

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into on the date indicated below by and between Leonora Leon Guerrero ("Employee") and PORT AUTHORITY OF GUAM ("Management") whereby both parties release and discharge all rights, claims and demands upon the terms and conditions provided herein.

RECITALS

WHEREAS, Employee filed an adverse action appeal of her termination from employment with the Port Authority of Guam titled *Leonora Leon Guerrero vs. Port Authority of Guam*, Civil Service Commission Case No. 13-AA11T as permitted by Guam law creating administrative rights to redress termination of non-probationary permanent employees of the government of Guam and its autonomous agencies, which appeal resulted in a determination in Employee's favor and thereafter Management filed a Petition for Judicial Review which has resulted in the matter now being returned to the Civil Service Commission and which matter is now denominated as *Leonora Leon Guerrero vs. Port Authority of Guam*, Civil Service Commission Case No. 13-AA11T-SP (hereinafter referred to as the "Litigation"); and

WHEREAS, Employee and Management desire to amicably resolve the adverse action appeal through this Agreement, and any and all claims related thereto, whether filed or unfiled, asserted or unasserted, threatened or not, known or unknown to exist without any admission of wrongdoing by any party; and

WHEREAS, Employee and Management agree that the terms of this Settlement Agreement are a personnel matter and privacy hereof is required to be preserved such that this Settlement Agreement shall be confidential and only disclosed by the parties as law may require or as necessary to enforce the rights of either party hereunder; and

WHEREAS, Management has been consulted as to the application of the Port's personnel rules and regulations regarding back-wages, annual leave, sick leave, and retirement benefits, is satisfied as to the compliance thereof of the terms of this Agreement and after such consultation has approved through Board resolution on December 19, 2019 that this Agreement shall be offered to Employee; and

CONFIDENTIAL SETTLEMENT AGREEMENT between
LEONORA LEON GUERRERO and PORT AUTHORITY OF GUAM

Employee's Initials: 

Management's Initials: 

WHEREAS, the Staff Attorney of the Port Authority of Guam has been authorized through Board Resolution on December 19, 2019 to offer settlement terms to Employee, and the Deputy General Manager of the Port Authority of Guam has been authorized through Board resolution on December 19, 2019 to execute this Agreement following its execution by Employee;

NOW, THEREFORE, Employee and Management agree to end and terminate the Litigation upon the following terms and conditions:

TERMS AND CONDITIONS OF AGREEMENT

1. Employee and Management shall enter into a Stipulated Judgment to be entered by the Civil Service Commission of the Government of Guam, by which Employee's appeal of the adverse action taken against Employee by Management shall be fully resolved, without disclosure of the terms of this Settlement Agreement, unless and until such time as either party may determine in good faith that it is necessary to enforce the terms of this Settlement Agreement. Employee and Management agree that the Civil Service Commission shall retain jurisdiction to enforce the Stipulated Judgment.

2. Management agrees to rescind the adverse action taken against Employee and reinstate Employee to the position of Planner Work Coordinator, at the Safety Division, earning \$24.96 per hour, and with all benefits, rights, privileges, obligations, duties and responsibilities related to such employment within the government of Guam according to the laws of Guam, and the Personnel Rules and Regulations of the Port Authority of Guam. Employee shall be reinstated effective January 6, 2020.

3. Management further agrees to make Employee whole for all compensation, benefits, or other remuneration or compensation that Employee would have earned had the adverse action not been taken against Employee (hereinafter referred to as "Back Wages") and to provide to Employee's Counsel assurances of completion of these obligations. The Back Wages are subject to setoff for income earned by Employee during the period of Employee's termination, which amount shall be that amount already disclosed to Management by Employee. As of January 4, 2020 the total amount of Back Wages after setoff is calculated to be \$189,316.15. Management shall further deduct from the Back Wages and make payment to: the government of Guam Retirement Fund for Employee's share of retirement fund contributions in amounts that restore Employee to what Employee would have contributed or paid had Employee remained in employment at the Port Authority of Guam (along with Management's matching contribution); Medicare; and all applicable taxes and withholdings; and within 60 days provide assurance to Employee that such withheld amounts have been timely paid to the appropriate entity for which the deduction has been made. Employee's Back Wages shall be payable in three installments: \$22,000.00 on January 6, 2020; \$113,589.80 on or before March 6, 2020, and \$53,726.35 on or before January 4, 2021.

The first installment shall only deduct regular payroll taxes. Employee's portion of retirement contributions shall be deducted percentage pro rata from the second and third installments.

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Employee's Initials: LG

Management's Initials: AG

4. Management shall restore to Employee credit for all annual leave that Employee would have accrued, had she remained in employment at the Port Authority of Guam, which is 320 hours in accordance with Guam law and the Port's Personnel Rules and Regulations. In the event that Employee desires separation from the government of Guam immediately after reinstatement, Management shall pay to Employee the amount of \$7,987.20 as cash out of her annual leave, as permitted by Guam law and the Port's Personnel Rules and Regulations. If Employee shall separate from the government of Guam at a later date, the cash out amount of annual leave shall continue to be adjusted according to Guam law and the Port's Personnel Rules and Regulations.

5. Management shall restore Employee credit for all sick leave, that Employee would have accrued, had Employee remained in employment at the Port Authority of Guam, which is 846 hours in accordance with Guam law and the Port's Personnel Rules and Regulations. In the event that Employee desires separation from the government of Guam immediately after reinstatement, Management shall pay the amount of \$21,116.16 as cash out of her sick leave, as permitted by Guam law and the Port's Personnel Rules and Regulations. If Employee shall separate from the government of Guam at a later date, the cash out amount of sick leave shall continue to be adjusted according to Guam law and the Port's Personnel Rules and Regulations.

6. Management shall further pay Employee's attorney's fees, and legal costs and expenses, as provided by 4 Guam Code Annotated §4406.1 by making direct payment to Attorney Leevin T. Camacho in the amount of \$21,754.50 and making payment to Attorney Curtis C. Vandeveld in the amount of \$28,800.00 for which Management will issue an IRS form 1099 reflecting such payment to the tax authority. Such attorney's fees shall be payable only upon presentation of invoices to Management after execution of this Agreement, *on January 6, 2020.*

7. Management agrees to expunge Employee's record of this termination and the adverse action upon which it is based pertaining to the Litigation.

8. Management agrees that any payment deferred hereunder shall become immediately due and payable to Employee upon termination of Employee or resignation by Employee, should such event occur before the date that any payment provided hereunder is due.

9. It is stipulated and acknowledged that each party hereto has read and understands the meaning of each term of this Settlement Agreement, that this Settlement Agreement is made without duress or undue influence of any kind, and that each Employee and Management are aware of their respective rights, and each has had a full and fair opportunity, to consult with their or its own legal

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Employee's Initials: 

Management's Initials: 

counsel or seek legal advice in negotiating, executing and understanding the legal effect of this Release and this Agreement.

10. It is intended by the parties, each of them, that this Settlement Agreement is complete and shall not be subject to any claim of mistake of fact or law. This Agreement has been carefully reviewed by all parties, each of whom has had an opportunity to participate in its drafting by making changes, additions, or deletions. This Agreement expresses a full and complete settlement of liability claimed and denied as against the one party may assert against the other party. Other than what is specifically stated in this Settlement Agreement, no other promises of any kind have been made by any party to this Agreement, and regardless of the adequacy or inadequacy of the consideration exchanged, this Agreement are intended to avoid litigation and to be final and complete in full.

11. Upon execution of this Agreement, the Port and Employee, on behalf of themselves and of any and all natural and non-natural persons or governmental instrumentality who may succeed in respective interest of the Port or of Employee (all such parties are hereinafter collectively referred to as "Releasers") hereby mutually release any and all claims and forever discharge one another, together with each of their respective employees, agents, spouses, heirs, executors, administrators, directors, officers, insurers, successors and assigns as well as all other persons or entities (collectively "Releasees") of and from any and all legal liability, claims, obligations, demands, damages, actions and causes of action of every kind, arising out of or in any way connected with their employment relationship to date, including without limitation, those claims which were raised or might have been raised in the Litigation, whether currently known or unknown, and whether knowable or unknowable.

Further to this Paragraph 11, both Employee and Management, hereby waive any and all rights under Title 18 Guam Code Annotated Section 82602, which has been fully explained to the party by the party's own attorney, which states as follows:

Section 82602. Certain claims unaffected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. [Source: 18 Guam Code Annotated § 82602.]

12. The RECITALS stated herein are part and parcel of this Release and Agreement; and they accurately express the claims and intentions of the Parties.

13. It is agreed and stipulated by the Parties that the consideration for this Release and Agreement

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Employee's Initials:

Management's Initials:

is a fair and reasonable settlement, and that this Release and this Agreement are made in good faith.

14. Should either party bring suit in court to enforce any of the terms of this Release or this Agreement, it is agreed that the prevailing party will be entitled to reasonable attorney fees and costs.

15. Any Party who has to enforce this Agreement may disclose only such parts of this Settlement Agreement as are necessary to enforce its terms.

16. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

The undersigned are hereinafter bound to this Release and this Agreement under the terms and conditions stated herein:

Dated: 12/23, 2019


Employee:



Leonora Leon Guerrero

Management:

Dated: 12/23, 2019



DEPUTY GENERAL MANAGER FOR PORT
AUTHORITY OF GUAM authorized by the
Board of Directors evidenced by duly passed
resolution attached hereto.

CONFIDENTIAL SETTLEMENT AGREEMENT between
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Employee's Initials: 

Management's Initials: 

ACKNOWLEDGEMENTS

Hagatna)
) ss:
CITY OF Guam)

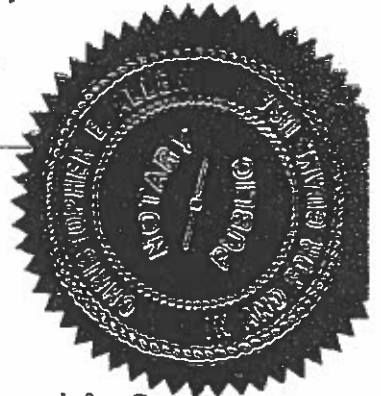
On this 25th day of November 2019 before me, a Notary Public in and for Guam, personally appeared Employee LEONORA LEON GUERRERO, known to me to be the person whose name is subscribed to the foregoing SETTLEMENT AGREEMENT and acknowledged to me that he executed the same as her/his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.

) S E A L (



NOTARY PUBLIC



TERRITORY OF GUAM)
) ss:
VILLAGE OF HAGATNA)

CHRISTOPHER E. ALLEN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **OCT. 05, 2021**
PMB 386 STE 101 TAMUNING, GUAM 96913

On this 23rd day of December 2019, before me, a Notary Public in and for Guam, personally appeared A DULY AUTHORIZED REPRESENTATIVE FOR THE PORT AUTHORITY OF GUAM, whose name is subscribed to the foregoing SETTLEMENT AGREEMENT and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

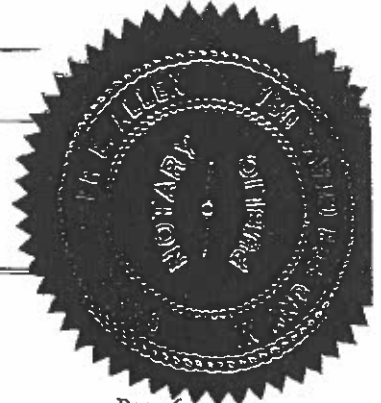
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.

) S E A L (



NOTARY PUBLIC

CHRISTOPHER E. ALLEN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **OCT. 05, 2021**
PMB 386 STE 101 TAMUNING, GUAM 96913



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Employee's Initials: 

Management's Initials: 

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Maria D.R. Taitano, Member
Anthony P. Chargualaf, Jr., Member



Resolution No. 2019-20

**RELATIVE TO APPROVING AN OFFER TO SETTLE ADVERSE ACTION APPEAL
BETWEEN THE PORT AUTHORITY OF GUAM AND
MRS. LEONORA V. LEON GUERRERO**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, the Port Authority of Guam and Mrs. Leonora V. Leon Guerrero are presently engaged in litigation under Civil Service Commission Case No. 13-AA11T-SP (the "Adverse Action Appeal"); and

WHEREAS, the Board of Directors has instructed that Port Legal Counsel engage with Mrs. Leon Guerrero's attorney and amicably resolve the Adverse Action Appeal through a settlement agreement; and

WHEREAS, the Board of Directors, after receiving advice from Counsel has agreed to offer the terms of the Settlement Agreement presented in confidence to the Board in privileged communications; and


WHEREAS, it is in the best interest of the Port Authority of Guam to offer said settlement and terminate litigation with Mrs. Leon Guerrero; now therefore be it

RESOLVED, the Port Authority of Guam will offer the settlement agreement to Mrs. Leon Guerrero as presented to the Board of Directors in confidence and as set forth in the terms and conditions of said agreement; and be it further

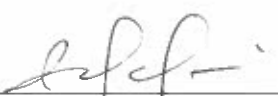
RESOLVED, the Deputy General Manager of the Port Authority of Guam is authorized to execute and deliver all documents and undertake or order such acts as are necessary to comply with the terms of the settlement after Mrs. Leon Guerrero has signed it; and be it further

RESOLVED, the Civil Service Commission shall be notified of the settlement and both parties' desires to withdraw the litigation before the Commissioners and comply with the Rules and Regulations of the Commission with regards to settlement of the Adverse Action Appeal.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 19th DAY OF DECEMBER, 2019.**



FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM



ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

