's direction is to proceed on that basis, then so be it.

Remaining items under Reports were for Board's information.

VI. OLD BUSINESS

Without objections, items under old business were entertained in the following order:

k. **Annual Travel/Training Budget:** The Chairman said information has been forwarded to the Board on conferences scheduled for next month relative to the SeaTrade Cruise Shipping Conference and TOC Asia 2010 Seminar. These conferences are ideal as it is an opportunity to showcase the islands destination in the cruise industry as well as learning and obtaining knowledge on the different trades regarding terminal operating systems, respectively. The Chairman mentioned that the 2010 Zebra Enterprise Solutions is similar to the TOC Asia 2010 Seminar.

Mrs. Lacson made motion to approve travel authorization for two participants to attend the SeaTrade Cruise Shipping Conference, March 15-18, 2010, Miami Beach, Florida, seconded by the Vice Chairperson. Motion was unanimously approved.

The Vice Chairperson made motion to approve travel authorization for two participants to attend the TOC Asia 2010 Seminar, March 16-18, 2010, Shanghai International Convention Center. Motion was seconded by Mrs. Lacson and was unanimously approved.

e. **MOA – Port Authority / Attorney General Office:** For Board's information, the Deputy General Manager said the memorandum of agreement between Port Authority and Attorney General Office is pursuant to Public Law 30-72 where the Attorney General shall act as legal advisor to the government of Guam during all phases of any solicitation or procurement process if the award is estimated to be \$500K or more. The purpose of this MOA is to coordinate the respective efforts of both parties and delineate each parties' responsibilities. She mentioned that the MOA is currently being reviewed by the Attorney General's office.

d. **MOA – Port Authority / Department of Public Works:** The Deputy General Manager said the memorandum of agreement between Port Authority and Department of Public Works relates to both parties having a joint desire to sustain and improve their interconnected transportation infrastructure in support of the Defense Posture Realignment Initiative and the related military buildup on Guam. The Port enlisted DPW's funding and assistance to utilize the expertise of DPW's Contractor to provide services on behalf of the Port in furtherance of its projects, including the design, design management and construction oversight services for intermodal improvements at the Port. She mentioned that both parties are in agreement with the MOA with minor fine tuning of the 'indemnification clause'. It is being requested of the Board to allow management to enter into this agreement.

The Vice Chairperson made motion to allow management to proceed with finalizing the memorandum of agreement between Department of Public Works and the Port Authority of Guam, subject to the completion of the indemnification clause, seconded by Mrs. Lacson. Motion was unanimously approved.

c. **Fiscal Year 2009 – Audit Report:** (Item addressed under Finance committee report.)

a. **OAE Task Orders – Extension Completion Date:** The Deputy General Manager requested for Board to approve the extension to February 18, 2011 on the following task orders:

- Task Order 1 (Amendment 2) – Kick-off & Implementation Plan
- Task Order 4 (Amendment 2) – Prepare Permit Application
- Task Order 7 (Amendment 5) – PMC Advertisement Support
- Task Order 9 (Amendment 2) – Terminal Alternative Analysis-Development & Operations Plans
- Task Order 10 (Amendment 2) – Performance & Technical Requirements for Truck Gates & TOS
- Task Order 17 (Amendment 1) – Dredge, Reclamation, and Disposal Planning
- Task Order 18 (Amendment 1) – Dredge Sediment Characterization
- Task Order 22 (Amendment 1) – Dredge Sediment Coring Samples

Mr. Camacho asked that prior to Board action, PB Americas, Owner's Agent/Engineer consultant to the Port needs to provide a priority plan based on organic growth and military buildup. He said as of now the existing contract is valued at \$8.5M that's been Board approved and the Port is using its own cash to pay all these task orders because the federal reimbursements have yet to be received from these funding sources: OEA - \$2.975M; OIA - \$3M. It was made mentioned to the Board that \$670K has been invoiced to the Governor's office for reimbursements. Staff is currently reviewing another invoice worth about \$1.5M which will be processed to the Governor's office for drawdown. Mr. Camacho said the extension can be made up to next month until a priority plan is provided and was uncomfortable approving beyond that point until he is able to see how to go about prioritizing. The Chairman said although a valid point has been raised, he asked to extend quarterly because of a time element. Mr. Peck asked to clarify a priority plan, as he felt the services provided thus far are already prioritized; however, in terms of deliverables, unless the Port issues a stop order. Mr. Camacho said the idea is to identify what is considered absolutely necessary if all the Port has is \$50M of its own monies and proceed with those projects, then redeploy the remaining resources to support \$50M. Mr. Peck explained that the dollar value of all the in-water task orders, for example, is being funded through OEA grant and if the work is not performed, there's no money loss and is not a case of not being prioritized. Mr. Camacho asked whether OEA is able to reprogram this work. Mr. Peck said these tasks are project specific and is not able to be reprogrammed.

After some discussion, the Deputy General Manager said management is working closely with the front office for an OEA grant extension which expires April 2010. Mr. Camacho said he will consider to grant the extension of the task orders up to April 2010 and for management to come back before the Board for another extension. The Chairman asked the reason for task orders expiring. The Deputy General Manager explained that there were certain original task

orders that had expiry dates for certain number of days, for example, once a notice to proceed is issued there is a certain period for that project to be completed, and upon reaching the expiry date, there were still work to be performed for that particular project. The Chairman understands that if these task orders are not extended, then the only work that PB America will be performing are those task orders under the \$8.5M. Without objections, Mr. Jeff Schechtman, Vice President/Director Ports & Marine Division explained that when the management contract was signed between parties there were task orders within the management contract, those two components have to stay parallel with one another. Currently, the management contract expires February 2011, so similarly by extending the management contract, all task orders need to be extended as well. He mentioned that this is to simply keep the contract dates and task order dates aligned. The Chairman expressed that the contract was extended to 2011 and all these task orders ended last week and what is being represented today is that all these task orders are to be parallel to the contract, so why wasn't it parallel then. He said there is \$8.5M of task orders that PB America is to continue to complete and there is no stop orders. With other task orders, if there is additional funding identified to execute those, then such will move forward. Mr. Peck clarified that all the task orders (1 thru 32) are funded and covered under the \$8.5M and those task orders that have yet to be performed was suspended because of the NEPA process.

At this time, as the matter relates, item b. **OAE Task Order No. 28 – Project Management** was entertained. Mr. Schechtman advised the Board that Task Order No. 28 is a time and material task order that expires this Sunday which is the core project which allows for PB representatives to perform their work on all matters relating to Port modernization program. He said without this task order, PB representatives have no ability to perform their work. Mr. Camacho said this can also be extended to April 2010. The Deputy General Manager said funding has been identified for this particular task order up to July 2010. The Chairman expressed concern that the task orders have already been approved as stated earlier and the only reason some have not started was because of the NEPA process. He made it clear that all the task orders have been approved as prescribed and have extended the contract to 2011, so PB America is still obligated to execute on the \$8.5M worth of projects. The Chairman emphasized that Task Orders 1 thru 32 includes Task Order 28 which has been approved, so what is the problem. The Deputy General Manager said what is being presented before the Board is to amend the value of Task Order 28 to \$1.8M from \$710K. She mentioned that the funding will come from OIA and Federal Highway Fund. Mr. Camacho was of the understanding that the grants were not able to be reprogrammed because it is project specific. The Chairman stressed that based on the grant allocation spreadsheet it shows Task Orders 1 thru 32, it explicitly outlines all the task orders to be executed at the value that it was executed on. The Project Management original value is \$710K which has already been approved. Mr. Schechtman reminded the members that without the extension of Task Order 28 that expires this Sunday, what will happen is PB America will have no ability to expect payment from the Port for services because this task order have lapse. He said by extending this task order to April 2010 would require no additional funding.

Mr. Camacho made motion to extend Task Orders 1, 4, 7, 9, 10, 17, 18, 22 and 28 up to April 30, 2010, seconded by the Vice Chairperson. Discussion followed, and the Chairman clarified whether this was to be for all task orders. The response was in the negative. The

Chairman stressed that the extension of the management contract has been validated, and these task orders have already been approved; so PB is obligated and is to move on to complete the job based on the value already approved on these task orders. After some discussion, it was agreed to further discuss this matter at the next board meeting. Motion on the floor failed.

f. **Board Policy no. 2010-01 – Pay Grade Reassignment:** (Item addressed under HR committee report.)

g. **Drug-Free Work Place Policy & Procedure / Board Resolution No. 2010-02:** (Item addressed under HR committee report.)

h. **Above-Step Recruitment – Planner IV position / Board Resolution No. 2010-03:** (Item addressed under HR committee report.)

i. **Pay Grade Reassignment: Building Maintenance Superintendent; Administrative Aide; Buyer I & II:** (Item addressed under HR committee report.)

j. **Request to Fill Budgeted Positions:** (Item addressed under HR committee report.)

VII. NEW BUSINESS

a. **Public Law 30-79 relative to Public Official Financial Disclosure Act:** For Board's information.

b. **Travel Authorization Request:** (Item addressed under Annual Travel/Training Budget, old business.)

VIII. PUBLIC COMMENT

a. **Port Users Group Comment:** None.

b. **General Public Comment:** None.

c. **Employee Comment:** None.

IX. EXECUTIVE SESSION

RECESSED: The members agreed to recess prior to moving into executive session. Meeting recessed at 8:50 p.m.

RECONVENED: The meeting reconvened at 8:55 p.m.

At this time, the Board went into executive session. Executive Session ended at 9:05 p.m. The Board is now back in regular meeting session. Items addressed in executive session

include GFT Negotiations; Watts Constructors Civil Case No. 10-00002; Guam YTK and Civil Case No. CV0817-08 Mariana Express Lines and M/V Ratstor.

OAE Task Orders

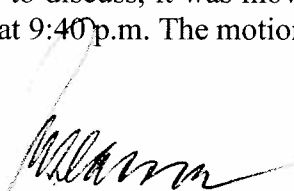
At this time and without objections, the matter on OAE Task Orders was reconsidered for discussion by the Board. It was explained to the Board to ensure their understanding that PB representatives will not be able to perform any services relative to Port as their services through Task Order No. 28 Project Management expires February 28, 2010. The Chairman did not agree and mentioned that all the task orders are inclusive of a project management services. The Deputy General Manager clarified that the project management services has been taken out from each task order and placed into Task Order No. 28. The Chairman said if that is the case then the extension can be made; however, the value of \$710K does not change. Mr. Camacho said if the time and material was taken out from each task order, did management reduce those amounts accordingly. The Deputy General Manager replied positively. The Chairman said then that's what should've been shown to the Board to show that the total amount of \$8.5M still remains.

Mr. Camacho made motion to authorize the extension of the Owner's Agent/Engineer Task Order Nos: 1-Amendment 2, 4-Amendment 2, 7-Amendment 5, 9-Amendment 2, 10-Amendment 2, 17-Amendment 1, 18-Amendment 1, 22-Amendment 1, and 28-Amendment 1 to April 30, 2010 subject to no additional funds in excess of the original amounts. Motion was seconded by the Vice Chairperson and was unanimously approved.

The Vice Chairperson asked that PB provide the Board with a spreadsheet in an orderly fashion such that it is absolutely clear, that would include: funding source, extensions, tangibles/deliverables and what remains outstanding.

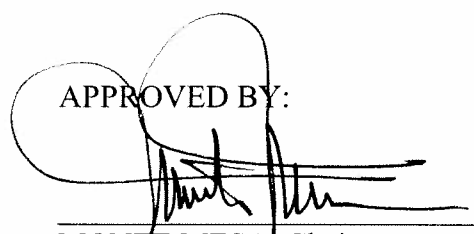
X. ADJOURNMENT

There being no further business to discuss, it was moved by Mr. Camacho and seconded by Mrs. Lacson to adjourn the meeting at 9:40 p.m. The motion was unanimously passed.



MARILOU LACSON, Board Secretary, Board of Directors

APPROVED BY:



MONTE MESA, Chairman, Board of Directors



These issues were raised during a meeting with representatives of Shell Guam and IP&E holdings regarding a New GEDA pipeline easement and F-3 lease (including pipeline easement):

1. Waiver of CFIUS approval. In previous negotiations with Shell, it was agreed that an assignment to IP&E Holdings, LLC would be dependent on IP&E obtaining either CFIUS approval or an exemption for such approval. IP&E & Shell have stated they don't believe the CFIUS approval is needed because the assignment of the Port leases is not significant compared to the assignment of other Shell assets to IP&E. IP&E is proposing that the assignment proceed without prior CFIUS approval and they will agree to obtain the approval if it is ever required by a federal agency. IP&E is also willing to indemnify the Port for any liability for failing to obtain the CFIUS approval prior to the assignment.

RECOMMENDATION: REQUIRE CFIUS APPROVAL OR EXEMPTION PRIOR TO RELEASING SHELL FROM LIABILITY UNDER THE ASSIGNMENT

2. IP&E is requesting a specific dollar amount of the performance bond that is required of them, and a methodology for determining the bond amount.

RECOMMENDATION: BOND AMOUNT SHOULD BE EQUAL TO THROUGHPUT ACTIVITY FOR LAST CALENDAR YEAR

3. IP&E would like a specific minimum amount of general liability insurance that will be required from them.

RECOMMENDATION: MINIMUM FIVE MILLION

4. The language of the proposed contract currently requires that in the event the Port needs Shell/IP&E to relocate the pipelines, it would be at the lessee's expense. IP&E does not agree with this and would prefer any relocation to be at the Port's expense.

RECOMMENDATION: ANY RELOCATION WOULD BE AT LESSEE'S EXPENSE

5. Shell/IP&E would like the Port to execute, concurrently with the lease and easement agreements, a consent allowing Shell to assign the lease and easement to IP&E at any time after the performance bond is provided by IP&E.

RECOMMENDATION: ASSIGNMENT AND RELEASE OF SHELL'S LIABILITY SHOULD BE CONTINGENT UPON IP&E OBTAINING CFIUS APPROVAL OR EXEMPTION

6. IP&E would like to clarify its company name (it was listed incorrectly in the minutes of the January Board meeting). The company name is IP&E Holdings, LLC dba IP&E Guam.

RECOMMENDATION: NO OBJECTION

7. The rent structure negotiated thus far is:

For New GEDA Easement: annual rent: \$6,597 (calculated using $FMV \times 225 \times .08 \times .25$ (as easement rate))

For f-3 lease (tanks): annual rent: $\$64,688.88 + 5\% = \$67,923.32$ (calculated using open space rate)

For f-3 lease (pipeline portion): annual rent: \$1,845 (calculated using $FVM \times 225 \times .08 \times .50$ (as easement rate))

f-3 lease throughput rate: \$0.35 per barrel outbound product