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Ray Tenorio
Lieutenant Governor

**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, September 22 & 29, 2011**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 11:55 a.m., Thursday, September 22, 2011. Present at the meeting were:

Daniel Tydingco, Chairman
Michael Benito, Vice Chairman
Jovyna Lujan, Board Secretary
Eduardo Ilaos, 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; Rick Bordallo-Phillips & Bordallo Law Office; AnnMarie Muna/Trish Granillo/Alan Rixon-AM Insurance and Port Management staff.

II. APPROVAL OF MINUTES

a. **August 25, 2011:** Mr. Ilaos made a motion to approve the minutes of August 25, 2011 subject to correction. The motion was seconded by Ms. Lujan and was unanimously passed.

III. OLD BUSINESS

1. **Financial Report:** The financial report for August 2011 was presented to the Board for information.

Mr. Ilaos asked the status of the collection agency services. Mr. Jose B. Guevara, Financial Affairs Controller said the contract is currently with Legal Counsel for review. Legal Counsel said the review should be completed this week.

Autonomous Agency Infrastructure Collection Fund (AAICF)

As the closing of fiscal year 2011 draws near, Mr. Guevara reminded the Board about the payment in lieu of taxes in the amount of \$700K. He mentioned that the funding source for this payment would come from the performance management contract budget at \$500K and the lapse funds from the Insurance at \$200K. The General Manager added that the initial amount from Department of Administration totaled \$12,250,000; however, after discussions held with the autonomous agencies and DOA resulted in the payment amount of \$700K for each agency.

Mr. Ilao asked whether a legal document between parties to effectuate this transaction will be made so there are no misunderstandings. Legal Counsel said a memorandum of understanding between Department of Administration and the Port would be appropriate.

Ms. Gibson made motion for Legal Counsel to prepare a memorandum of understanding between Department of Administration and the Port Authority of Guam attaching the Port's memo of May 10, 2011 for the Autonomous Agency Infrastructure Collection Fund also known as "pilot" program - payment in lieu of taxes, seconded by Mr. Ilao. Motion was unanimously approved.

2. **Insurance Report:** The insurance report for August 2011 was presented to the Board for information.

Relative to fiscal year 2012 insurance renewal, Ms. AnnMarie Muna, AM Insurance said the insurance specifications were issued to the carriers on September 3, 2011; deadline being September 19, 2011 to submit quotations. However, as there were questions and clarifications that needed to be addressed, the Port extended the deadline to September 26, 2011 at 6:00 p.m. She understands that the insurance application was signed on August 19, 2011. AM Insurance received the insurance specifications on September 1, 2011 and after review, it was issued to the carriers on September 3, 2011.

expressed with concern about the period from August 19, 2011 thru September 1, 2011. that it was still with the Port.
The Chairman ~~was concerned about the period from August 19, 2011 thru September 1, 2011. that it was still with the Port.~~ Mrs. Alma B. Javier, Procurement Manager provided the following:

- August 19 – the insurance application was signed by the General Manager.
- Thereafter, the application, along with the specifications and data was forwarded to the Port's insurance consultant for review.
- August 27 – Port received the information back from its consultant and then finalized the documents.
- September 1 – official transmittal of the insurance package to AM Insurance.

Ms. Muna said AM Insurance will be meeting with the Port Committee on September 27, 2011 to review the proposals submitted by the carriers. The Vice Chairman asked whether that is sufficient time. Ms. Muna said there are no additional requests for extensions made and given the existing insurance policy expires September 30, 2011, the information will be ready by then.

At this time, discussions were made about the timing element as the idea is to ensure a responsive participation of candidates to select from, while also making sure there is no lapse in insurance coverage. It was also expressed that for next insurance renewal that this process commence sooner. Without objections, Mr. Mike Moody, Port Risk Insurance Manager informed the Board typically the starting process to work on the insurance package is mid May and the Port was provided with the insurance specifications since May 24, 2011.

Mr. Guevara noted as to whether this matter would need to go before the Public Utilities Commission (PUC) for review and approval. He reminded the Board based on the contract protocol with PUC; they have oversight on any contract(s) exceeding \$1M involving the Port. Mrs. Javier mentioned that the Port insurance contract is with AM Insurance, an inclusive broker of the Port, who is responsible for placing the policies with the different carriers. The Port does not have a contract with these different carriers, but only through the broker. The Chairman advised management to proceed with the process and requested that contact be made with PUC for clarification on this matter. The Board has to continue its due diligence to ensure the Port has proper insurance coverage without it lapsing.

3. **List – Federal Grant / Local Funding Programs:** Ms. Dorothy P. Harris, Chief Planner said there are two projects due to expire end of this month, that being the protocol manual and project management services which is funded under the OEA grant. The Port will be seeking an extension to March 2012. The Vice Chairman asked whether the protocol manual vetted through the committee spearheaded by member Ilaio, can be used as a deliverable. Ms. Harris said the Port can seek an amendment as an option to exercise after an approval on the extension is granted.

a. **Status-ARRA Tiger Grant III Application Submission:** Ms. Lujan said she was able to review the MSR draft and commended staff for the work produced; however, she felt the net application of \$2M knowing the average award of the grant is at least \$12M was inadequate and wanted to see this as an opportunity to seek for additional federal dollars by the Port. Ms. Lujan pointed out the Port's budget has an appendix showing \$7M plus of unfunded capital improvement projects, and since the average award is \$12M-\$15M, she encouraged the Port to submit a solid package for \$15M-\$20M and see how it goes. Ms. Harris understands the points being raised and said in terms of the urban areas the minimum application is \$10M, but as a rural area the minimum is \$1M. She expressed the challenges being faced with this grant and the requirement of identifying projects that are shovel ready and which such projects must be completed within a 24 month period. One other challenge her staff is facing is determining what projects to identify when the Port is in a state of flux with its implementation plan. Ms. Harris informed the Board when an agency receives federal funds it enters into an obligation with the federal government to fulfill what is promised with those monies, so it is incumbent upon such agency to ensure that the obligation is realistic. Ms. Lujan disagrees with her statement and said there are facilities within the modernization program that are not likely to get funded over the short term, so there is a strong potential project candidates within the modernization program that clearly views acceptable in the terms of the ARRA Tiger Grant. She stated outside of that program, there are the marinas which need to be improved and other internal capital improvement projects. She further disagrees the application as it stands in draft form is good to

go as the Port's best foot forward and felt that management should aggressively push forward on this grant as it is a duty to do so to better improve port facilities. Ms. Lujan commented that it may not get approved, but does not think the Port should step down from that posture when federal dollars are involved.

Mr. Ilaos asked what project is currently being applied for. Ms. Harris said current total of the project is \$3.4M which includes the maintenance, supply and rigging building (MSR) and the terminal drainage and pavement repair, and as a rural area qualifies for 100% federal funding. The Chairman said to the point raised by member Lujan, he asked whether projects outside the reset of the modernization program can be considered. Ms. Harris replied in looking at the application for the two projects identified, is evident it is ready to go which qualifies under the grant criteria. She noted when the federal reviewer sees a full scope of work, a full budget breakdown, it will show that these projects are shovel ready which is difficult to provide for other port projects. Mr. Ilaos asked for the definition of 'shovel ready'. Ms. Harris said basically completing all environmental work complying with NEPA requirements and being at the stage of obtaining a construction permit to commence work. The General Manager mentioned that planning staff is working closely with the Port's OAE consultant through this grant process.

b. **\$2M DOI Funding – Technical Support Assistance:** Ms. Harris said the Port received notification that the Guam State Clearinghouse will be announcing awards on funding status by October 1, 2011.

4. **Port Modernization Program – Implementation Plan:** The General Manager said PMT-EA was to provide the cost estimate for the implementation plan by September 15, 2011; however, this information has yet to be received. The cost estimate will assist in identifying projects of priority. He mentioned there have been some overtures which MARAD is looking more towards improvement to the waterfront area. He was concerned the more monies spent into the waterfront will be much less to support the upland project which management and stakeholders have been working diligently towards. The Vice Chairman understands that the cost estimate will be provided simultaneously with the ABAM report of the wharf.

5. **Program Management Manual:** Mr. Ilaos said work sessions were held on September 6 & 8, 2011 to address this item with representatives of MARAD, PMT-EA and Port Management. There were good discussions and areas that were addressed. He mentioned that the next step is for MARAD to bring the manual to their management and legal counsel for further review; afterwards their final version will be forwarded to the Port. He thanked management and staff for their support during the work sessions.

6. **Ratification - Task Order 28-9 Project Management:** With the guidance of member Lujan, the General Manager said discussions were held with management on the project management services of OAE. During discussions, it was agreed that the three month service of September 15, 2011 thru December 15, 2011 will now be for a period of four months ending January 15, 2012. In this transition period, management will begin to take control of the projects this task order requires, leaving OAE to perform services as needed. OAE has been apprised of this modification and will begin to turn over certain projects that apply.

The Chairman mentioned that in his review of the task order, suggested that an amendment be made to Section A to read: "... to increase the available revenue for services contained herein." He was concern that if there is a performance period or the use of *or until funds have been expended whichever occurs first*, the consultant could conceivably expend those funds by the end of this month. Although it is understood that tracking of the task orders will be made by management, he wanted to ensure funding is available to cover all the services as provided for in the task order. The Vice Chairman wondered how the amendment would preclude the consultant from expending the funds all at once. He was more in favor of leaving a performance period in the verbiage so that the individual who is performing the work understands that during this period and for this amount the task has to be completed. The Vice Chairman believes that the point being made is that all work is to be approved by management.

In Section B, the Vice Chairman suggested that the word 'or' be removed from the verbiage. There were no objections.

The Vice Chairman made motion to ratify OAE Task Order No. 28-9 Project Management in the amount of \$393,397.00 subject to corrections made, seconded by Ms. Gibson. Motion was unanimously approved.

7. **Budget Approval – Fiscal Year 2012:** Mr. Guevara said as a result of the budget working session, being presented before the Board is the first quarterly report budget for fiscal year 2012. He mentioned that basically the budget lays out the operational expense and the capital improvement projects plan. The budget expense was reduced to 25% for each category. He presented a revised budget grand summary as of September 22, 2011 as there were corrections made to the federal reimbursements. Mr. Guevara said in addressing the concern of the Board relative to the capital improvement projects adjustments were made. He explained that the ongoing CIP projects consist of the catwalk; task order 28 projects; Mobil pipeline; marine design and wetland delineation. Other areas addressed were the vacancies and staffing pattern.

The Vice Chairman made motion to approve the fiscal year 2012 quarterly budget covering the periods of October 2011 thru December 2011 as revised, seconded by Mr. Ila. Motion was unanimously approved.

8. **Status of Lease Agreements:** Without objections, the Chairman said this item will be addressed in executive session to resolve legal matters.

IV. NEW BUSINESS

1. **Public Law 30-100 – Crane Procurement:** The General Manager said a letter was recently sent to the Port Legislative Oversight Chair to seek other options in terms of acquiring a crane as mandated by Public Law 30-100. A proposed legislation was attached to this letter and is hopeful for legislative consideration.

2. **PAG 09-001 Owner's Agent/Engineer Consultant Agreement – Third Option**

Year: The General Manager said the Port's consultant, Parsons Brinckerhoff submitted a letter dated August 30, 2011 notifying the Port of their OAE consultant master agreement services is to expire on February 2012 and would like to exercise their third year option for continued services. He mentioned that the funding source to support this service is through an Office of Economic Adjustment grant that extends through December 2012. Ms. Lujan informed the Board that the master contract is basically the parent contract of Parsons Brinckerhoff that allows for services to continue as performed by OAE. This is being presented for Board's consideration and she recommended that it be acted on in sync with the budget. The Chairman said given the expiry term of February 2012 and that the budget was approved for the first quarter, there is still time.

3. **2011 AAPA – Professional Port Manager Program (PPM) Certification: Marine Terminal Management Training, October 17-20, 2011, Long Beach, CA:** The Vice Chairman made motion to approve travel authorization in the amount of \$10,713.92 for Messrs. Jose B. Guevara, Financial Affairs Controller and Glenn B. Nelson to attend the AAPA Marine Terminal Management Training, October 17-20, 2011 in Long Beach, California as part of their professional port manager program. Motion was seconded by Ms. Lujan and was unanimously approved.

V. PUBLIC COMMENT

No public comment made.

VI. EXECUTIVE SESSION

RECESSED: Meeting recessed at 1:20 p.m.

RECONVENED: The meeting reconvened at 1:25 p.m.

At this time, the Board went into executive session. Executive Session ended at 2:25 p.m. The Board is now back in regular meeting session.

Items addressed in executive session include:

- Performance Management Contract
- Guam YTK
- Notice of Area Availability
- Tristar
- Marylou S. Gogo vs GovGuam
- Mobil
- Performance Evaluation – General Manager
- IP&E

RECESSED: The Vice Chairman made motion to recess the meeting to Thursday, September 29, 2011 at 11:00 a.m., Port Authority Board Conference Room, Piti for purposes of a continued process for the insurance program and to obtain additional information to further

address items on the agenda. Motion was seconded by Mr. Ilaio and was unanimously passed. The meeting recessed at 2:25 p.m.

RECONVENED: There being a quorum, the Chairman called the meeting to order at 11:00 a.m., Thursday, September 29, 2011. Present at the meeting were:

Daniel Tydingco, Chairman
Michael Benito, Vice Chairman
Jovyna Lujan, Board Secretary – *Telephonic Attendance*
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; AnnMarie Muna/Trish Granillo-AM Insurance; Fishing Group-Tohn Tedtaotao, Edward Tedtaotao, Vicente Yoshida, Frank Tedtaotao, John Ballesta, Ronny Cruz, Judy Cruz, Frank Santos, Lewie Santos, Mike DelValle, Margaret Bamba, George Bamba; Thelma Hechanora-Ocean Solutions, Jack Mowreader-PMT EA and Port Management staff.

1. **Insurance Renewal - Fiscal Year 2012:** Mrs. Javier said the Port's Insurance Broker solicited bids and proposals from different insurance markets, having eight responsive bidders, resulting with three insurance firms that best meets the necessary specifications and requirements to provide insurance coverage for the Port. In comparison, insurance premiums for fiscal year 2011 was at \$1,838,467.36 and fiscal year 2012 being proposed is \$1,838,528.24, resulting in a savings of \$3,939.12. The following was presented and explained to the members:

Insurance Coverage	Fiscal Year 2012 (Proposed)	Fiscal Year 2011
Property & Liability Package	\$1,768,500.00	\$1,759,438.36
Directors & Officers Liability	\$46,875.00	\$42,744.00
Automobile Insurance	\$14,990.74	\$30,035.00
Crime Insurance	\$4,162.50	\$6,250.00
Total Premiums	\$1,834,528.24	\$1,838,467.36

Relative to the concern of whether this matter requires the Public Utilities Commission review and approval pursuant to Public Law 30-52, the Chairman cited a provision which includes that *the Utility (includes Port Authority) shall not however, enter into contractual agreements or obligations which could increase rate and charges prior to the written approval of the Commission.* He said based on his read contemplates increases. Co-Counsel said having not seen the contract protocol between the Port and PUC, however understands that the threshold is \$1M of any contracts or obligation requiring PUC approval. Mr. Ilaio commented that based on what was said reflects increases, but what is being presented is a decrease. Co-Counsel commented that the contract protocol established by PUC should define what contracts or obligations results in an increase tariff or rates. The Chairman advised Legal Counsel to

communicate with the PUC Administrative Law Judge as soon as possible, noting the urgency in this matter. He expressed to management that for future and to avert this from reoccurring, that any and all Port affairs requiring various regulatory body's review and approval to ensure sufficient time is factored into the process. The Vice Chairman expressed concern that that particular provision puts the onerous on the Port and is certain that the PUC process is not likely to happen within a couple days. The Chairman understands the concern and said having had experience with PUC process there may be an alternative and option where the Administrative Law Judge is able to act on behalf of the PUC to make an administrative decision without the entire body convening. He said the PUC will be practical in this regard given the circumstance of this matter.

Mr. Ilaio made motion to approve the Insurance Renewal for Fiscal Year 2012 for the period of October 2011 thru September 2012 in the premium amount of \$1,834,528.24, subject to the notification to the Public Utilities Commission. Motion was seconded by Ms. Lujan and was approved by a majority vote. The Chairman, member Lujan and member Ilaio voted in favor of the motion. The Vice Chairman and member Gibson recused themselves from voting due to conflict of interest.

2. **Port Logo:** The Vice Chairman made motion to approve the "Port of Guam" logo for Jose D. Leon Guerrero Commercial Port, seconded by Ms. Gibson. Motion was unanimously approved.

3. **Status-ARRA Tiger Grant III Application Submission:** Mr. Jose G. Javellana, Planning Division said that planning staff with the assistance of the Port's OAE consultant worked aggressively to identify potential projects for this grant. He mentioned that there were initially two projects; however, in addressing the concerns of the Board to determine the applicability of other potential projects that may be eligible candidates under this grant, he mentioned the following:

- Construction of new maintenance, supply and rigging (MSR) building
- Container yard drainage and pavement repair
- Welding shop renovation
- Container freight station (CFS) operations facility renovation
- Construction of inbound/outbound optical character recognition (OCR) canopy portals
- Construction of administration building annex

Mr. Javellana said the total program cost amounts to \$11,902,827.29 inclusive of the contingency cost. The Chairman asked whether these projects are included in the modernization plan. Mr. Javellana mentioned that the projects are identified in the master plan as approved, but not part of the Phase IA implementation program projects.

V. PUBLIC COMMENT

Hagatna Boat Basin – Net Fishing

Mr. Felix R. Pangelinan, Harbor Master said the concern raised by the fishing group is to be provided with a suitable area for their recreation of seasonal fishing at the Hagatna boat basin. In addressing this matter, he informed the Board that a meeting was held with the fishing group and resulted in an amicable solution. As agreed upon by the fishing group, the proposal is to amend the Marina Rules and Regulations to allow net fishing in a designated area.

At this time, members of the public were recognized to speak.

Mr. John Tedtaotao, local fisherman: *On behalf of the Fishing Group, I am appreciative of this opportunity to be able to inform this Board how important it is fishing at Hagatna boat basin is to us fisherman. It just happens to be one of the greatest and most enjoyable spot that never fails to have great catch of the seasonal fish – manahak (rabbit fish), atulai (mackerel) and achenchon (rainbow runner). These pre-seasonal types of fish are the very few delicacy in Guam and yet very popular among the diverse nationality of the people now living in Guam. As a fisherman I can tell you, you cannot purchase these items commercially. It is only caught by a fisherman you see standing beside me. To accommodate our island needs for these fish is challenging for us, even more so to be told we were to never be allowed to net fish at Hagatna boat basin. How can you take away this wonderful body of water at Hagatna boat basin. It is our most prime spot to start us off. Many times in such abundant that quite a few groups at the same time are able to receive such great fortune as a fisherman to catch. We are happy, the community are happy, all over Guam is happy, our family are happy when these fish are in season. If we were never allowed this area to be open to net fishing, it would be forgotten delicacy due to the fact that these fish don't always migrate in such abundance in other area around our island. In addition to net fishing, you never come down and see just who are pulling this fish out of the net and enjoying it and most of all learning how to fish. It is our children, grandchildren who all participate. These are the people who are our future fishing generation to carry on one day. This spot Hagatna boat basin has such wonderful memories for many of our friends. We are able to look into the wonders of net fishing, non-commercial, but a wonderful way of life. It is in your hand and in your heart as our leader toward the destiny of us, your very own island people, fishermen, to allow us to continue without threat or confiscation of our equipment. Your destiny was to be our leader of Guam, our destiny is to fish for Guam. Our location is Hagatna boat basin which we are prohibited at this time only because of the law created previously. We are the generation of fisherman that needs Hagatna boat basin as one of our very few yet most important location for us to fish in. There is so much more than the fishing itself, goes deeper than that, mine goes into the heart and mind, it is our culture of fishing to the next generation. Dankulu na si yu'os ma'ase todus hamyu. Let's unit together and amend this law expeditiously that prohibits this endeavor. We ask as soon as possible to give us our temporary pass of starting today and you watch you will see atulai from Hagatna boat basin. Atulai is still in season. We are able to see our island eat healthy, we are able to help our families who have no job – we are just asking for support – this is our way of life. Please don't let us wait too long, the holidays are coming. The holiday is coming soon, fisherman are starting*

their family, their Christmas decoration soon. Honestly, this is our Christmas shopping time – believe it or not. Thank you.

Mr. Manny Duenas, Fisherman's Coop: Thanked the Board for support of the fishing community for the upgrades to the Hagatna and Agat marina. Recognizing the uniqueness of Guam's Fisheries, the need by the local community to afford a supply of fresh local fish, through either self-harvest (rod and reeling) or the harvest (net fishing) efforts by Mr. Tedtaotao and his group; and harvest efforts by others. He proposed recommendations for consideration by the Board as follows:

- No fishing within the boundaries of the channel. Reference points are north east point known as dry dock area. No nets are to be used within 100 yards of the channel entrance markers.
- The shoreline area along the Paseo Des Susanna shoreline shall be designated for the use of anglers and shoreline casting of the net.
- A surround net may be used in the area known as the outer basic with the following conditions: soak time shall not exceed 24 hours; permitted fishing may be on a rotational basis among recognized operators in area designated; and at no time should the use of the gear described impede marine traffic recognizing that the outer basin has moored vessels.
- Violators of the net prohibition within the channel boundaries shall not be permitted to use the nets to fish within the allowed fishing zone for a period of one year. This restriction applies to the seasonal appearance of all marine species harvested and does not apply to none seasonal use of all other legal harvesting devices.
- Swimming in the boundaries of the marina channel is strictly prohibited.

Mr. Duenas said there are marina operators that are operating outside the channel markers that has to be regulated because it is a safety hazard and affects the atulai coming in.

Mr. Mike T. DelValle: *Fisherman are trying to self subsidize our lives. This is a chance for our people to contribute to the economy and to sustain themselves, yet the law prohibits us from doing that in Hagatna harbor. Mr. Pangelinan has a very good proposal where we can co-exist with the rod and reelers and the netters. This is a fair compromise so at least we will be able to have our livelihood and the rod and reelers will still be able to enjoy their recreation. So I agree with what Mr. Pangelinan has proposed.*

Without objections, the Chairman advised Mr. Pangelinan to work this through with the parties concerned.

VI. 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 1:30 p.m. The Board is now back in regular meeting session.

Items addressed in executive session include IP&E; Cementon Micronesia; Guam YTK and Tristar.

VII. ADJOURNMENT

There being no further business to discuss, it was moved by the Vice Chairman and seconded by Ms. Gibson to adjourn the meeting at 1:30 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

