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Eddie Baza Calvo  
Governor of Guam  
Ray Tenorio  
Lieutenant Governor

**MINUTES OF THE  
SPECIAL MEETING OF THE BOARD OF DIRECTORS  
Friday, November 4, 2011**

**I. CALL TO ORDER**

There being a quorum, the special meeting of the Board of Directors was called to order at 11:50 a.m., Friday, November 4, 2011. Present at the meeting were:

Daniel Tydingco, Chairman  
Michael Benito, Vice Chairman  
Jovyna Lujan, Board Secretary  
Eduardo Ilaio, Board Member  
Shelly Gibson, Board Member  
Pedro A. Leon Guerrero, General Manager  
Anisia B. Terlaje, Deputy General Manager  
Atty. Mike Phillips, Legal Counsel  
Atty. Rick Bordallo, Co-Counsel

Also present were Jimmy Camacho-Senator Tom Ada's office; John Dennett/Maggie Cruz-Agility (Tristar); Jack Mowreader-PMT EA; John Robertson-EA/AmOrient and Port Management staff.

**II. OLD BUSINESS**

1. **Container Yard Lighting**: Ms. Dorothy P. Harris, Chief Planner provided the Board with a container yard lighting chronology of events and said this project has been in discussion for implementation for over a year. As background information, Mr. Joe Javellana, Planning division said in 2007, the Port was awarded two investment justification (IJ) or projects – acquisition of 3 trailerable firefighting pumps and the container yard lighting. The trailerable firefighting pumps have been acquired and completed. With respect to the container yard lighting, it was ready for bid issuance; however because of the modernization program having a lighting component, this project was held in abeyance. The thought process then was if the Port moved forward with the acquisition and installation of the container yard lighting, the potential of having it demolished because of the modernization program was a possibility which would serve as a project in futility. He mentioned that due to the potential finalization of the implementation elements back in August 2011 which provided reasonable indication to resume with the container yard lighting project, staff then coordinated meetings with all parties involved.

In response to the question about the notice to proceed, Mr. Javellana said the Port was issued the notice to proceed back in February 2009; however prior to, additional information was requested which was then provided, such as: pictures, conditions of the container yard, replacement of poles and fixtures, including the preliminary scope of work which was done in-house. The Port then was given the grant adjustment notice releasing the funds.

The Chairman asked whether the specifications meet the needs of the operational division: terminal, stevedore, transportation. Mr. John B. Santos, Operations Manager said the operations division was made part of the meeting discussions and had provided input to the development of the specifications. Mr. Javellana added that during the coordination meeting the Port team consists of the following divisions: Planning, Procurement, Engineering and Operations. He mentioned that operations division dictated the meeting as they are end users of this project and have identified the critical areas to install the lightings from the existing fixtures.

Ms. Gibson asked for the cost of this project. Mr. Javellana said the federal grant is \$834,046.00 which includes the fixture, pole and construction. The design work is being handled by PMT-EA through the Port Enterprise Fund which amounts to over \$100K.

After discussion, the Chairman asked for an estimated project timeline. Mr. Javellana said if approved, the Port is looking to place the advertisement second part of November 2011 and then proceed with the procurement process. Target date for construction award is December 2011. He requested for Board concurrence to proceed with the advertisement and the bid process. Ms. Lujan clarified whether it is the Guam Administrative Rules procurement process that will be used for execution and award of this project. Ms. Harris replied positively. Ms. Lujan asked from the time of contract award, what will be the timeline for execution. Mr. Javellana understands it to be about 10 months.

The Vice Chairman made motion to authorize management to proceed with the advertisement and bid process for IFB No. PAG-CIP-12-001 Container Yard Lighting Project, seconded by Mr. Ilao. Motion was unanimously approved.

2. **Property Lease Report:** Mr. Glenn B. Nelson, Commercial Manager presented the October 6, 2011 property report and addressed those requiring Board action.

1. **Cementon Micronesia** – Requests short term lease to stage construction materials and equipments that are to be used to fabricate the steel silo rings that are to go atop the two completed cement silos. Term of lease is three months. Board authorization is being requested to proceed in the direction where management has identified 34,100 square feet of open space located at Seaplane Ramp to enable Cementon to conduct fabrication and work incidental to their project on the adjacent lot of Golf Pier. This enables Cementon to perform hot work activities that they are unable to do otherwise due to the fuel pier bunkering operations. A security deposit equivalent to monthly rent of total area requested will be made; however, not for purposes of revenue, but will be returned after the three month period of use. The intent is to simply enable them the space needed to support their operation.

The Vice Chairman asked why Cementon is not able to have full access or use of their existing leased area. Mr. Nelson said due to the proximity to golf pier. There are restrictions with use once a vessel bunkers up against golf pier. The activity performed by Cementon is in conflict with bunkering operations.

The Chairman asked about the security deposit. Mr. Nelson said in this particular case the rental will be about \$15K which will be held in trust. The intent is to accommodate an area to Cementon for three months and in the event they exceed that lease period, the security deposit will be surrendered to the Port. He reiterated that this arrangement is to merely allow Cementon a space that they in turn are unable to use in their respective leased area, basically an alternate site to continue their construction (hot work) activity without further delays in their project schedule. Mr. Nelson informed the Board that Cementon Micronesia is currently occupying 1.3 acres of land and paying an annual rent of \$200K+. The area being requested is adjacent to their current leased area. He noted that the distance between the two lots is water. Cementon will fabricate at requested area, then transport such materials to existing site to install.

Mr. Lujan wondered why the Port would not be generating revenue out of this temporary lease term. Mr. Nelson said the goal is to accommodate for additional land to support their construction which is a \$20M project. Ms. Gibson appreciates the goodwill gesture the government extends; however, most agencies charge for staging. The Vice Chairman expressed that in the case of Cementon, they are currently leasing an area, but within that area which they are paying lease for, is not able to fully access it to perform hot work activities and complete their project as scheduled due to the bunkering operations. Cementon is only requesting for a space to perform work that they are not otherwise able to do at their existing site. He said the big picture here is promoting good industry to a company that went through the entire process the right way. They went through the Legislature for an extended term lease; is building a facility that will generate revenue for the island and the Port for an extended period of time; they are current with their monthly rents and are basically requesting for a three month staging area. The Vice Chairman expressed no concern with this request. The Chairman said there is no disagreement with the gesture being proposed; however, asked whether this proposal is permissible by law no matter the request and is under fair market value. Mr. Nelson asked whether the Board would be inclined to authorize the General Manager to proceed with a month-to-month lease subject to legal review.

The Vice Chairman made motion to authorize the General Manager to proceed with the recommendation by management in allowing a short term lease for a period of three months at 34,100 square feet of open space located at Seaplane Ramp to enable Cementon Micronesia to conduct fabrication and work incidental to their project on the adjacent lot of Golf Pier to include rental terms, subject to legal review. Motion was seconded by Ms. Gibson and was unanimously approved.

2. IP&E – Area B – Request use of Area B, the old mobil tank farm for purposes of constructing a new tank farm. Being proposed is two fuel storage tanks at capacity of 175K barrels. Project cost estimate is \$9M-\$11M. This request was made as far back as June 2011 during which time management efforts were made in trying to enable alternatives with

IP&E to invest in the Port owned Area A tank farm. As this approach did not materialize, the request to use Area B moved forward. The General Manager generated a response letter providing the following:

- a. Provide notice to proceed with intent;
- b. Immediate access to site with purposes of survey and engineering studies as required;
- c. Indemnify the Port from those associated work process;
- d. Enter into an initial one year license agreement with a one year option for the period of construction; and
- e. Provide notice that the Port agree in principle to a lease for 25 years; an initial 5 year term, plus two 10 year extension options subject to legislative approval.

The Chairman asked whether the conditions were reviewed by Legal Counsel. Mr. Nelson said a representative of IP&E had just signed the letter which provides that it is subject to legislative and legal review. And, final approvals from both this body as well as IP&E's Corporate.

Relative to lease terms, the Chairman asked how the process was done for Cementon Micronesia. Mr. Nelson mentioned that the terms were stipulated as an initial 5 year term with four 5 year options subject to legislative approval. These terms plus option periods were ratified by the then Port Board of Directors before it was submitted to the Legislature. The Legislature then took that document and basically in principle agreed to the terms and enabled the Governor to give the Port Authority a 30 year lease term with Cementon Micronesia. Legal Counsel said the Port's enabling legislation only allows the Board to enter into a 5 year lease and then pray that the Legislature will grant a 25 year lease to receive a total of 30 year lease term; but the Board does not have the authority to agree in advance for any lease term in excess of 5 years. Mr. Nelson indicated that the language is specific to "subject to legislative approval" for the option periods. He expressed concern that these developers are contemplating multimillion dollar investments, and should require some assurance at the front end at least in spirit that the Port will enter into these term periods to enable them that recover period. Mr. Nelson said as a matter of process done for Cementon - the initial lease term with option periods was agreed to by the parties, ratified by the then Port Board of Directors and then submitted to the Legislature *within the initial 5 year term*. Legal Counsel commented that that process was inappropriate. The Vice Chairman presented the scenario that if the entity is willing to take that risk with the terms of the initial 5 years, plus option periods, would that be doable? Legal Counsel replied negatively. The Board has the authority of only up to a 5 year lease, and for any additional terms would need to lobby the Legislature for a separate lease. He reiterated that the Board does not have the authority to negotiate a lease term beyond a 5 year period. Mr. Nelson clarified whether this also applies to language that provides "subject to legislative approval" for option periods. The Chairman said as pointed out by counsel, the statute that authorizes this body lease authority is specific to only a 5 year term. There are no exceptions. The Vice Chairman said suppose a lease is prepared and agreed upon by all parties only in principle (not ratified by this body) a 5 year term, plus options and then lobby the Legislature for their approval on the lease terms, and upon their approval, ratification will be made by this Board. Is this possible? Legal Counsel replied

positively. Mr. Nelson said if this is the direction of this Board, management will proceed; however, was concerned that this approach may be placing the financial terms in the hands of the Legislature which has not been ratified by this body. The Vice Chairman said point well taken, but with regards to moving this forward management is to present this scenario to IP&E as it is the safest, most efficient approach. He mentioned that the only opportunity given to the Legislature which they already have is approving and legalizing the lease terms, rather than the economics of this arrangement.

Relative to the one-plus-one for purposes of construction, Mr. Nelson asked for Board's approval to proceed with the initial one year license agreement with a one year option for the construction period. The Chairman advised management to apprise IP&E of the Board discussions on their request to determine how they would want to move forward. As to the letter relative to this matter, the Vice Chairman made suggestive changes to item 4 on the conditions to reflect - *with legislative approval prior to ratification*. There were no objections.

Mr. Nelson reminded the Board that this may need the Public Utilities Commission approval as it will exceed \$1M threshold as per the contract protocol manual.

3. IP&E Holdings, Inc. – A background information and chronology of events was provided to the Board and in consideration of the proposed development the effective commencement date be changed from January 2010 to September 2011 for the Agreements (Assignment, F-3 Tank and Bunker Pit Lease and New GEDA Easement Agreement). After some discussion, the Vice Chairman said based on recent events IP&E has agreed to pay the new rent at fair market value as of September 2011. With respect to the length of the lease, the Vice Chairman advised to follow similar method as discussed for in Area A on the option periods. There were no objections.

4. Small Boat Marinas Alternative Management Regime Study – Request is for management to proceed with an outreach program with stakeholders which will be brought back to the Board for ratification. In connection to this, staff is working with the Oversight Chair on legislation aimed to allocate 1.5% - 3% of the Tourist Attraction Fund per year for purposes of implementing an aggressive capital improvement program at both marinas.

As the matter relates, the Chairman asked whether the issue with the anglers and netters have been resolved. The General Manager said there was an incident that occurred, but has since been resolved. Management will issue a news release to the public as a reminder on the prohibition to net at the marinas and the violations involved. He said the current marina rules and regulation is being worked on to provide language that will identify an area for the netters which will go through the triple A process for this amendment. The Chairman directed management that there is no netting to be performed or conducted at the marinas as it is not only a safety hazard, but a prohibition of law. The General Manager mentioned that management and staff will enforce this prohibition.

5. Tristar Terminals Guam, Inc. – Mr. Nelson understands that there was a proposal submitted by Tristar. The Chairman said this item will be addressed in executive

session. Mr. Nelson respectfully requested that before decision is made that staff have the opportunity to review the proposal for consideration.

3. **Program Management Manual:** Mr. Ilao said this item is still pending MARAD response. The Chairman asked Mr. Jack Mowreader, PMT-EA as to the status of the program management manual. Mr. Mowreader understands that Mr. Brian Varney, MARAD is still working on the manual. Mr. Ilao mentioned that he will follow-up with Mr. Varney.

4. **Fiscal Year 2012 Budget:** The General Manager said the Board had approved a quarterly budget; however, requested that items requiring annual payments be lifted, for example the cost of living allowance. The Chairman asked whether the Port is able to deal directly with Retirement Agency as oppose to Department of Administration on this matter. The General Manager said he did inquire with the Director of Retirement and was advised that the idea was practiced in the past; however, due to some confusion it became problematic for some government agencies. He mentioned that Retirement is looking to re-consider the program at some point; in the meantime, asked that the Port work directly with Department of Administration. The Chairman expressed concern why the COLA would be disbursed in its entirety at the beginning of the fiscal year. Mrs. Vivian C. Leon, Corporate Services Manager understands it has been the practice for the disbursement of annual COLA payments at the beginning of the fiscal year, usually on November 1<sup>st</sup>, reason being is that she is aware of retirees that have already received this allowance. This covers annual payment for the year 2012.

The Vice Chairman said aside from Horizon Lines discontinuing its container shipping service on Guam which will resolve itself, the budget has a current revenue stream, the significant change would be when the tariff is implemented which will only increase upwards. Based on this, he does not foresee any concerns releasing the fiscal year 2012 budget as presented with a possible amendment January 2012. The Chairman said the Board could advise that a supplemental budget be prepared at the time or could easily have the budget adjusted accordingly when necessary. The Vice Chairman said as to the list of capital improvement projects to ensure that the line item does not exceed its total dollar figure.

The Vice Chairman made motion to approve the Fiscal Year 2012 Budget as originally presented to the Board, subject to budget adjustments when necessary. Motion was seconded by Ms. Lujan and was unanimously approved.

### **III. EXECUTIVE SESSION**

**RECESSED:** Meeting recessed at 1:10 p.m.

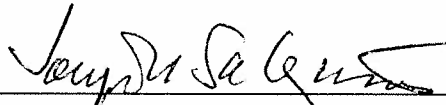
**RECONVENED:** The meeting reconvened at 1:15 p.m.

At this time, the Board went into executive session. Executive Session ended at 2:00 p.m. The Board is now back in regular meeting session.

Items addressed in executive session include Tristar Pipeline Relocation.

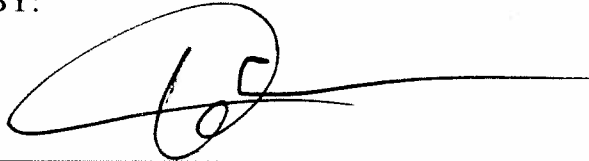
#### IV. ADJOURNMENT

There being no further business to discuss, it was moved by Ms. Gibson and seconded by the Vice Chairman to adjourn the meeting at 2:00 p.m. The motion was unanimously passed.



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

APPROVED BY:



DANIEL J. TYDINGCO, Chairman, Board of Directors

