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Governor of Guam

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Ray Tenorio
Lieutenant Governor

**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Friday, March 4, 2011**

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., Friday, March 4, 2011. Present at the meeting were:

Daniel Tydingco, Board Member
Michael Benito, Board Member
Jovyna Lujan, Board Member
Eduardo Ilao, Board Member
Pedro A. Leon Guerrero, General Manager
Felix R. Pangelinan, Acting Deputy General Manager
Atty. Anthony Perez, Legal Counsel

Also present were Jimmy Camacho-Senator Tom Ada's office; Zachary Sprute-PB/OAE; Rizaldy Cortez-RB Cortez Engineering (MARAD); AnnMarie Muna-AM Insurance and Port Management staff.

II. ELECTION OF OFFICERS

Mr. Benito made motion to nominate Daniel J. Tydingco as Chairman of the Port Authority of Guam Board of Directors, seconded by Mr. Ilao. Motion was unanimously approved.

The Chairman made motion to nominate Michael T. Benito as Vice Chairman and Jovyna S.A. Lujan as Board Secretary of the Port Authority of Guam Board of Directors. Motion was seconded by Mr. Ilao and was unanimously approved.

III. APPROVAL OF MINUTES

a. **January 20, 2011:** The Vice Chairman made a motion to approve the minutes of January 20, 2011 subject to correction. The motion was seconded by Ms. Lujan and was unanimously passed.

IV. COMMUNICATIONS

a. **Matson letter dated February 1, 2011 re December 17, 2007 License Agreement:** The General Manager said the Port received a letter dated February 1, 2011 from Matson/Horizon relative to the License Agreement. The letter indicated the agreement does not require Matson/Horizon to indemnify the Port from claims arising from Port employee's negligence, nor does it require Matson/Horizon to provide insurance to the Port against those claims. He noted that claims against the Port for death, bodily injury or property damage arising from the negligent operation of the cranes by Port employees is not covered by Matson/Horizon's liability policies. He mentioned that Matson/Horizon has expressed it is essential for the Port to have in place at its expense adequate first party insurance against all foreseeable claims which may arise from the negligent operation of the cranes by Port employees. This matter has been discussed with the Port's insurance company and he yielded to AM Insurance to further elaborate on this issue. Ms. AnnMarie Muna, AM Insurance said in review of the agreement, Section 7 indicates that Matson/Horizon shall indemnify and save harmless the Port against any and all loss, damage, claims or liability, etc., arising from or related to the cranes, except to the extent that such is caused by the wrongful or negligent acts or omissions of the Port. She mentioned the Port's insurance policy does not cover actual physical damage to the POLA cranes. Until a determination is made on which responsible party is to provide coverage, she recommended it is important coverage be made to minimize Port exposure. Ms. Muna said the additional premium for this coverage is \$141K which includes POLA cranes and Subic crane.

Ms. Lujan provided the Board with background information regarding the license agreement. She indicated there is a dispute and difference of opinion between the former Board members and Matson and Horizon regarding their understanding at the time the agreement was granted and Matson and Horizon's point of view. She recommended a legal review be conducted on this matter because the transcript of the meetings and off-line discussions with Matson/Horizon representatives at that time when they requested for Board to consider the license agreement favorably. The former Board's understanding was the agreement is a special license for non-exclusive use of the rails. Ms. Lujan said this is a public port, there would be no new rules to accommodate the addition of these POLA cranes. She indicated at that time, when the military first conducted their assessment of the island, there was a strong perspective the Port was poorly able to accommodate certain cargo and was looked at as a choke point, so the POLA cranes was viewed to be an interim measure to provide relief as well as assist the Port to accommodate cargo. She noted Matson/Horizon commands 80% of the market that come through Guam which was good reason to accommodate the request, but there's no doubt that in discussion both online and off-line there are strong differences of opinion and perspectives on both sides. The Chairman advised in-house counsel to look into this matter.

The Vice Chairman said to address Port exposure at hand asked whether the Port will be paying for additional premium. Ms. Muna said as soon as Board directive is given, coverage for damage caused by port negligence will be provided. The Vice Chairman asked if insurance coverage was to proceed and was later determined by counsel such coverage was not necessary, would the Port be obligated to pay the full amount or would it be pro-rated. Ms. Muna said

normally when a coverage is no longer needed it can be removed from the policy; however she would have to confirm with the Underwriters and how the premiums is applied at that point.

The Chairman asked whether there would be any procurement issues when modification is made to the insurance policy. Mrs. Alma B. Javier, Procurement & Supply Manager replied negatively and said the contract with AM Insurance is as an exclusive Broker, so changes can be made to the insurance policy by way of amendments.

The General Manager requested authorization from the Board to proceed with the insurance coverage as a precautionary measure and cautioned that if no policy coverage to this effect, damages to cranes could estimate to be in the millions. He mentioned this cover is specific to damage to the POLA cranes caused by Port negligence and if an incident does occur against the POLA cranes, and was determined not to be caused by Port, then all cost associated on the damage will be borne by Matson/Horizon.

The Vice Chairman made motion to approve insurance coverage at an additional premium amount of \$140,000.00 for the POLA Cranes and Subic Crane (Gantry 3) for the purposes of damages to cranes caused by Port Authority negligence, subject to coverage deletion if determined by Port legal counsel that coverage is not necessary. Motion was seconded by Mr. Ilaio and was unanimously approved.

b. **Bill No. 79-31 – (Repeal of Public Law 27-60 Privatization):** The General Manager said the Port was asked to provide testimony on March 14, 2011 for Bill 79-31 which basically is an act to repeal Public law 27-60 relative to a public-private partnership. The Chairman said this bill is not operational in nature, but policy which will be requiring input from the Board members and asked management to forward the draft testimony to the Board.

For Board's information, the General Manager understands that testimonies on bills are to be submitted also to the Governor's Office for their information.

c. **IP&E letter dated February 18, 2011 re Fuel Storage Request:** The General Manager said the Port received a letter from IP&E interested in the use of Cabras Area A Fuel Facility to include storage tanks and load rack facilities. Although an asset of the Port, Mobil manages the area with a contract expiring the year 2020. The Manager of Area A also manages Golf Pier. The General Manager said if the asset is fully operational and utilized, potential revenue for the Port amounts to \$2M annually. Currently, the Port receives \$83K a year on its use. He requested authorization from the Board to proceed with issuing a solicitation of interest. The Chairman asked whether Area A is contemplated in the port modernization program. The General Manager replied negatively. He stated Mobil has indicated to the Port they are not interested in all of the tanks and will provide a cost estimate repair for those tanks currently out of service. The members pointed out and inquired as to its status of the previous action of the former Board which includes the following: 1) legal counsel to review the management agreement for termination options; 2) management to issue solicitation of interest; and 3) prepare draft letter on the concerns of dissatisfaction with the Managers relative to the upkeep of the area. The General Manager said as the authority heads has since changed, wanted to ensure that

same direction applies and also the Port recently acquired in-house counsel through the Attorney General's office, and would like the opportunity to engage him on this matter.

The Vice Chairman asked why the previous Board wanted to terminate the contract with the Manager. Ms. Lujan said main points generally were the dissatisfaction with performance, quality and maintenance performed on Golf Pier and the tanks. Several issues covering: repair/replacement of the pipelines which was discussed in length; Manager's interest in extending pipeline agreement for additional 20 year term and working with the Guam Legislature to obtain such approval. The then-General Manager of Mobil committed to implement the repair/replacement of the pipelines, but during the turnover in Mobil management, nothing really happened and during that time Mobil had expressed grave concern about the danger of having those pipelines used in its existing condition. Ms. Lujan said these are some of the long standing issues with the Manager and ultimately the Board then was just not satisfied with how the Manager performed. She understands now that Mobil had recently invested substantial improvements to Area C, and questions the status of Area A and do those assets have any opportunity for new business revenues to the Port and how does the Port move down the path to accomplish that now that there's interest for fuel storage. As a sitting member of the former Board, Ms. Lujan reconfirms it was Board action for legal counsel to look into the agreement and determine options to exit such agreement and in the meantime, management was to issue a solicitation of interest. Relative to the pipelines, Mr. Glenn B. Nelson, Commercial Manager said that as the conditions of the pipelines are paramount, and as approved by the previous Board, management has committed funding to repair the pipelines and is moving forward with the pipeline portion of that management agreement. Ms. Lujan added that the Port moving forward with the repair of the pipeline was as a result of the Manager not pulling through with their initial commitment.

The Vice Chairman asked whether an environmental assessment of the property would be made to ensure no traces of toxins exist and if any, responsible party should be liable and address the issue before property reverts back to the Port. The General Manager assured that environmental protocol measures will take place prior to turnover of property to the Port. Legal Counsel said letter to Mobil addressing all issues is currently being finalized and any environmental concerns that exist during the time of the lease need to be rectified. He said from the moment the Port receives the property back either by termination or by expiration, the management agreement should be in suitable condition.

Management was advised to proceed with the solicitation of interest subject to legal counsel review.

V. OLD BUSINESS

1. Management Updates

a. **Master Plan:** At this time, Ms. Dorothy P. Harris, Chief Planner presented the following:

i. PMT-Implementation Plan – The Port is currently waiting on PMT-EA to provide revisions to the implementation plan for further review by management. Additionally, as Board directive, MARAD is to use a Design-Build as the delivery method and the PMT-EA should not serve as the General Contractor. The General Manager explained that there is differing of opinions on this issue in that the present desire of EA (MARAD PMT) is to serve as General Contractor and to use a design-bid-build method; however it is the Port's position and Board directive that the delivery method be through a design-build approach. Ms. Harris added that the concern is in terms of liability.

Relative to the Protocol Manual, she mentioned the Port is still waiting on MARAD's comments and the draft environmental assessment which are critical documents in moving the port modernization program forward. Ms. Harris said the grant funding for the protocol manual expires this month and the Port had to request for an extension. MARAD was issued the draft protocol manual since November 2010. The General Manager recalled that in a meeting held with MARAD question was asked as to the status on their review of the draft protocol manual and response made was it is a "do-over" / "re-do". Ms. Harris said the Port and USDA has submitted its review and she expressed that the Port has not experienced a \$100M project, so the protocol manual is crucial as it will provide assistance and guidance moving forward. She also pointed out the protocol manual is a deliverable for the grant funding of \$250K. The Chairman advised management to follow up with MARAD on this matter.

ii. F-5 Results – The Port's Owner's Agent/Engineer has completed an initial load rating, material sample collection, and partial material testing. Remaining tests are to be provided next week. The purpose of the testing is to evaluate the current conditions and determine the repairs required and scheduling of work. Mrs. Vivian C. Leon, Corporate Services Manager added that Kleinfelder, sub-consultant to OAE, had provided their initial testing indicating the compression strength of the concrete is fine and there is no cathodic protection in some of the rebar areas. They have found more testing needs to be made on the chemical makeup of the concrete to determine if salt is at the rebar.

Additionally, the Port met with its Insurance Adjusters who will be reviewing the final results of OAE once completed.

iii. Pipeline Relocation Project – Port's consultant has submitted the draft design drawings, specifications, and cost estimate for review by the Port and Tristar. Additional meetings are to be held this week. The relocation project is included as part of the ESA Phase II Work Plan that will be submitted for the Environmental Protection Agency review and approval this month.

Mr. Ilaos asked whether Tristar is the only party of interest in this fuel line. The General Manager replied that the major user of the pipeline is Guam Power Authority.

iv. Federal Grants – The status under Port Modernization FY2006-01, FY2006-02 and FY2006-04 should reflect: *Subject to an amendment or repeal of the port debt ceiling as mandated by Public Law 30-100.* This USDA loan at the sum of \$14M is for the

acquisition of gantry cranes. Ms. Lujan asked the status of the updated financial feasibility study. Mrs. Leon understands that the target date to receive the updated report is in two months and if the financial analysis shows the Port is able to assume the \$14M loan, management will work with the Port Oversight Chair to look into amending Public Law 30-100 to reflect current Port financial capacity level.

b. **Internal Matters:**

i. **Properties** – Mr. Nelson presented the following:

1. **5 Year Lease Request:** There are currently four companies that express interest in a 5 year lease as follows:

- **Tyco Electronic:** Good standing with Port since 2007 with a lease in WH1, Bays 5-8 encompassing 14,400 square feet of warehouse space for purpose of staging fiber optic cables. Reason for request is to further enable and justify build out related expenses of space for their purpose at no cost to the Port. Rent will be at Port prevailing fee forward but now at rate of \$10,944 per month. Total term commitment approximately \$656,640.00.
- **Samuri Adventure Tours:** Good standing with Port since 2009 with a lease in the vicinity of Family Beach for purpose of watersport tourism. Reason for request is to justify build out expenses related to render the site suitable for their purpose at no cost to the Port. Rent will continue at Port prevailing fee forward but now at rate of \$4,515.08 per month. Total term commitment - \$270,904.80.
- **KVOG Broadcasting:** Good standing with Port since 2009 with a lease in the vicinity of Port Beach for purpose of staging and operating a transmitter/antennae site. Reason for request is for FCC permitting purposes and costs related to rendering site suitable for their purpose at no cost to the Port. Rent will continue at Port prevailing fee forward but now at rate of \$276.00 plus telecommunication related assessment of \$1,000 per month. Total term commitment approximately \$76,560.00.
- **Tidewater Distributors:** Good standing with Port since 2000 with a lease in WH1, Bay 12 encompassing 6,201 square feet of warehouse and 310 square feet of office space for purpose of fisheries related operations. Reason for request is to further enable and justify build out related expenses of space for their purpose at no cost to the Port. Rent will continue at Port prevailing fee forward but now at rate of \$5,218.06 per month. Total term commitment approximately \$131,803.60.

Mr. Nelson said the Port has long standing relationships with these tenants and would like to show that the Port is committed to their longer term tenancy. He requested Board authorization for management to: 1) proceed with finalizing the five year lease agreements with in-house counsel; and 2) expressed authority for the General Manager to enter into the leases with these tenants.

The General Manager said current lease arrangements with tenants are on a month-to-month basis and felt their request is reasonable in order for them to make improvements to their sites. He said the Board has authority through port enabling act to enter into commercial lease for a term not to exceed five years. The Vice Chairman asked information on the prevailing fee.

Mr. Nelson said the prevailing fee is mandated under Public Law 30-19 wherein the Port shall conduct assessment once every 3 three years on the value of port real properties.

Mr. Ilaio made motion to authorize management to proceed with finalizing the five year lease agreements with in-house counsel for the following tenants: Tyco Electronics; Samuri Adventure Tours; KVOG Broadcasting; and Tidewater Distributors, to include that the Port General Manager has expressed authority to enter into such leases with those tenants indicated. Motion was seconded by the Vice Chairman and was unanimously approved.

2. SPPC Term Lease Negotiations: Extended term lease negotiations for SPPC's Lot 2 have been ongoing since October 2009. Through arbitration process pursuant to the lease agreement, services of a third independent appraiser have been acquired as agreed upon by both parties. The third independent appraisal has been completed and as such the parties can now finalize the extended term amendment reflecting the new and binding rate for this option period. As for Lot 3A, communications will be made with SPPC to address the extended term rent.

3. Mobil Lot 1 (Area C): Extended term lease negotiations for Mobil's Lot 1 (Area C) have been ongoing since February 2010. Mr. Nelson stated Mobil had agreed to the rate proposed by the Port until the SPPC's third independent appraisal has been finalized.

4. Hanson Lot 6: Extended term lease negotiations for Hanson's Lot 6 began January 2011. The Port sponsored statement of value has been completed by Captain, Hutapea & Associates with copy provided to Hanson on March 3, 2011. Based on discussions, Hanson is expected to respond to the Port proposed rate by March 16, 2011.

5. Guam YTK: Arbitration proceedings are slated to re-commence next week. Legal Counsel said this matter was set to going through the arbitration process, in the meantime settlement discussions were taking place; however, YTK had backed out of the settlement. The arbitration process is getting back on track. In terms of arbitrator representation, the Port acquired the services of Attorney Jacque Terlaje; YTK is being represented by Attorney Dan Bermann and both arbitrators agreed to a third neutral arbitrator Attorney Ed Hann.

6. Casamar Guam: Extended term rent negotiations continue. However, recent developments may complicate matters as it is rumored that Casamar representative based in Las Vegas has released her interests in the leasehold. Method of entity or interest transfer is being explored by counsel. It was noted the Port's goal is to address lease rate for successive term for Lot 5 to a final resolve.

ii. Port Tariff - Mr. Jose B. Guevara, Financial Affairs Controller said as the Port is in the process of implementing its Port Modernization Program, including an estimated \$200M in capital improvement projects, will need to fund the improvements through a combination of internally generated operating income, commercial loans and government grants. Part of this capital improvement program is in preparation of the impending military buildup. The sound fiscal policy suggests that the cash flow generated from the projects should adequately cover the cost of capital, and earn an adequate return on investment. The Port needs

to determine the level and nature of adjustments in port tariffs required to generate the cash flow to support its planned capital improvement projects.

The Port's terminal tariff has not been adjusted since 1993 which created a situation where the Port had to depend on cost control and government subsidy to maintain and upgrade port facilities and equipment. Since the passage of Public Law 30-52, the Public Utilities Commission having oversight of the Port Authority with respect to any rate increases, approved the Port's application for "interim" tariff rate at 3.4% which took effect February 2010. The Port later retained the consulting services of Cornell Group, Inc. to perform a comprehensive review and revision of the existing terminal tariff. The proposed tariff must be capable of generating sufficient revenue to cover operating costs of the Port and service the loans required for a proposed capital expansion of the Port. The primary objective is to develop an economically sustainable tariff that is equitable and reasonable for the Port as well as its users, consistent with the quality and level of services provided by the Port. This report will provide the basis and justification for the Port's application to the Commission for a change in tariff. Under Public Law 30-52, the Port is required to submit to the Commission the results from the study of existing rates, charges and cost of services by December 31, 2010; and has already done so on December 30, 2010.

As to next steps in this process, Mr. Guevara presented the timeline for Board's information:

- February 15 thru March 11: Testimonies are currently being worked on which will be included in the formal rate case petition.
- March 14-25, 2011: Presentation with port users/customers on proposed tariff changes.
- April 1, 2011: Submit Rate Case Petition to Public Utilities Commission. Administrative Law Judge, Atty. David Mayer has 120 days to act upon receipt of the petition.
- May thru July 2011: Possible scheduling of public hearings, once the PUC consultant has completed their review of the Port's rate petition.

Mr. Ilaos asked how the 3.9% proposed tariff rate increase was derived. Mr. Guevara said this was based on the recovery of operating costs, and the ability to pay port loans.

2. **Legal Counsel Contract Services:** Mrs. Javier said Port legal services expire this year in June 2011. She mentioned that the initial contract was for a year with three annual renewal options. All renewal options have been exercised, expiring this year. The print advertisement for legal services was on March 3, 2011; pre-proposal conference is scheduled for March 14, 2011 and deadline to submit proposals is March 23, 2011.

3. **Financial Report:** The financial report of January FY2011 was presented for Board's information. Mr. Ilaos asked that the members be provided with the aging receivables by the next meeting.

4. **Insurance Report:** The insurance report of January 2011 was presented for Board's information.

5. **Appointment of Deputy General Manager:** Mr. Ilao made motion to ratify the appointment of Mr. Felix R. Pangelinan as Acting Deputy General Manager for a period of 90 days; effective February 28, 2011. Motion was seconded by the Vice Chairman and was unanimously approved.

VI. NEW BUSINESS

1. **Creation of Position-Maintenance Planner:** Mrs. Francine T. Rocio, Personnel Services Administrator requested authorization from the Board to allow management to begin the creation process for Maintenance Planner position. This request is presented to initiate the transparency and disclosure process in accordance with Title 4, GCA, Section 6303(d) and the Port's Personnel Rules and Regulations.

Ms. Lujan made motion to authorize management to begin the transparency process and disclosure reports to establish the creation of position for the Maintenance Planner under the Port's Classification and Compensation Plan, seconded by Mr. Ilao. Motion was unanimously approved.

2. **Board Policy No. 2011-03 Code of Ethics:** Ms. Lujan made motion to approve Board Resolution No. 2011-03 and Board Policy No. 2011-01 relative to the adopting a Code of Ethics Policy for the Board of Directors of the Port Authority of Guam. Motion was seconded by Mr. Ilao and was unanimously approved.

3. **Board Resolution No. 2011-02 Designation of Signatories:** Ms. Lujan made motion to approve Resolution No. 2011-02 relative to the designation of signatories for the Port Authority of Guam, subject to amending the list of management personnel to reflect General Manager, Deputy General Manager, Corporate Services Manager, General Accounting Supervisor and Financial Affairs Controller, seconded by Mr. Ilao. Motion was unanimously approved.

4. **Travel:**

- a. **Technical Exchange Seminar, Oregon/Washington-March 15-17, 2011**
- b. **AAPA Spring Conference, DC-March 21-24, 2011**

As to items a and b, the General Manager requested Board approval to authorize travel for himself to attend a Technical Exchange Seminar held in Portland/Seattle with Port's consultant Parsons Brinckerhoff Americas. This trip also encompasses participation in Washington DC for the AAPA Spring Conference as well as the opportunity to meet with port stakeholders: Maritime Administration, USACE, Department of Defense Inspector General, USDA and JGPO. Also on return back to Guam, arrangements are being made to meet with USDA in Hawaii. Purpose of request is to take this opportunity to engage in the activities and developments thus far relative to the Port Modernization Program.

Mr. Ilao made motion to transfer travel funds from the Seatrade Cruise Shipping Miami Conference on March 14-17, 2011 as previously approved to fund and approve the travel for the General Manager and a Board Member to attend the Technical Exchange Seminar held in Portland and Seattle, and in Washington DC for the AAPA Spring Conference as well as meetings with stakeholders relative to the Port Modernization Program scheduled on March 14 thru 26, 2011. Motion was seconded by Ms. Lujan and was unanimously approved.

c. **Pacific Logistics Movement Forum 2011, Hawaii-April 26-28, 2011:**

The General Manager said an invite was extended to the Port from the Military Surface Deployment and Distribution Command to conduct a presentation on the Port Modernization Program before participants of the Pacific Logistics Movement Forum scheduled for April 26-28, 2011, Hawaii. Purpose is for SDDC and participants to be provided the opportunity to gain knowledge on the program and the impacts to the Port by the military build-up.

Ms. Lujan made motion to approve travel request for the General Manager to attend the Pacific Logistics Movement Forum on April 26-28, 2011 held in Hawaii, seconded by Mr. Ilao. Motion was unanimously approved.

d. **Incident Response to Terrorist Bombing/Prevention and Response to Suicide Bombing Incidents, New Mexico-April/May 2011:** Mrs. Rocio said Guam Homeland Security had invited port personnel to attend the Incident Response to Terrorist Bombing/Prevention and Response to Suicide Bombing Incidents in New Mexico. She mentioned that there will be a break-in period between the two trainings and request Board approval to cover per diem and fuel consumption. All other cost associated with this training will be borne by Guam Homeland Security.

Mr. Ilao made motion to approve travel request for two groups of ten port employees to attend training for the Incident Response to Terrorist Bombing & Prevention and Response to Suicide Bombing Incidents on April/May 2011 held in New Mexico. Motion was seconded by Ms. Lujan and was unanimously approved.

e. **Weapons of Mass Destruction Radiation/Nuclear Hazardous Material Technical Course, Las Vegas Nevada-March/May 2011:** As a continuing training course held in New Mexico, Guam Homeland Security extends the invite to port personnel to attend the Weapons of Mass Destruction Radiation/Nuclear Hazardous Material Course in Las Vegas, Nevada for the period of March/May 2011. Although, travel accommodations will be borne by Guam Homeland Security, the Port would have to cover fuel cost.

Ms. Lujan made motion to approve travel request for twelve participants to attend training for the Weapons of Mass Destruction Radiation/Nuclear Hazardous Material Technical Course which will be held either March, April or May 2011 in Las Vegas, Nevada. Motion was seconded by Mr. Ilao and was unanimously approved.

VII. PUBLIC COMMENT

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

VIII. EXECUTIVE SESSION

No executive session discussed.

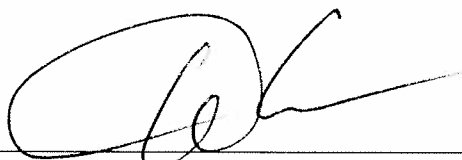
X. ADJOURNMENT

There being no further business to discuss, it was moved by Ms. Lujan and seconded by Mr. Ilao to adjourn the meeting at 7:10 p.m. The motion was unanimously passed.



JOVYNA S.A. LUJAN, Board Secretary, Board of Directors

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

