



PORT OF GUAM
ATURIDAT I PUEYTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

REGULAR MEETING OF THE BOARD OF DIRECTORS
Jose D. Leon Guerrero Commercial Port
Thursday, January 20, 2022
Virtual Board Meeting
3:00 p.m.

A G E N D A

I. CALL TO ORDER

II. ELECTION OF OFFICERS

III. APPROVAL OF MINUTES

1. December 23, 2021 – Regular Board Meeting

IV. PUBLIC COMMENTS:

- a. Public Comments
- b. Employee Comments
- c. PAGGMA Association

V. GENERAL MANAGER'S REPORT (deferred to Old/New Business Items)

VI. OLD BUSINESS

VII. NEW BUSINESS

1. IFB-PAG-022-002 Ultra Sulfur Low Diesel (Resolution No. 2022-03 relative to petitioning Public Utilities Commission for approval)
2. Resolution No. 2022-01 Relative to adopting the recommendations made by the Office of Public Accountability (OPA) in its performance audits (OPA Report No. 21-03 and OPA Report No. 21-09), specifically the ratification of back wages provided for seven (7) recently reinstated Port employees, as recommended by the OPA, and ratifying such action specifying legal remedies; i.e., compensation of the total back wages, interest, and legal fees and costs, and to further providing herein a structure establishing uniformity and consistency in how Port management will prospectively address these personnel matters.
3. Resolution No. 2022-02 Relative to the approval of Cementon Micronesia, LLC's request to pledge its leasehold interest in Parcel 3-1
4. Performance Evaluation of General Manager and Deputy General Managers

VIII. ADJOURNMENT



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**MINUTES OF THE
REGULAR MEETING OF THE BOARD OF DIRECTORS
Thursday, December 23, 2021**

I. CALL TO ORDER

There being a quorum, the regular meeting of the Board of Directors was called to order at 10:05 a.m., Thursday, December 23, 2021. Present at the meeting were:

Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Board Member
Dr. Judith P. Guthertz, Board Member
Rory J. Respicio, General Manager
Dominic G. Muna, Deputy General Manager, Operations
Luis R. Baza, Deputy General Manager, Admin/Finance
Atty. Christine K. Claveria, Port Staff Attorney

Also present were Governor Lou Leon Guerrero; Xavier De Ramos-Senator Telenia Nelson's office; Senator Sabina Perez; Senator Tony Ada; Port OAE Consultant-Blaire Garcia, Jim Reed, Hardik Gajjar, Rob van Eijndhoven; and Port Staff.

II. APPROVAL OF MINUTES

1. **November 24, 2021 – Regular Board Meeting.** Director Koki made motion to approve the minutes of November 24, 2021, subject to correction. The motion was seconded by the Vice Chairman and was unanimously passed.

III. PUBLIC COMMENTS

- a. **Public Comments:** None.
- b. **Employee Comments:** None.
- c. **PAGGMA Association:** Mr. Steven Muna, PAGGMA Vice President mentioned that the members will be receiving a gift this year and that the election of officers will be held on December 28, 2021.

IV. GENERAL MANAGER'S REPORT

1. **Organizational Climate Survey.** On December 17, 2021, a survey questionnaire was distributed to all Port employees to allow them the opportunity to anonymously rate different levels of the Authority to provide Board members the status of the overall climate at the Port, highlight successes, identify areas in need of improvement, and feedback on management's impact to Port administration and operation.
2. **Year-To-Date Finances, as of November 30, 2021.**

REVENUES AND CARGO THROUGHPUT:

YTD Total Revenues as of November 2021 is \$10.4 million. This is 12% or \$1.1 million higher than the YTD November FY22 budget projection of \$9.3M.

The total number of containers handled as of November 2021 is 15,541, which is 12% or 1,685 containers higher than last year's November 2020 total of 13,856.

OPERATING EXPENSES:

Overall YTD Operating expense, as of November 30, 2021 is \$7.7M, which is 11% lower than the YTD budget as of November of \$8.6M, or \$890K in YTD cost avoidances.

YTD OPERATING REVENUES MINUS YTD EXPENSES

Operating revenues minus operating expenses resulted in an operating income of \$2.6 million. The final result for the month of November is a net income of \$1.3 million, after deducting net of Other Income/Expense totaling to -\$1.3 million. The November Net Income is higher by 232% or \$900K as compared to Budget projection of \$387K.

3. **Port COVID-19 Vaccination Dashboard.** 99% or 345 of 346 Port employees have been vaccinated. The remaining individual goes through a weekly Antigen COVID-19 testing.
4. **Demolition of Inoperable STS Gantry Cranes #2 & #3.** Contract for the demolition services was awarded to Guam Shipyard. As soon as all required permits have been obtained, the Port will issue a Notice to Proceed (NTP) with a 12-month Period of Performance.
5. **Demolition of Inoperable Container Yard Equipment.** Contract for the demolition services was awarded to Guam Shipyard. As soon as all required permits have been obtained, the Port will issue a Notice to Proceed (NTP) with a 12-month Period of Performance.

6. Procurement Planning – Container Yard Equipment Acquisition Program

- a. On December 21, 2021, the initial procurement planning meeting was facilitated by the Port's Procurement Division in collaboration with the Strategic Planning and Engineering team members.

7. Procurement Planning – Ship-to-Shore (STS) Gantry Cranes Acquisition Program. On December 21, 2021, the initial procurement planning meeting was facilitated by the Port's Procurement Division in collaboration with the Strategic Planning and Engineering team members.

1. **Year-in-Review.** At this time, the Division Heads presented their year-in-review/milestones and accomplishments on their respective divisions, as follows:

Joe Javellana, Chief Planner, Strategic Planning Division: revenue bond projects procurement; office of local defense community cooperation; federal grants awarded; 2020 master plan update; planned federal grant applications.

Jose Guevara, Financial Affairs Controller, Finance Division: implementation of the JD Edwards Enterprise One (E1) financial management system; building a strong finance team; enhanced financial performance and improved transparency; accomplished clean audit and low-risk status in FY2020 financial audit.

Shawn Cepeda, Acting Personnel Services Administrator, Human Resources Division: strengthening hiring practices to ensure protection of the merit system; on-the-job-training and certifications; workman's compensation program; Civil Service Commission routing of personnel actions; personnel actions processed; light duty accommodations; in-house training.

Bernadette Sterne, Marketing Administrator, Marketing Division: revive monthly newsletter; took part in establishing the Port contact tracing team for the covid-19 pandemic; organized covid care packages; planned and coordinated two virtual port week celebrations; coordinated numerous public ceremonies and events.

Dennis Perez, Systems Manager, Information Technology Division: migrate in-house PAG process and programs to JDE Enterprise One; JDE World Data to JDE Enterprise One; implement site-to-site connectivity between Oracle and PAG; established CCTV for Agana marina and its connectivity to PAG network; prepared cyber-security annex with Port Police division; increased PAG's internet bandwidth; evolution of digital environment.

Steve Muna, Contract Management Administrator, Procurement Division: procurement delegation sustained for two fiscal years; high volume of requisitions; minimized overstocking of parts and supplies that lowers cost overruns and waste; numerous bid solicitations (IFB, RFP, Multi-step and goods and services) in a fiscal year over the last 5 years; contract award issued for the demolition/removal of gantry cranes, RTGs, mobile harbor crane and sunken barge.

Jesse Mendiola, Acting Port Police Chief, Port Police Division: reinstated training and certification; in the process of acquiring the Superior Court VCCH/CJIS data base; recently installed a turnstile at pedestrian gate to increase access control security system; entire vehicle/boat fleet up and running.

Paul Salas, Acting Safety Administrator, Safety Division: participated in establishing a Port Clinic in aid of the covid-19 pandemic; ensured covid compliant safety measures in the port facilities and employee worksites; reduced the number of injuries and accidents from 16 injuries and 62 incidents last year compared to this year at 11 injuries and 43 incidents.

Vivian Leon, Corporate Services Manager, Overseeing Commercial Division: standardized terms for lease agreements and updated standard operating procedures; renewed expired lease options after 11 years (SPPC, Mobil and Hansen); awarded contract to Tristar on the F1 fuel pier management and operation; currently in the procurement process for the Golf pier management and operation; entered into a memorandum of understanding with Customs & Quarantine Agency to relocate their offices to a much larger work area; allowed Customs all access pass at the Port facilities; shared use of Port washdown station; implemented commercial cargo activity written procedures; executed a memorandum of agreement with Department of Public Works on the remaining Federal Highway Administration funds to expand the automobile lot expansion; removal of abandoned derelict vessels program.

Masoud Teimoury, Engineer Manager, Engineering Division: with an increase of capital improvement projects during CY2020 and FY2021 various projects have been successfully completed; completed CIP packages in aid of the procurement process; provide technical engineering know-how in support of grant applications and complex projects; continues to perform construction and overall project management services for almost all port funded projects; entered into a memorandum of agreement with U.S. Army Reserve in port projects for purposes of providing skilled manpower; equipment and fuel at no cost to the Port; building a strong engineering team.

Christopher Flores, Harbor Master, Harbor Master Division: infrastructure upgrade of Harbor Master's office walls, windows and frames; update and revision of harbor rules and regulations 12.0 small craft; basic boating safety course offered at the Port; created a recreational water use management plan to include a jet ski course as required by Department of Parks & Recreation; awarded grant for radar/AIS vessel monitoring system with infrared camera system.

Glenn Nelson, Operations Manager, Operations Division: hazardous pay entitled implemented accordingly; implemented overtime eligibility for line supervisors as required by Department of Labor; increase productivity; crane hours; established new operational procedures to assist Customs; consolidation of Operations' Administration; created Operations Central; IT integration with Terminal division; cross training; right sizing manpower levels; terminal gatehouse renovation and expansion; Route 11 auto lot inner access; implemented two week shift schedule.

Glenn Nelson, Operations Manager, Overseeing EQMR Department: dirty pay reinstated for Fleet Mechanics; implemented new scheduling that is union compliant; consolidated Planners; right size divisional manpower; cross functional detail assignments; integration of operations dispatch function with Fleet division; planned relocation of the Preventive Maintenance Mechanics section to WH1; PMC crane assessment in January 2022; crane mechanic training first quarter of 2022; working with procurement to revolutionize how the Port has been procuring for parts and equipment.

Glenn Nelson, Operations Manager, Overseeing Facility Division: full service provider to all facility maintenance needs of the Port; instrumental in the relocation, expansion and renovation of Customs office; clearing of the seawall with help of Maintenance and Operation division.

Annette Mafnas, Administrative Services Officer, General Administration Division: electronic/digital documents filed and retained; document management system; acquisition of new VOIP telephone system; email/scan documents wherever possible in an effort to go green.

Christine Claveria, Port Staff Attorney, Legal Division: notice of availability process and procedures; GEDA leases; standardized port leases (marina, open space, dry dock, etc.); designated as Special Assistant Attorney General for all procurement process of bids and issuance; Civil Service Commission and Superior Court representation; other legal matters as directed.

2. **Draft Master Plan Presentation.** At this time, Port OAE Consultant presented the draft master plan. Topics included purpose and goals; master plan status; project planning and analysis tasks; demand forecast; port modernization; diversification of commercial activities/revenue; successful partnership with the Office of the Governor and Office of Local Defense Community Cooperation.

V. OLD BUSINESS

There were no old business discussed.

VI. NEW BUSINESS

1. **Request Authorization and Funding for WSP to provide for an Information Technology Study.** The General Manager mentioned that the Information Technology Master Plan is structured to address core capabilities of the Port – Operations, Finance, and Security. To achieve efficiency in all areas of concern, the IT master plan's scope includes cyber security, terminal operating system, and information technology infrastructure. He said the Ports OAE Consultant agreement with WSP provides for IT Support under Task Order 11, Subtask 11.4 and requests for Board approval to supplement funding to Subtask 11.4 in the amount of \$225K for OAE/WSP to develop a comprehensive scope of work addressing the Port's cybersecurity, terminal operating system and IT infrastructure objectives. Director Guthertz commented that this is a very important initiative, especially cybersecurity because the Port is so critical to the very life of this island, livelihood of the people and its economy relies on how well the port functions and on how its information systems operate. She suggested that contact be made with Guam Power

Authority and Guam Waterworks Authority because they have a cybersecurity division and perhaps learn how they were able to establish and setup that division. She expressed that the Port will be able to learn from their experiences.

Director Guthertz made motion to approve the amount of \$225,000 to supplement Subtask 11.4 for OAE/WSP to develop a comprehensive scope of work for the Port's cybersecurity, terminal operating system and IT infrastructure objectives. Motion was seconded by Director Koki and was unanimously approved.

2. **Board Resolution No. 2021-35 Relative to authority to enter into a stipulated judgment between the Port Authority of Guam and Eddie N. Castro pursuant to Guam Supreme Court Case No. CVA19-020.** Director Guthertz made motion to approve Resolution No. 2021-35 relative to authority to enter into a stipulated judgment between the Port Authority of Guam and Eddie N. Castro pursuant to Guam Supreme Court Case No. CVA19-020. Motion was seconded by the Vice Chairman and was unanimously approved.

VII. ADJOURNMENT

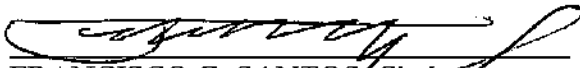
There being no further business to discuss, it was moved by Director Guthertz and seconded by Director Koki to adjourn the meeting at 12:40 p.m. The motion was unanimously passed.



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ISA MARIE C. KOKI, Board Secretary
Board of Directors

APPROVED BY:



FRANCISCO G. SANTOS, Chairman
Board of Directors





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General Manager's Report for Board of Directors January 20, 2022

1. Port's COVID-19 vaccination Dashboard

- Fully vaccinated: 367 or 100% of Port employees
- Booster vaccination: 89 or 24% of 367 Port employees

2. COVID-19 Vaccination Outreach Clinic. On January 14, 2022, the Port Authority of Guam hosted a Vaccination Clinic for all employees, port users and members of the public. The Vaccination Clinic was held from 9:00am until 11:00am in front of the former Port Clinic. The vaccines were available for anyone who is eligible and the booster shots were available based on the eligibility criteria established by DPHSS. Special thanks to Governor Lou Leon Guerrero, Lt. Governor Josh Tenorio, the Guam National Guard and the Department of Public Health and Social Services for making this drive through clinic a reality.

There were 34 port employees who received their booster shots on this day.

3. Port Employees Positive for Covid-19. Just like the rest of our island, the Port is experiencing a surge of cases of COVID-19. In the past 2 weeks we have had 22 confirmed positive cases. Overall since the pandemic began in 2020 we have had a total of 56 positive cases so the recent 22 cases represent 39.29% of all of our cases and they have occurred in the past 2 weeks. More than half of these recent cases - 54.55% to be exact - were identified by our Port Contact Tracing Team. Out of the 22 recent cases - 81.82% - of these employees do not have their booster shots. We are working hard to address this as we recently held a drive-through vaccine clinic and we are constantly encouraging our employees to receive their booster shots. We also are continuing to deep clean our facilities, mandate masks and social distancing and we are providing our employees with hand sanitizer, antibacterial wipes and masks.

PAG Omicron Surge Statistics

Our Omicron surge began on January 6, 2022

22	22 cases total since surge began
56	56 total since August 2020
39.29%	This is the total percentage of ALL our COVID cases over the past 17 months that have happened in the last 2 weeks.

Surge Specifics January 6, 2022 to present

22	Total Cases
81.82%	Percentage of these employees who <u>do not</u> have their booster
18.18%	Percentage of these employees who <u>do</u> have their booster
54.55%	Percentage of the positive cases since January 6, 2022 who were tested as a close contact identified by our contact tracing team - facility spread
135	Number of close contacts identified and either tested or scheduled for testing since January 6, 2022.

4. **Organizational Climate Survey.** The Port employees were invited once again to anonymously speak their truths in an organizational survey. The organizational climate survey was conducted earlier this month by the agency's Human Resources Division. The survey provided employees an opportunity to anonymously rate different levels of our agency. It assessed what they value most in their employment and provided them an opportunity to make positive suggestions for improvement.
5. **General Manager's Notes for YTD Finances, as of December 31, 2021.** We are providing the following summary:

REVENUES AND CARGO THROUGHPUT:

- The Port's Total YTD Operating revenue for December 2021 is \$15.2 million, 9.2% or \$1.3 million higher than the YTD December FY22 budget projection of \$13.9M.
- The total number of containers handled as of December 2021 is 23,312, which is 7.2% or 1,559 containers higher than last year's December 2020 total of 21,753.

OPERATING EXPENSES:

- Overall YTD Operating expense, as of December 31, 2021 is \$12.2M, which is 6.1% or \$790K lower than the YTD budget as of December of \$12.9M, or \$576K in YTD cost avoidances.

OVERTIME EXPENSE AND DIRECT LABOR REVENUE:

- Overtime YTD for Divisions involved in Operations is \$464,304, which is 41.6% or \$136K higher than YTD overtime budget of \$327,918. The OT for the month of December is \$138K, which is 16% or \$26K lower than the overtime for the month of November.

Direct Labor reimbursement is \$1.1 million, which is 31% or \$258K higher than the FY21 budget of \$826K.

Here is the breakdown:

Direct Labor Revenue:	\$1,084,080
Operations Overtime:	\$ <u>464,304</u>
Variance:	\$ 619,776

YTD OPERATING REVENUES MINUS YTD EXPENSES

- Operating revenues minus operating expenses resulted in an operating income of \$3.1 million. The final result for the month of December is a net income of \$964K, after deducting net of Other Income/Expense totaling to a -\$2.1M. The December Net Income is higher by 66% or \$384K as compared to the net income projection in the FY22 Budget.

Note: -\$2.1M is a net balance of Other Income and Expense which is composed of Interest Income, Interest Expense, Federal Reimbursements, Federal Expenses, Retirees COLA, Supplemental, Medical and Dental, and Other NonOperating Income & Expenses.

Other Financial Highlights, as of December 31, 2021:

- The debt service ratio as of December 31, 2021 is 2.28. This is 83% higher than the Bond Indenture Debt service ratio requirement of 1.25.
- Days Cash on Hand is 892 days, which is 78% or 392 days higher than the 500 days requirement of Moody's Rating agency.

DEBT SERVICE RATIO - DECEMBER 2021

Projected Annual Debt Service Coverage	2.28
Debt Service Coverage Requirement	1.25
Variance	2.06
% Above the Indenture Requirement	83%

6. Grant Awards and Ongoing Grant Submissions:

- **Fuel Pipeline Connectivity Project.** SHPO's guidance on the project indicates the need for a HABS/HAER Level I document prior to construction. Strategic Planning Division is coordinating this process with SHPO. EDA held a virtual meeting with PAG staff on January 7, 2022 to introduce new Project Officer. PAG transmitted A/E Design scope of work and other documents to new Project Officer for informal review and comments.

Project Cost Estimate: \$3,016,363.00

Grant Award: \$2,413,091.00 (80% Cost Share)

PAG Share: \$603,272.00 (20% Cost Share)

- **Department of Agriculture Grant (DoAG).**

- **Harbor of Refuge (HOR).** Planning Division has coordinated with the Procurement Division for the issuance of the IFB. Anticipated announcement – February 3, 2022.

Grant Award: \$776,684.50

FWS Share: \$621,347.60 (75% Cost Share)

PAG Share: \$155,336.90 (25% Cost Share)

- **Agat Marina Dock B and Public Boat Ramp Repairs.** Procurement Planning meeting with PAG stakeholders pending A.G. and SAAG review/comment period scheduled during calendar year 1st quarter with the tentative issuance of an IFB during the 2nd quarter. Status Quo

Grant Award: \$512,759.00 (Dock B Repairs)


\$40,000.00 (Agat Marina's Boat Ramp Bumpers Repair)

- **Gantry Crane Acquisition.**

- **USDA Direct Loan.** RFP for Banking Services coordination meeting with Finance Division has been postponed and anticipated to be rescheduled during the 2nd quarter FY22.
- **EDA Grant.** The Port's STS Gantry Crane revised grant application to EDA is anticipated to be submitted on 2nd quarter FY22

- **MARAD Marine Highway Program.** The Operations and Maintenance Division provided Planning with their equipment priority listing for the upcoming funding request in preparation for the FY2022 Marine Highway Program's NOFO. Work continues on the equipment acquisition market research and specifications.
 - **Office of Local Defense Community Cooperation (Formerly Office of Economic Adjustment - OEA Task Order #10 & #10S).** The 2020 Master Plan update continues to progress. Task Order #11 services have commenced with WSP's review and compilation of responses to RFIs on the H-Wharf Rehabilitation Project.
 - **EPA Diesel Emissions Reduction Act (DERA) Program.** MOU/Contract was certified on December 14, 2021 and document was registered with DOA's division of accounts on January 19, 2022. PAG team to work with GEPA to move forward with the procurement process.
7. **Port Revenue Bonds Project Status.** As of January 13, 2022, the attachment provides information on the status of the revenue bond projects that consist of rehabilitation of hotel wharf, golf pier repairs and improvements, waterline replacement/relocation, EQMR building, and warehouse 1 repair/upgrades, new admin annex building, and other priority projects.

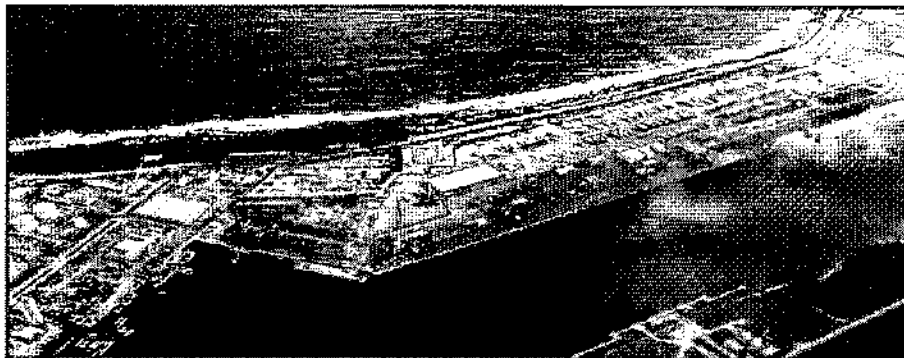
Respectfully submitted,


Rory J. Respicio
General Manager

2018 Port Revenue Bonds Status Report As of January 13, 2022

Bond Project	Total Award Amount	Total Draw Down	Total Remaining Balance	PROCUREMENT IFB/RFP/PO Number	Status
Rehabilitation of "H" Wharf (Federal Share & Port Share)	\$10,000,000.00 \$13,774,255.00	\$0.00 \$1,009,949.58	\$10,000,000.00 \$12,764,305.42	PO No. 17043-0F for \$2,249,945.54 awarded to GHD Inc. Change Order No. 1 PO No. 17159-0F for \$198,140.16 Approval of Change Order No. 2 on 10/07/2021, PO No. 17416-0S for \$18,670.13 Approval of Change Order No. 3 on 10/21/2021, PO No. 17545-0S for \$15,414.88 Approval of Change Orders No. 4, No. 5, and No. 6 on 12/07/2021, PO No. 17585-0S for \$63,110.20	Rebid of the Construction Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction issued on 10/27/2021, via Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for Q&C was due on 11/19/2021 at 4:00 P.M. Bid submittal AMENDED from 12/13/2021, 01/13/2022, TO NOW READ, 01/18/2022 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval. 18-Month Coral Monitoring Report completed on 11/10/2021 by CSA. Quarterly report due 01/20/2022.
Golf Pier Repairs and Improvements	\$2,000,000.00	\$357,876.53	\$1,642,123.47	RFP No. 2019-02: A&E Design for \$484,000.17 awarded to NC Macario	Bid submission deadline extended to January 14, 2022.
Waterline Replacement and Relocation	\$6,000,000.00	\$308,658.55	\$5,691,341.44	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	Bid opening completed on 12/7/2021. Pending certification of additional funding.
EQMR Building Repairs and Upgrades	\$3,628,800.00	\$439,259.10	\$3,189,540.90	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	Bid opening held on 01/03/2022 at 2:00 P.M. Two (2) vendors submitted proposals. Lowest bid is currently pending review by the PAG.
Warehouse 1 Repairs	\$2,000,000.00	\$439,259.10	\$1,560,740.90	RFP No. 2019-03: A&E Design for \$1,406,427.48 awarded to NC Macario	Bid opening held on 11/19/2021 at 2:00 P.M. Four (4) vendors submitted proposals. Lowest bid is currently under legal review by the PAG.
Other Priority Projects - Repair of F-1 Fuel Pier - Repair of F-3, F-4, F-5, and F-6 waterfront facilities - Upgrade of the Port's IT system and integration of TOS	\$4,980,745.00	\$0.00	\$4,980,745.00		1. The PAG was awarded funding for the repair of multiple deficiencies, including sheet pile and concrete cap spalling, at F1 through F6. The total project cost is \$2,427,496.00 with a total of \$17,941,997.00 in federal funding. A kickoff meeting will be scheduled for this grant in the coming week. 2. TOS upgrade work anticipated to begin later this fiscal year. Work is ongoing to determine the appropriate maintenance and support solution. Status Quo.
Other Priority Projects - EnterpriseOne Financial Management System	\$2,500,000.00	\$1,871,194.37	\$628,805.63		Job costing for CIP, Work Orders, and ACH payments expected to go live late January to early February.
New Admin. Annex Building	\$10,445,000.00	\$0.00	\$10,445,000.00		Three draft layout options for the Admin Building has been completed by the PAG's OAE and is being reviewed by Management. No decision on which option has been selected as of this report. Status Quo.
Grand Total	\$55,328,800.00	\$4,426,207.24	\$50,902,592.76		

PAG Organizational Climate Survey



January 2022 Report
PAG Board of Directors Meeting

Presented by Rory Respicio, General Manager
January 20, 2022



Participation




Total Employees	Total Responses
368	339

Total Participation
92%

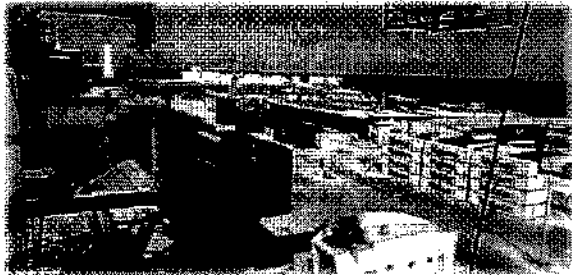



- Positive/Neutral – includes Strongly Agree, Agree, and Unsure, or Excellent, Good, and Average
- Negative – includes Strongly Disagree and Disagree or Poor
- No Answer – recorded when a survey did not have a response for a question
- Invalid – recorded when there were conflicting answers chosen (e.g. Agree & Strongly Disagree) for a question





LTS



Question	Positive/Neutral	Negative	No Answer	Invalid
I receive the information that I need to do my job.	92%	5%	3%	0%
I get a sense of personal accomplishment from my work.	94%	3%	3%	0%
I am proud to work for the Port Authority of Guam.	96%	3%	1%	0%
The Port Authority of Guam is a great place to work.	95%	3%	2%	0%
Employee morale at the Port Authority of Guam is good.	92%	5%	2%	0%

Question	Positive/Neutral	Negative	No Answer	Invalid
My supervisor communicates to me on how I can improve my job performance.	93%	5%	2%	0%
My supervisor knows his/her job well.	94%	5%	1%	0%
Management knows his/her job well.	93%	5%	2%	0%
Management recognizes Port Authority of Guam Employees for their good work performance.	92%	7%	1%	0%
My supervisor recognizes me for my good work performance.	92%	5%	2%	0%






Question	Positive/Neutral	Negative	No Answer	Invalid
Management makes my work environment a safe place to be during the COVID-19 Pandemic.	96%	4%	0%	0%
Management ensures that I am well informed during the COVID-19 Pandemic.	96%	4%	0%	0%
Management provides me with all of the resources I need to safely do my job during the COVID-19 Pandemic.	93%	7%	0%	0%
Management made it clear to me that they cared about my safety and well being during the COVID-19 Pandemic.	93%	6%	1%	0%

RESULTS

Question	Positive/Neutral	Negative	No Answer	Invalid
Training Opportunities at the Port Authority of Guam are offered to everyone?	87%	12%	1%	0%
My superiors share their knowledge and skills on how to handle situations and how to become more effective and efficient.	94%	5%	1%	0%
I believe that I will have promotional opportunities at the Port Authority of Guam.	90%	8%	1%	1%

RESULTS


Question	Positive/Neutral	Negative	No Answer	Invalid
My supervisors provide clarification and guidance on the job to help me carry out my work?	95%	4%	1%	0%
Management provides me with regular updates on current events and advisories?	94%	5%	1%	0%
My superior communicates frequently and honestly about issues that may affect me.	93%	6%	1%	0%
Management supports two-way communication between managers and employees?	93%	6%	1%	0%

Most effective communication method:

Type	Total
Face-to-face	134
Email	123
Whatsapp	102
Written Memo	92
Telephone	63
No Answer	15
Social Media	13



Who do you seek to help resolve problems that prevent you from doing your work?

Source	Chosen
Supervisor	55%
Co-Workers	23%
MGMT	12%
Human Resources	6%
Union Steward	2%
No Answer	2%





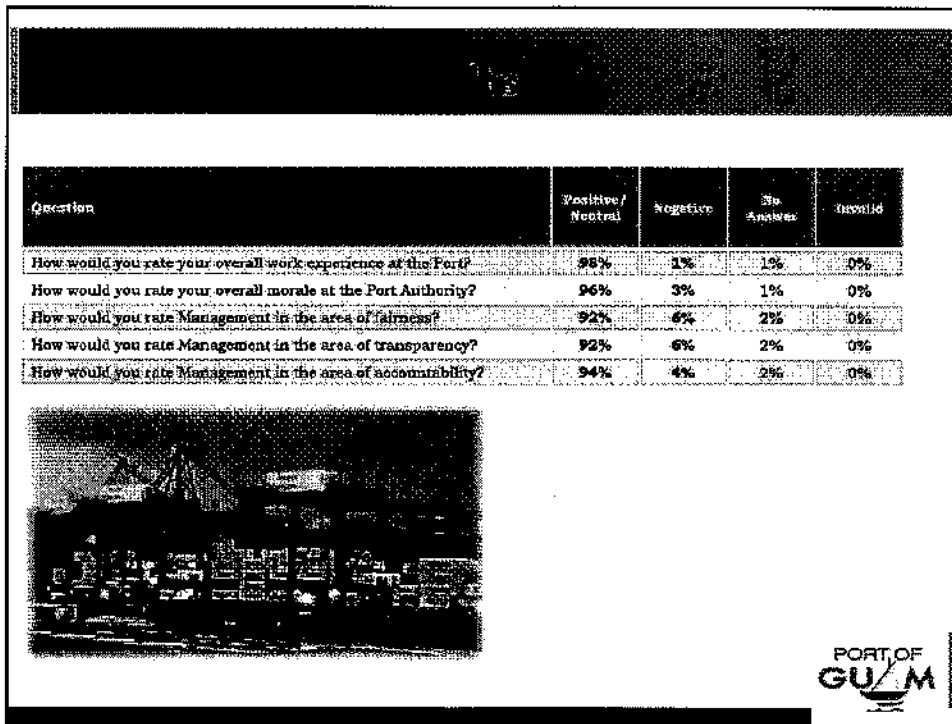
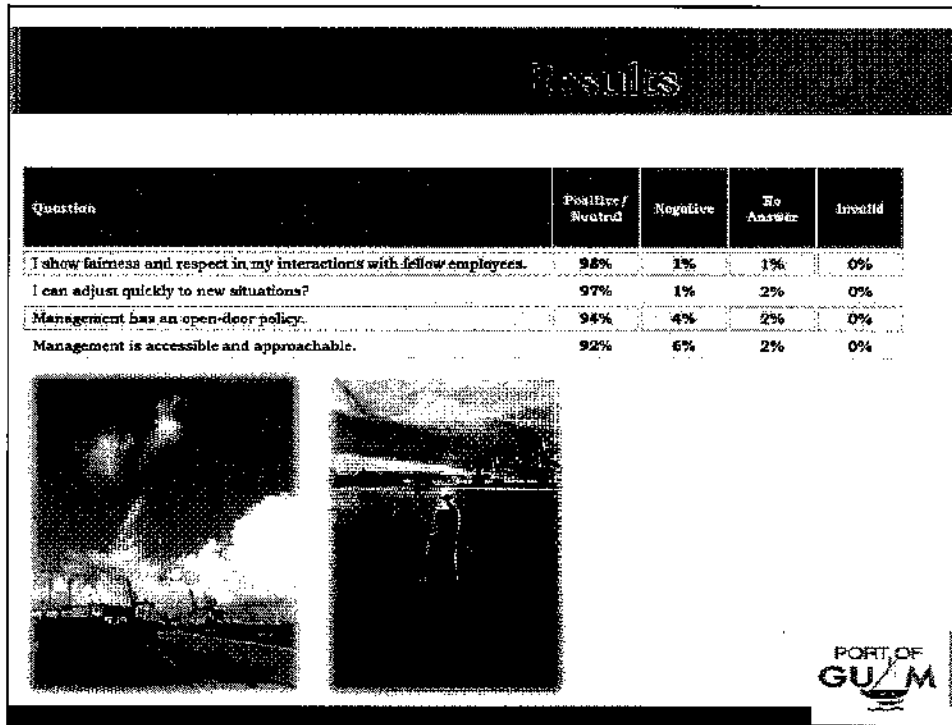
Skills

Question	Positive/ Neutral	Negative	No Answer	Invalid
I believe that Port Authority employees have a good relationship with each other?	94%	4%	2%	0%
I am able to go to my supervisor if I have a problem?	94%	5%	1%	0%
I am able to go to Management if I have a problem?	93%	5%	2%	0%
My co-workers are always willing to help each other?	95%	4%	1%	0%

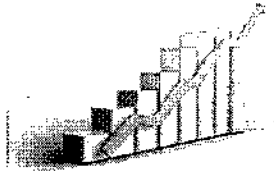



Question	Positive/ Neutral	Negative	No Answer	Invalid
I make an effort to be a part of the team?	98%	1%	1%	0%
In my department/division, we work as a team?	94%	5%	1%	0%
I support Gov. Lou Leon Guerrero and the Port's Board of Directors' vision for the Port.	91%	5%	4%	0%



- Apples to Oranges
 - Total Employees:
 - FY 2020 – 356
 - FY 2021 – 368
 - Numerous retirements and new employees
- Higher Participation
 - 89% vs 92%
- Overall Improvement
 - Average variance is a 0.56% **increase** in the positive/neutral category.
 - Average positive/neutral score **increased** from 93.14% in 2020 to **93.70%** in 2021.



Please feel free to ask any questions.





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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

Board of Directors Regular Board Meeting
January 20, 2022
IFB-PAG-022-002
Ultra-Low Sulfur Diesel

Executive Summary

PURPOSE: Request the Board of Directors to approve the Invitation for Bid award to South Pacific Petroleum Corporation for the delivery of Ultra-Low Sulfur Diesel to the Port Authority of Guam's Gantry Cranes, Load Centers, and Above Ground Storage Tank.

BACKGROUND: The above referenced Invitation for Bid was officially announced and advertised in the Guam Daily Post on Monday November 29, 2021. The bid was opened and read on December 14, 2021 at 2:00 pm. Four (4) prospective bidders expressed interest by acknowledging receipt of the bid package; and two (2) bidders submitted a bid package before the submission deadline, IP&E Guam and South Pacific Petroleum Corporation (SPPC).

After opening of all sealed bids and determining that all bidders were determined to have met the standards of responsibility and responsiveness as outlined in the Guam Procurement Rules and Regulations. South Pacific Petroleum Corporation was the lowest bidder, offering a price of \$2.757 per gallon, or approximately \$470K per year for 170,000 gallons of ULSD. This is a sample formula in which invoices shall be calculated, the previous month average (float with Singapore MOPS) and the premium fee. The fixed premium fee is the equivalent of the bid price minus the monthly average of the previous month.

As part of the IFB procurement process, a letter of Notice of Intent to Award was sent on December 20, 2021 to SPPC. IP&E Guam was issued a Notice of Results informing that their bid was rejected due to high price and that SPPC was recommended for award. On December 24, 2021 SPPC acknowledged receipt of their notice of award.

LEGAL REVIEW: AG Form 16 was completed to ensure that the Competitive Bidding Procedure (IFB) for Procurement over \$500,000 and over was complied with. Upon the Board's approval of this award and legal approval of the contract to form, the final documents will be forwarded to the Public Utilities Commission for review and concurrence of resolution.

FINANCE REVIEW: Funding for the contract is made possible through Local Port Funds. A requisition was inputted and approved covering the amount of \$450,001 for the initial year of this multi-year contract. Contract is for a term of three (3) years with two (2) additional one year options to renew upon the availability of funds not to exceed a total of five (5) consecutive years.

RECOMMENDATION: Management requests the Board of Directors' motion to approve the award of this IFB contract to South Pacific Petroleum Corporation for a period of three (3) years with two (2) additional one year options to renew upon the availability of funds, and not to exceed a total of five (5) consecutive years. The bidder has been deemed to have met all the requirements set forth in the IFB and is consistent with the Guam Procurement Regulations.

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guthertz, Member



Resolution No. 2022-03

RELATIVE TO PETITIONING THE PUBLIC UTILITIES COMMISSION (PUC) FOR THE APPROVAL OF THE AWARD TO SOUTH PACIFIC PETROLEUM CORPORATION FOR THE DELIVERY OF ULTRA-LOW SULFUR DIESEL TO THE PORT AUTHORITY OF GUAM'S GANTRY CRANES, LOAD CENTERS, AND ABOVE GROUND STORAGE TANK

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

WHEREAS, on November 29, 2021, the Port Authority of Guam (PAG) issued an Invitation for Bid IFB-PAG-022-002 for the delivery of Ultra-Low Sulfur Diesel (ULSD) to the Port Authority of Guam's gantry cranes, load centers, and above ground storage tank; and

WHEREAS, a total of two (2) firms submitted their proposals, namely IP&E Guam and South Pacific Petroleum Corporation (SPPC); and

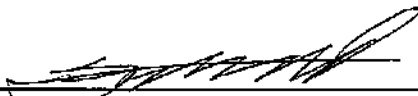
WHEREAS, after the opening of all sealed bids and determining that all bidders were determined to have met the standards of responsibility and responsiveness as outlined in the Guam Procurement Rules and Regulations. South Pacific Petroleum Corporation was the lowest bidder, offering a price of \$2.757 per gallon, or approximately \$470K per year for 170,000 gallons of ULSD; and

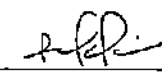
WHEREAS, this bid is made possible through local funds of the Port Authority of Guam; now therefore be it

RESOLVED, the Port Authority Board of Directors authorizes Management to petition the Public Utilities Commission (PUC) to review and approve the contract award to South Pacific Petroleum Corporation in accordance with the Contract Review Protocol for the Port Authority of Guam; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that a copy of this resolution be sent to the Public Utilities Commission.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 20th DAY OF JANUARY, 2022.


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


Digitally signed by Isa Koki
Date: 2022.01.21 10:23:19
+10'00'
ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM



BOARD OF DIRECTORS

*Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guchertz, Member*



Resolution No. 2022-01

RELATIVE TO ADOPTING THE RECOMMENDATIONS MADE BY THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) IN ITS PERFORMANCE AUDITS (OPA REPORT NO. 21-03 AND OPA REPORT NO. 21-09), SPECIFICALLY THE RATIFICATION OF BACK WAGES PROVIDED FOR SEVEN RECENTLY REINSTATED PORT EMPLOYEES, AS RECOMMENDED BY THE OPA, AND RATIFYING SUCH ACTION SPECIFYING LEGAL REMEDIES; I.E, COMPENSATION OF THE TOTAL BACK WAGES, INTEREST, AND LEGAL FEES AND COSTS, AND TO FURTHER PROVIDING HEREIN A STRUCTURE ESTABLISHING UNIFORMITY AND CONSISTENCY IN HOW PORT MANAGEMENT WILL PROSPECTIVELY ADDRESS THESE PERSONNEL MATTERS.

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

WHEREAS, during December 2019, February 2020, June 2020, and July 2020, the Port Authority of Guam, as directed by its Board of Directors, entered into settlements to satisfy judgments and orders, involving seven wrongfully terminated Port employees; and

WHEREAS, after years of costly litigation, the Supreme Court of Guam and the Guam Civil Service Commission ultimately determined that these seven Port employees were wrongfully terminated; and

WHEREAS, the former General Manager as well as former Port legal counsel, continued to pursue repeated appeals of these cases, which led to significant financial damage to the Port, to wit: millions of dollars paid to satisfy attorney's fees to former Port legal counsel and other legal counsels, court costs, and payouts ordered by the Guam Supreme Court and the Civil Service Commission, that which continued to accumulate interest thereby substantially consuming both ratepayer money and the Port's time and resources; and

WHEREAS, the former in-house Port Staff Attorney, through Board direction, as well as the current Deputy General Manager for Administration and Finance also through Board direction, entered into settlement agreements with these seven wrongfully terminated employees which allowed the Port and these Port employees to agree upon a payment plan for back wages spreading over a year or two-year period. These settlement agreements benefitted the Port by avoiding negative impacts to cash flow avoiding immediate, one-time payments and by mitigating the actual back wages that resulted in a significant cost savings to the Port; and

WHEREAS, because the Port was successfully able to negotiate and mitigate these settlements, we were able to realize a total savings to the Port of more than \$1.5 MILLION; and

WHEREAS, in doing so, this also brought justice to these seven wrongfully terminated employees who endured almost eight years of tiring and costly litigation resulting in both personal and financial hardships; and

WHEREAS, through the efforts of the Port's current management, and at the direction of its Board, the Port acted diligently to honor the judgments and orders by the Guam Civil Service Commission, Superior Court of Guam, and the Guam Supreme Court; and

WHEREAS, in the interest of transparency and accountability, the Board of Directors directed management in Board Resolution No. 2020-04 to transmit the finalized and signed settlement agreements to the Honorable Benjamin J.F. Cruz, Guam Public Auditor, for his review; and

WHEREAS, the Guam Office of Public Accountability then released two audits regarding their review of the first three settlements, and those audits are identified as OPA Report No. 21-03 and OPA Report No. 21-09; and

WHEREAS, the Board of Directors are grateful for the OPA's acknowledgment of how the Port handled these very complicated settlement agreements regarding the wrongful terminations of these employees and is pleased with the report relative to the issuance of back wages and appreciates the acknowledgment by the OPA that the Port handled the appeals of these employees properly; and

WHEREAS, the most recent audit states in its conclusion, "Our performance audit of the back wages of two reinstated Port employees found that the Port's reinstatements of Employee S & Employee T were generally made in accordance with administrative and judicial review judgments and orders. The legal remedies stipulated in the Agreement to Satisfy Judgment and Settlement Agreement were likewise generally complied with by the Port;" and

WHEREAS, when the analysis was conducted on the methodology the Port utilized for the reconstruction of these back wages, it was determined that the Port had in fact underpaid two reinstated employees and, as such, this means there was no overpayment made, so far as to any of such audits conducted; and

WHEREAS, the OPA found the following in its 21-03 report the following:

- Port adhered to certain terms and conditions of Employee Q's that were not required by the Civil Service Commission (CSC) or the courts' judgments, such that:
 - The highest number of incremental sub-steps were granted based partly on two (2) prior years' "Outstanding" performance evaluation ratings that were not approved by the former (or any) General Manager (GM); and
 - A 6% interest charge was paid to Employee Q without any court order requirement, negotiated terms, and proper calculation.
- Successor management approved salary increments that their predecessors did not approve of themselves;
- Legal remedies were executed without seeking the Board of Directors (Board) ratification by resolution and without a formal agreement and liability release until after the final payment in May 2020;
- Different legal opinions resulted in delay and certain unorganized remedial actions; and

WHEREAS, the OPA found the following in its 21-09 report the following:

- Legal remedies paid (satisfied) without board ratification by a resolution; and
- Inconsistencies and deficiencies in the Agreement to Satisfy Judgment and Settlement Agreement; and
- Deviations from certain provisions of Port's Personnel Rules and Regulations; and
- Highest number of incremental sub-steps granted annually without the required performance evaluations approved by the former General Manager (GM); and
- Annual salary increments based partly on three prior years' "Outstanding" or "Highly Satisfactory" rating not approved by any GM; and
- Discrepancies in using the "Outstanding" and "Highly SAT" ratings instead of eligible "Marginal Satisfactory" rating due to the absence of or NRPER not approved by former GM; and
- Conflicting Notifications of Personnel Actions; and
- Deficiencies in Port back wages calculations resulting to potential overpayments due to:
 - Unapproved increments due prior to employees' terminations included in paid back wages; and
 - Questionable and unaccounted back wages paid.
- Income Tax withholding not deducted from paid back wages; and
- Other Matters:
 - Potential violation prohibition on retroactive pay raises; and
 - Pay raise prior to end of freeze period potentially violated the freeze increment mandate; and
 - Appearance of conflict of interest; and

WHEREAS, Port management responded to both OPA Audits 21-03 and 21-09 and both responses are attached as a part of this resolution for recorded purposes; and

WHEREAS, despite the Port management's response, the OPA made recommendations for OPA Report No. 21-03 and OPA Report No. 21-09; and

WHEREAS, for OPA Audit 21-03 the following recommendations are made:

- The GM and the Board standardize a salary increment process for back wages to include a required performance evaluation report (of the sort) accountable to the incumbent GM who approves the number of sub-steps on the personnel action forms; and
- The GM seek the Board's ratification, via board resolution, specifying the composition of total back wages and interest paid to Employee Q; and
- The GM execute a comprehensive formal agreement that includes (1) the purpose, amounts, and terms of what Port paid for Employee Q's back wages, benefits, attorney fees, and interest charge; (2) a liability release provision; and (3) the signatures of the relevant parties and witness; and
- The GM and the Board reconsider their practice of unifying employees' increment anniversary dates moving forward; and
- The Board comply with Guam Code and provide parity to ratepayers and taxpayers by incorporating in its PRR the relative (or similar) provisions of 4 GCA Chapter 6 §6202; and

WHEREAS, for OPA Audit 21-09 the following recommendations are made:

- Consistently seek Board's ratification via a Resolution specifying the legal remedies such as: composition of the total back wages, interest, and legal fees and costs; and
- Ensure the execution of formal & comprehensive settlement agreements disclosing therein the legal remedies such as amount and terms of gross and net back wages, mitigation, other benefits, interest charges, legal costs, and a liability release provision; and
- Standardize a salary increment process for reinstated employees to include a performance evaluation report to be signed by the incumbent GM; and

- If recommendation #3 is not feasible, we recommend that moving forward Port management and the Board should decide on how this PRR requirement on annual increments for reinstated employees be satisfactorily complied by seeking the Attorney General's opinion; and
- Adhere to the restrictions on retroactive pay raises on performance-based increments; and
- Review the following:
 - Port actions in granting increments during the freeze increment period; and
 - Port policy on conflict of interest; and

WHEREAS, as a result of the OPA's findings and recommendations for corrective actions cited in OPA Audit Report No. 21-03 and 21-09, this Board Resolution is intended to resolve and affirm the agency's actions in regards to the settlements in line with the OPA recommendations and ratifies via this Board Resolution the specific legal remedies such as the composition of the total back wages, interest, and legal fees and costs; now therefore be it

RESOLVED, that the Board of Directors hereby ratifies Port management's methodology to reconstruct the salaries for the reinstated employees covered in the OPA Audit Report No. 21-03 and 21-09 as well as employees covered under PAG Board of Directors Resolution 2020-04; and be it further

RESOLVED, that the Board of Directors hereby ratifies and accepts management's submissions of the formal agreements that included the purpose, amounts, and terms of what the Port paid for these seven reinstated employees, to include back wages, benefits, attorney fees, and interest, and directs management to inquire of the OPA on whether any further documents are required for his review; and be it further

RESOLVED, that the Board of Directors hereby ratifies and accepts management's submissions of the liability release provisions signed by all seven reinstated port employees, to include the signatures of the relevant parties and witnesses; and be it further

RESOLVED, that the Board of Directors hereby accepts and ratifies the General Manager's submission (to be filed as Board Policy 2022-01, adopted herein), which establishes and standardizes a salary increment process for back wages of reinstated employees to include a performance evaluation report to be signed by the incumbent General Manager who approves the number of sub-steps on the personnel action forms; and be it further

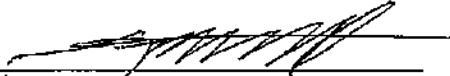
RESOLVED, that the Board of Directors hereby directs the General Manager to include in the process that the General Manager shall seek the Board's ratification, via board resolution, specifying the composition of total back wages and interest paid to all future reinstated employees; and be it further


RESOLVED, that the Board of Directors directs Port management to implement and adhere to Public Law 34-145 authored by Senator Mary Camacho Torres "AN ACT TO AMEND §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM;" in order to prevent similar situations from reoccurring; and be it further

RESOLVED, that the Board of Directors, directs that the General Manager willfully adhere to Public Law 34-145 whenever duly ordered by the Civil Service Commission; and be it further

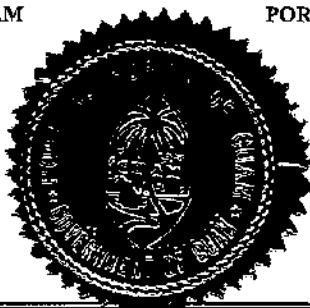
RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that copies of the same be transmitted to Governor Lou Leon Guerrero; Lt. Governor Joshua Tenorio; Speaker Therese M. Terlaje of the 36th Guam Legislature; Port's Legislative Oversight Chairperson Senator Telena C. Nelson of the 36th Guam Legislature; the 36th Guam Legislature; and the Honorable Benjamin J.F. Cruz, Guam Public Auditor.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 20th DAY OF JANUARY, 2022.


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


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



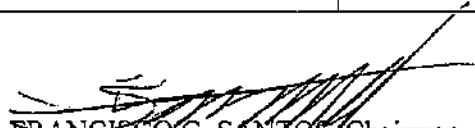


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Lourdes A. Leon Guerrero
 Governor of Guam
 Joshua F. Tenorio
 Lieutenant Governor

BOARD POLICY MEMORANDUM NO. 2022-01

To: Division Heads	Subject: Salary Increment Process for Reinstated Employees
Effective Date: January 20, 2022	Revision Date:
Approved by:  FRANCISCO G. SANTOS, Chairman, Board of Directors	

I. REFERENCES:

- A. Public Law 29-24 authorizes the Port to establish pay scales for certified, technical and professional positions subject to the provisions of the Administrative Adjudication Act.
- B. Public Law 30-43 approved the Personnel Rules and Regulations for maritime related positions unique to Port operations and certified, technical and professional positions.
- C. A classified worker's entitlement to an anniversary increment is a statutory mandate that cannot be annulled in the event that a performance evaluation or increment certification is somehow delayed. See OPA 20-0375, p. 4 (citing 4 GCA § 6202).

II. PURPOSE: To establish and standardize a salary increment process for back wages of reinstated employees to include a performance evaluation report to be signed by the incumbent General Manager who approves the number of sub-steps on the personnel action forms.

III. GENERAL INFORMATION

- A. It is the policy of the General Manager to provide a uniformed pay administration to facilitate pay actions, while ensuring the proper compensation of employees occupying maritime positions unique to Port operations and certified, technical and professional positions and to provide the opportunity for the Port to carry out its mission.
- B. Salary increment increases shall be granted as authorized in the Personnel Rules and Regulations.

- C. A performance appraisal or evaluation encourages efficiency and productivity among employees and the orderly and constructive relationships between management and employees in the interest of effective personnel management, and the efficient operation of the Port.

IV. PROCEDURE

- A. The General Manager shall be responsible for the effective implementation and administration of the performance appraisal system within the Port. He shall approve all performance rating made for all Port employees and shall ensure that supervisory personnel receive adequate training in the performance evaluation system. He shall ensure that performance appraisal and reports are completed and submitted on a timely basis.
- B. The salary increment of all Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions shall be based on an annual review of performance. As part of the appraisal process an individual's performance will be assessed against a performance range of zero (0) to six (6) sub-steps. As sub-steps (within the pay schedule) increase by one (1%) the performance (and resulting salary increment) range from zero (0), or a nil increase, through up to six percent (6%). All salary increments will require the approval by the General Manager.
- C. The salary increment for back wages of reinstated employees found to be ~~wrongfully terminated in a judgement or order from the Guam Civil Service Commission or the courts of Guam~~ shall be based on the average ratings of the employee's last three (3) years' employment at the Port. If for whatever reason the employee's performance evaluation or increment certification was unsigned or somehow delayed, and a letter from the General Manager rejecting the performance evaluation or increment certification was NOT submitted at the time the employee's performance evaluation was submitted to Human Resources, then the incumbent General Manager shall so accept such submission of the performance evaluation for purposes of reconstructing the employee's back wages.
- D. All salary increments and performance appraisals for reinstated employees shall be approved and signed by the incumbent General Manager who approves the corresponding personnel action.

V. ENTIRE POLICY

All prior policies or memorandum in conflict with this policy are hereby rescinded.



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

November 25, 2020

The Honorable Benjamin J. Cruz
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Draft Report – Port Authority of Guam Back Wages Series, Part A

Dear Mr. Public Auditor:

Hafa Adai! We are in receipt of your draft report dated November 6, 2020, Subject: Port Authority of Guam Back Wages Series, Part A. This letter is to supplement our response, dated September 25, 2020, which we are also enclosing with the exhibits. We are concerned with your auditors' assertions of noncompliance with applicable laws, regulations, and internal policies, as well as lapses in the Port's internal processes. This letter, together with all of its supporting documents, will clear up any concerns raised in this draft audit.

Please note that our responses are in *italics*, and, in those instances where it is pertinent, we will restate what was already provided to your office by way of our September 25, 2020 letter.

Introduction

This report presents the results of our performance audit on the Port Authority of Guam's (Port) execution of settlements, or legal remedies, with one of the nine reinstated employees based on resolved Civil Service Commission (CSC) cases. We conducted this audit in response to the public's concern over Port's decision to keep confidential the settlement costs connected with nine previously-terminated employees—salary, employee benefits, and their attorney's fees and costs.

Response: *It is factually incorrect to state, "Port's decision to keep confidential the settlement costs connected with nine previously-terminated employees—salary, employee benefits, and their attorney's fees and costs", without stating that all of the settlements can now be found on the Port's website. Granted, these settlements were uploaded sometime after the development of this draft audit, we are requesting that a notation be made to reflect that all the settlements can be found on the Port's website. Although these settlements were uploaded to the Port's website for the general public to view a few months after your audit began, an objective review of the circumstances which were acknowledged in our meeting on November 20, 2020 show that the Port was following the advice of counsel which was to not disclose the settlements. The Port General*

Manager then requested that the OPA seek an opinion on this issue as the General Manager wanted to disclose but could not as the only standing legal advice prohibited those actions. Once the Attorney General opined that it was legal to release the settlements, the Port immediately uploaded all agreements to the website for full public transparency and released copies to all media who requested for hard copies as well. We believe that the statement in the Introduction that indicates "We conducted this audit in response to the public's concern over Port's decision to keep confidential the settlement costs connected with nine previously-terminated employees—salary, employee benefits, and their attorney's fees and costs" is not factual and is misleading. Using Professional Judgment on this matter to include the collective knowledge of the circumstances already acknowledged by the Auditing Team clearly would deem this statement to be misleading and not a true and accurate reflection of all of the circumstances.

Our audit objective was to determine whether Port's settlement, or legal remedies, with nine reinstated employees were properly accounted for and paid in accordance with applicable laws, regulations, and administrative and judicial review judgments. However, this specific report (Part A) focused on the audit results of only one of the nine reinstated employees, herein referred to as "Employee Q". A separate report was necessary because of the significant amount of Employee Q's legal remedies and the manner in which Port executed his payments.

In Part A, our audit scope covered the court orders and judgments, Port documents, and other documents that contributed to Port's calculations and payments to Employee Q's legal remedies during our audit engagement (i.e., October 2010 through October 2020).

Our audit results on the other eight employees' settlements will be issued in separate audit reports. We detailed the objective, scope, and methodology in Appendix 1.

Background

Port is a public corporation and autonomous Government of Guam (GovGuam) agency, for which primary revenues are derived from providing services to major shipping line customers, tariffs, and rentals of equipment and spaces related to ocean commerce, recreational and commercial boating, and navigation. Since fiscal year (FY) 2016, Port revenues averaged \$54.4 million (M) a year. On average, 98% of Port's revenues were derived from the tariffs and rentals paid by Port customers (ratepayers). Port prides itself in dedicating all of its profit to the upgrading of its equipment and facilities and the continued growth of Guam's seaport.

Confidential Settlements of Multiple, Employee Termination Lawsuits

Port has been a defendant in nine employees' adverse action (termination) lawsuits. All nine of these employees were reinstated to their original employment position and paid (or will be paid) back wages. Back wages represent the salaries owed to an employee for the period following their unlawful termination until they are reinstated. Port provided other legal remedies such as reimbursement for attorney's fees and legal costs related to the employee's lawsuit, and interest for the delay and loss of use of back wages as ordered in a court's decision.

Our initial audit scope included only five reinstated employees with whom Port already executed settlement, or legal remedy, payments. With five reinstated employees set to receive back wages

around the same time, the public demanded for transparency. The confidential nature in which Port executed these initial five settlements, or remedies, created a climate in which the public appeared suspicious of whether the Port was following the law when executing these settlements or legal remedies.

Response: We would like to make it clear that it was not Port management that created a climate of non-transparency when executing these settlements. As you are aware, in March 2020, Port management requested the Public Auditor to reconcile a legal opinion issued by Port’s in-house staff attorney that settlement agreements are not subject to public disclosure because it is part of an on-going litigation. On July 22, 2020, the Attorney General issued an opinion stating when settlement agreements are finally adjudicated, it is open for public inspection under Guam’s Freedom of Information Act (FOIA). In a press release issued by the Port on July 22, 2020, we responded that we are pleased with the recent opinion by the Attorney General, which clarifies whether settlements are considered public documents. For the record, I, as General Manager, disagreed with the opinion issued by former Port legal counsel and former in-house counsel that settlements were not public documents and not subject to disclosure under the FOIA. Immediately following this AG opinion, Port management uploaded all signed settlement agreements, all of which can be found on the Port’s website. We believe that the statement “The confidential nature in which Port executed these initial five settlements, or remedies, created a climate in which the public appeared suspicious of whether the Port was following the law when executing these settlements or legal remedies” is misleading and that an objective review using Professional Judgment on this matter to include the collective knowledge of the circumstances already acknowledged by the Auditing Team clearly would deem this statement to be misleading and not a true and accurate reflection of all of the circumstances.

Results of Audit

Our audit found the Port paid \$542 thousand (K) for Employee Q’s back wages, Medicare tax, retirement contribution, interest charge, and attorney’s fees and legal costs. See Figure 1.

Figure 1: What Port Paid as a Result of Employee Q’s Termination Lawsuit

\$381K	\$20K	\$6K	\$40K	\$95K
Back Wages	Retirement	Medicare Tax	Attorney Fees & Legal Costs	Interest Charge

Source: Port’s Check and Deposit Documents

Based on the data and documents provided by Port, we determined that Port’s legal remedies with Employee Q were generally made in accordance with administrative and judicial review judgments. However, we found instances of potential noncompliance with applicable laws, regulations, and internal policies, as well as lapses in Port’s internal processes in executing Employee Q’s legal remedies. See Table 1. Specifically, we found:

- Different legal opinions resulted in unorganized remedial actions;
- Legal remedies were not ratified by a board resolution;
- Legal remedies were executed without a formal agreement and liability release until after the final payment in May 2020;

- Adherence to Employee Q's terms and conditions that were not required by CSC or the courts' judgments; and
 - Highest number of incremental sub-steps were granted based on prior "outstanding" performance evaluation ratings.
 - Two prior years' performance evaluation ratings were not approved by the former General Manager, which results in the lowest number of incremental sub-steps.
 - "A 6% interest charge *per day*¹ is effectuated. Payment to be made by the 60th day of management approval."
 - ¹ Emphasis added.
 - The 6% interest charge was not negotiated.
- Significant deficiencies in the basis of calculations for back wages and interest that resulted in overpayments.
 - Summary of overpayments of back wages, benefits, and interest charge.
 - Annual salary increments were included without performance evaluation reports approved by and accountable to the GM.
 - Back wages included three pay raises not covered by CSC or the courts' judgments and retroactive to their authorization dates.
 - Interest charge was paid without considering time in the calculation.

Also, we identified other matters where:

- Port unified existing employees' increment anniversary dates to reflect the dates of agency-wide pay adjustments.
- Port's Personnel Rules and Regulations (PRR) do not have a cap (limit) on salary increments.
- Port interpreted Superior Court Decision as Employee Q did not have to mitigate the wages he earned during this termination.

Table 1: What Port Paid Employee Q and Its Basis

Remedy	What Port Paid	Judgment/Order	Rendered by
Back Wages – Base Salary, plus Pay Raise Changes, minus \$209K of Outside Income	\$361,476	“The Port Authority of Guam is further ordered to fully compensate Employee [Q] for all the time following his termination on December 18, 2012 until the date he is reinstated to his prior position of employment.”	Civil Service Commission
		“[...] upholds the Civil Service Commission’s Order awarding [Employee Q] full back pay and benefits from the date of his termination until Petitioner PAG complies with the Commission’s Order and allows [Employee Q] to return to work.”	Superior Court of Guam
Pay Raise Changes after Reinstatement	\$19,273	<u>Not</u> ordered or required by CSC or judicial courts’ judgments, regulations, or laws.	
Pay Raise Changes before Termination	\$771	<u>Not</u> ordered or required by CSC or judicial courts’ judgments, regulations, or laws.	
Total Back Wages	\$381,520		
Retirement Contribution on Back Wages	\$18,548	“The compensation shall include all employer [Q’s] contributions to the Government of Guam Retirement Fund [...] for all the pay periods between December 18, 2012 and the date Employee [Q] is reinstated.”	Civil Service Commission
		“[...] upholds the Civil Service Commission’s Order awarding [Employee Q] full back pay and benefits from the date of his termination until Petitioner PAG complies with the Commission’s Order and allow [Employee Q] to return to work.”	Superior Court of Guam
Retirement Contribution on Pay Raise Changes after Reinstatement	\$1,186	Result of payout <u>not</u> ordered or required by CSC or judicial courts’ judgments, regulations, or laws.	
Retirement Contribution on Pay Raise Changes before Termination	\$39	Result of payout <u>not</u> ordered or required by CSC or judicial courts’ judgments, regulations, or laws.	
Total Retirement Contribution	\$19,773		

Remedy	What Port Paid	Judgment/Order	Rendered by
Medicare Tax on Back Wages	\$6,028	Result of... "The Port Authority of Guam is further ordered to fully compensate Employee [Q] for all the time following his termination on December 18, 2012 until the date he is reinstated to his prior position of employment."	Civil Service Commission
		Result of... "[...] upholds the Civil Service Commission's Order awarding [Employee Q] full back pay and benefits from the date of his termination until Petitioner PAG complies with the Commission's Order and allows [Employee Q] to return to work."	Superior Court of Guam
Medicare Tax on Pay Raise Change after Reinstatement	\$279	Result of payout <i>not</i> ordered or required by CSC or judicial courts' judgments, regulations or laws.	
Medicare Tax on Pay Raise Changes before Termination	\$11	Result of payout <i>not</i> ordered or required by CSC or judicial courts' judgments, regulations or laws.	
Total Medicare Tax	\$6,318		
Attorney Fees & Legal Costs	\$40,043	"The Port Authority of Guam is further ordered to pay the attorney's fees incurred by Employee [Q], during the appeal of the December 18, 2012 adverse action in the amount of \$9,380.95" <i>Judgment passed on May 13, 2013.</i>	Civil Service Commission
		"The Court hereby Orders that Real Party in Interest [Employee Q] is awarded the amount of Twenty-Two Thousand Eight Hundred Ten Dollars and Ninety-five Cents (\$22,810.95) as reimbursement for attorney's fees and costs Real Party in Interest [Employee Q] has incurred in his prosecution of his appeal of his termination." <i>Order passed on September 29, 2016.</i>	Superior Court of Guam
Interest Charge	\$94,621	<i>Not</i> ordered or required by CSC or judicial courts' judgments, regulations or laws.	
Total Remedy Cost	\$542,175		

Sources: Port's Check and Deposit Documents; CSC Orders and Judgments; Superior Court Orders and Judgments.

Differing Legal Opinion's Resulted in Unorganized Remedial Actions

According to CSC and the Superior Court of Guam's (SC) judgments, Port is required to pay Employee Q back wages starting from his termination (in December 2012) and ending upon his reinstatement (in July 2018). Between July 2018 and late February 2020, Port received significantly different legal opinions from its former contracted Legal Counsel and former "in-house" Staff Attorney, that resulted in unorganized remedial actions, as shown in Table 2.

Port's former Legal Counsel was still representing Port when Employee Q was reinstated on July 30, 2018. Prior to his reinstatement, Employee Q's attorney submitted a letter (herein referred to as "declaration letter"), dated July 11, 2018, to Port's former Legal Counsel. Attached to the letter was his calculation schedule of the back wages and interest to be paid with a notation that Employee Q was entitled to the annual salary increments and Port-wide pay adjustment that occurred during the termination period.

However, the former Legal Counsel opined that any payout to Employee Q would be based on the same pay range as when he was terminated (herein referred to as "base salary") and without any salary increments. The former Legal Counsel held this opinion through to June 2019, when his contract with Port ended.

Then again, Port's former Staff Attorney (who served from early August 2019 through the end of February-2020) did not find any legal authority to support the former Legal Counsel's opinion. He rendered an opinion that Employee Q's back wages must include salary increments.

Table 2: What Port Did After Employee Q's Reinstatement

Year	Date	Port Action	Time Elapsed Since Reinstatement
2018	7/30/2018	Port reinstated Employee Q at base salary and continued to pay his regular wages at base salary until the start of February 2020.	0.0 months
	9/12/2018	Port filed a Motion for the Superior Court to reconsider its Decision to award full back pay and benefits to Employee Q.	1.4 months

Year	Date	Port Action	Time Elapsed Since Reinstatement
2019	2/5/2019	The Superior Court denied Port's Motion filed on September 12, 2018.	6.2 months
	4/30/2019	In a board meeting, Port's Board appropriated \$600K to pay Employee Q's back wages, based on his base salary, minus the income he earned during his termination, <i>and without any salary increments.</i>	9.0 months
	5/3/2019	<p>Port processed six (6) Notifications of Personnel Action forms (NPA) - five for the termination period, plus one for the October 2012 salary increment (before his termination).</p> <p>Under the General Accounting Supervisor's guidance (instead of under the Human Resources Division's role), Employee Q's annual base salary was mitigated (reduced) by \$209K for the outside income earned during his termination period.</p> <p>These NPAs did not reflect any salary increments or Port-wide pay adjustments, consistent with the former Legal Counsel's opinion.</p>	9.1 months
	5/10/2019	Port paid \$40K to Employee Q's attorney for attorney's fees and legal costs	9.3 months
	6/24/2019	Port paid \$243K to Employee Q for his back wages, based on his base salary and mitigated by the outside income. This payment was supported by the six NPAs filed on May 3, 2019.	10.8 months
	12/3/2019	Port's former Staff Attorney advised the Board of Directors that he found other judgments on similar cases in which reinstated employees were "entitled" to salary increments as part of their back wages.	1.3 years

Year	Date	Port Action	Time Elapsed Since Reinstatement
2020	2/7/2020	Port's Deputy GM of Administration & Finance approved Employee Q's additional terms and conditions listed in the remedy request letter dated February 6, 2020 addressed to him.	1.5 years
	2/10/2020	<p>Port <u>canceled</u> the six (6) NPAs issued on May 3, 2019 because they were processed incorrectly. These NPAs supported the \$243K payment of back wages made on June 24, 2019. Consequently, such payment was without supporting authorization.</p> <p>Then, Port replaced the six canceled NPAs with new NPAs that granted Employee Q the following:</p> <ul style="list-style-type: none"> • five annual salary increments for the termination period, in line with the former Staff Attorney's opinion, plus • October 2012 salary increment (before his termination). <p>Each salary increment was calculated at five sub-steps (or 5%) each, as requested by Employee Q and his attorney.</p> <p>Port processed four (4) additional NPAs that granted Employee Q with the following:</p> <ul style="list-style-type: none"> • 2011 salary increment (before his termination); • 2016 pay adjustment, in line with Employee Q and his attorney's declaration letter; • 2018 pay adjustment (after his reinstatement); and • 2019 salary increment (after his reinstatement). 	1.5 years
	2/21/2020	Port paid \$19K to Employee Q for the difference between the base salary he received (after his reinstatement) and the pay raises Port granted (on February 10, 2020) for his 2018 pay adjustment and 2019 salary increment.	1.6 years

Year	Date	Port Action	Time Elapsed Since Reinstatement
2020	4/7/2020	<p>Port paid \$95K to Employee Q as an interest charge on his back wages.</p> <p>Port paid \$66 to Employee Q's attorney for the unpaid balance of attorney's fees and legal costs.</p>	1.7 years
	5/1/2020	<p>Port paid \$119K to Employee Q for the following:</p> <ul style="list-style-type: none"> • \$118.6K for the difference between the base-salaried-back-wages (paid on June 24, 2019) and the pay raises Port granted (on February 10, 2020) for the salary increments and pay adjustment during the termination period. • \$771 for the difference between the base salary received before his termination and the October 2012 salary increment Port granted (on February 10, 2020). 	1.8 years

Sources: Various Port Documents; Superior Court Decision and Order.

The differences in legal opinions brought significant financial impact on the back wages paid to Employee Q. However, this did not motivate Port management to secure a Board ratification and execute a formal agreement with a liability release provision before final payments were made.

Response: This finding is misleading and does not include the collective knowledge of all the factual circumstances. Management does not believe that the remedial actions were unorganized. Instead, it is accurate to say that different legal opinions resulted in delayed remedial actions. Also, this draft statement implies that the Port's corrective actions were unorganized, and such corrective actions were in contravention to law and the Port's Personnel Rules and Regulations. We are providing you with several conflicting legal guidance's that the Board and Management received relative to the inclusion of increments as part of wages and benefits when an employee is reinstated after termination which will give great insight and additional collective knowledge as to the delay of remedial action:

1. *Email between our former legal counsel to former Deputy General Manager, Administration & Finance, dated November 25, 2019, Subject: Payment of Back Wages: former legal counsel opined they are unable to find any authority to include in the back wages, salary increments. Former legal counsel provides specific statutes which prohibits unappropriated expenditures.*
2. *Emails between the former in-house counsel and former Deputy General Manager for Administration and Finance on the following:*

- A. November 26, 2019 email to former in-house Staff Attorney forwarding former Legal Counsel's November 25, 2019 email, Subject: *Payment of Back Wages*.
- B. November 29, 2019 email from former in-house Staff Attorney, Subject: *Payment of Back Wages*, states below:
- i. "...when the situation is not a termination-reinstatement, in other words continuous civil service employment without adverse action-interruption, Port Personnel Rules 6.302 applies to require (a) employee's work performance; (b) performance review, (c) recommendation by the reviewing manager, and (d) certification by the GM that there is sufficient basis for giving the employee an incremental increase in his or her wage. However, that situation does not expressly cover termination-reinstatements after a judgment, lawful order, or other unlawful act.
 - ii. "The normal rule for consequential damages is whether they are (a) reasonably certain and (b) measurable... While there is no binding Civil Service Commission case on the issue from the Supreme Court of Guam... every case that I have reviewed from several other states made the civil servant-employee whole, including increments... Applied to the Port, increments are promised to be given according to the rules. At bottom, it does not appear likely that Superior Court of Guam or the Supreme Court of Guam will give a different rule other than to make the employee whole including increments because of the unanimity of the decisions from states. If Management decides not to give the increase, and the employee were to file a grievance or seek clarification of a judgment, he or she would at end be awarded increments given the unanimity of state law on public employees being entitled to increments after wrongful termination..."

Former in-house counsel stated that in order for the increments to be included, there should be a judgment from the Commission or judicial courts. That is why Port management included increments, based on the 1984 and 2016 CSC decisions provided below which ordered Government of Guam departments/agencies to pay back benefits, including salary increments for reinstated employees.

1. CSC Decision dated March 12, 1984, *Juan Q. Lizama vs. Port Authority of Guam*: CSC reversed the termination of this employee on March 12, 1984 and ordered the Port to:
 - i. Reinstatement the employee to his position of Port Operations Manager effective September 12, 1983;
 - ii. Restore all salary deprived him from the date of his termination to the date of his reinstatement;
 - iii. Restore all benefits, rights and privileges deprived him because of the termination; and
 - iv. Report compliance to CSC within 5 work days from date the decision is received.

A review of this employee's personnel jacket revealed:

- 1. Port had cancelled his termination action effective September 13, 1983; and*
- 2. Granted the employee a pay adjustment effective October 15, 1983 as a result of Public Law 17-26.*

Both personnel actions were processed on March 15, 1984 with retroactive dates of September 12, 1983 and October 15, 1983 to comply with CSC's orders.

- A. CSC decision and judgment dated August 30, 2016, Eric SN. Santos vs Department of Corrections. The decision mandated Department of Corrections to restore the employee to his position; to receive all back-pay and benefits, including, but not limited to retirement and all forms of increments; and all leave owed to him since his termination on October 5, 2013, up to and including the date he is restored to his prior position of employment with Department of Corrections.*

We are also attaching to our response CSC's Administrative Law Judge email affirming the Port's decision in ensuring Employee Q acquires his back benefits lawfully due to him:

- 1. Email dated November 9, 2020, from CSC Administrative Law Judge Eric Miller regarding the Commission's authority only to affirm, revoke or modify an adverse action appeal.*

We would like to state that Employee Q's payment of back wages, including benefits, was not due to the terms and conditions outlined in his and attorney's letters as continually referred to by your auditor, but such payment was because of CSC and judicial decisions rendered.

We would like to point out and request it be included in the report that after 1 year, 8 months and 7 days when the Port's last motion to not pay Employee Q his back wages was denied by Superior Court, the Port finally complied with decisions issued by Civil Service Commission (CSC and judicial courts (Superior and Supreme)).

We again disagree with the auditor's assertion that the Board did not grant authority to process Employee Q's back wages and the Board's recommendation to ratify such action. We stated in our September 25, 2020 response that the Board appropriated \$600,000 in order to comply with the Supreme Court Order relative to Employee Q. Although your auditor stated Board approval was only for Employee Q's base salary, the motion passed by the Board in their April 30, 2019 meeting directed Management to remain within the budget authorized, and any amount over the budget would require Board approval. As we demonstrated in our September 25, 2020 letter, the Board was advised by former in-house counsel that Employee Q's back wages include increments. As shown in Table 1, the Port stayed within the \$600,000 allocation, including salary increments, retirement contributions, Medicare tax, attorney fees, and interest payment.

We respectfully disagree with the assertion that CSC and courts' judgments did not require Port to implement or make retroactive payments on salary increments Employee Q did not receive before he was terminated.

In our September 25, 2020 response, we provided you with a chronological event showing to you factors contributing to the delay in issuing the correct payments due to Employee Q. We are restating such event as shown below:

- 1. On June 1, 2018, former legal counsel informed Employee Q's attorney that the Port decided not to appeal the judicial decisions and prepared to facilitate his reinstatement. In the letter, he requested a statement indicating the amount of back pay and benefits owed to Employee Q. Such letter was provided to former legal counsel on July 11, 2018. Also, there were two executive sessions and a regular meeting where the Board authorized former legal counsel and in-house Staff Attorney to engage with Employee Q's attorney on the terms and conditions of his back wages and benefits;*
- 2. On July 25, 2018, the Board was informed by former legal counsel of Supreme Court's decision (CVA16-018) dated April 17, 2018, affirming the Superior Court's decision (SP0125-13), which upheld the Civil Service Commission's decision of May 13, 2013, on the reinstatement of Employee Q. According to the Commission's decision, Employee Q is to be reinstated to his prior position of Financial Affairs Controller, fully compensate him for all the time following his termination until the date he is reinstated. Such compensation shall include all employer's contributions to the Government of Guam Retirement Fund and the accumulation of vacation and sick days. Based on the executive session minutes, the Board was briefed by in-house counsel on his recommendation to reinstate Employee Q at the salary he separated with an effective date of July 30, 2018 with the understanding that appropriate compensation will be paid when his attorney has provided a calculation of back wages and benefits;*
- 3. On July 11, 2018, Employee Q's attorney submitted his back wage and benefit calculations to the Port's former legal counsel, including the interest rate. His attorney stated the final calculation included a 6% pre-judgment interest as allowed by law. This was never contested by the Port's former legal counsel;*
- 4. On July 30, 2018, Employee Q was reinstated to his position of Financial Affairs Controller. However, his division was divided into three divisions; he was not granted his full responsibilities as a Financial Affairs Controller by prior Management and was told by the previous Port General Manager that he only supervises the Budget Section of the Port's Finance Division;*
- 5. On August 22, 2018, Superior Court Judge Vernon Perez issued a decision to award Employee Q full back pay and benefits from the date of his termination until the day he is allowed to return to work, along with attorney fees;*
- 6. On March 29, 2019, the Port's former legal counsel reported to the Board the back wages and benefits entitled to Employee Q are in accordance with the Supreme Court decision. The Board authorized former legal counsel to work with Employee Q's attorney;*
- 7. On April 30, 2019, the Board appropriated \$600,000 for the back wages of Employee Q;*
- 8. Despite the fact that Employee Q had provided his calculation of back wages and benefits to the Port's former legal counsel and was reinstated to his position effective July 30, 2018, personnel actions reflecting his back wages and benefits were not processed until May 3,*

2019—ten months after his reinstatement. Based on these personnel actions, checks payable to Employee Q were processed on June 24, 2019:

9. On December 3, 2019, former in-house counsel advised the Board that his review of other judicial decisions of similar cases found reinstated employees were entitled to salary increments despite former legal counsel's opinion that Employee Q was not eligible for salary increments as part of his reinstatement;
10. On February 10, 2020, the Port canceled in its entirety personnel actions dated May 3, 2019, because of errors in Employee Q's salary and re-issued new personnel actions reflecting the correct salaries;
11. On February 19, 2020, and April 24, 2020, the Port issued checks payable to Employee Q for back wages due to him as a result of the errors in his salary;
12. On April 7, 2020, the Port issued a check payable to Employee Q for interest payment due to him; and
13. On July 23, 2020, Employee Q provided a letter to the Deputy General Manager, RE: Supplemental Document; Settlement Agreement, stating the terms and conditions outlined in CSC Decision and Judgment were fulfilled and released the Port of any future liability.

We factually reconstructed how prior Port management delayed the rightful processing of Employee Q's back wages almost ten months after his reinstatement and only issued his first payment two months after the personnel actions were signed and executed. This is the reason why it took one year and ten months for Employee Q to be made whole and to eventually be reinstated as if though he never left the Port.

Thank you for the opportunity to go over this audit's draft findings and allow Management to submit additional supporting documents. At issue is Management's recognition of Employee Q's 2011 and 2012 performance evaluation giving the draft audit claim that neither of these documents were signed. We did a further review of Employee Q's performance evaluation reports for 2011 and 2012, and discovered supporting documents. Indeed, we apologize for not offering up the following documents for your review:

1. Performance evaluation period from October 13, 2010 to October 12, 2011:
 - i. Employee Q's performance evaluation report was signed by his supervisor, the Corporate Services Manager, and Employee Q. Overall evaluation rating is Outstanding. The Human Resources staff reviewed the report on December 31, 2012;
 - ii. Notice of Results of Performance Evaluation Report dated December 31, 2012, which reflected the Overall Rating as Outstanding was presented to the most immediate former General Manager;
 - iii. Port's Human Resources worksheet stating his salary will be \$83,900.00 per annum;
 - iv. Memorandum dated February 6, 2013, from Interim Deputy General Manager, Mr. Felix R. Pangelinan, Subject: Salary Increment; Ref: Jose B. Guevara III and Frances T. Arriola, addressed to Acting Financial Affairs Controller and Acting Corporate Services Manager. The memorandum authorizes payment in accordance with Section 7.008 of the Personnel Rules and Regulations;

- v. *A copy of the signed performance evaluation for 2011 by the Interim Deputy General Manager is provided for your review. Note that the former General Manager was on leave and did not rescind this action at any time upon her return to work; and*
- vi. *Notification of Personnel Action No. 317-13 dated January 9, 2013, Effective Date of October 13, 2011, Remarks: Approved by the Board of Directors in their regular meeting of December 14, 2012.*

2. *Performance evaluation period from October 13, 2011 to October 12, 2012:*

- i. *Performance evaluation report was signed by his supervisor, Corporate Services Manager. Employee Q signed the evaluation on December 26, 2012. Overall evaluation rating is Outstanding. The report was reviewed by the Human Resources staff on August 20, 2013:*
- ii. *Port's Human Resources performance evaluation point worksheet:*
- iii. *Notice of Results of Performance Evaluation Report dated February 22, 2013, which reflected the Overall Rating as Outstanding. The document was not signed by the General Manager. However, there is no written letter denying Employee Q his increment, therefore, Employee Q's increment for 2012 has been effectuated; and*
- iv. *Notification of Personnel Action No. 652-13 dated August 16, 2013, Nature of Action: Salary Increment; Effective Date: October 13, 2012, salary to: \$88,180.00 per annum.*

As shown above, other factors, aside from the differences in legal opinions, were major reasons why Employee Q was not provided his entitled back wages, including salary increments. Again, this is the reason why it took one year and ten months for Employee Q to be made whole and to eventually be reinstated as though he never left the Port.

Legal Remedies Executed Without a Formal Agreement and Liability Release Until After the Final Payment in May 2020

Of the five employees covered by our initial audit scope, only Employee Q did not execute a settlement agreement, or other type of formal agreement specifying the amounts and terms for back wages, benefits, attorney fees, and interest charge Port has to pay, as well as a liability release provision.

Employee Q and Employee V's² cases are similarly appealed, affirmed and concluded in the judicial courts. In Employee Q's case, Port decided not to appeal further after five years of litigation and appeals. However, Employee V executed a settlement agreement containing provisions on the amounts and terms of back wages and interest charge to be paid with a mutual release from all claims and liabilities.

(²Our audit results on Employee V's settlement will be issued in a separate audit report.)

For the protection of all parties involved, every liability should be accompanied with a document setting the parties' agreement to the amounts and terms that would end said liability (e.g., an invoice, contract, or agreement). Ideally, this document should have been finalized and signed by both parties before any payouts. Without a valid formal agreement containing relevant and pertinent provisions, most importantly a liability release provision, Port risked the possibility of

Employee Q, or his beneficiaries, pursuing further financial demands and litigation on the same termination lawsuit.

Response: As stated in our September 25, 2020 response to the draft audit report, former legal counsel was authorized to engage with Employee Q's attorney to facilitate his reinstatement because the Port decided not to appeal the judicial decisions. In the June 1, 2018 letter, former legal counsel asked for a statement indicating the amount of back pay and benefits owned to Employee Q, which was provided on July 11, 2018.

There were two executive sessions (July 25, 2018 and March 29, 2018) and a regular Board meeting (April 30, 2019) where the Board authorized former legal counsel and in-house counsel to engage with Employee Q's attorney on the terms and conditions of his back wages and benefits.

In July 25, 2018, the Board was informed by former legal counsel that Employee Q is to be reinstated to his prior position of Financial Affairs Controller and to fully compensate him for all the time following his termination until the date he is reinstated. Such compensation shall include all employer's contributions to the Government of Guam Retirement Fund as well as the accumulation of vacation and sick days. Based on the executive session minutes, the Board agreed to reinstate Employee Q at the salary he separated with an effective date of July 30, 2018, with the understanding that appropriate compensation will be paid when his attorney has provided a calculation of back wages and benefits.

On July 11, 2018, the attorney for Employee Q submitted his back wage and benefit calculations to the Port's former legal counsel, which included the interest rate. His attorney stated the final calculation included a 6% pre-judgment interest as allowed by law.

On March 29, 2019, the Port's former legal counsel reported to the Board the back wages and benefits entitled to Employee Q are in accordance with the Supreme Court decision. The Board authorized former legal counsel to work with Employee Q's attorney on the matter.

On April 30, 2019, former legal counsel verbally stated at the Board meeting that Employee Q is not entitled to salary increments. The former Deputy General Manager for Administration and Finance informed the Board that Employee Q's attorney disagreed with the former legal counsel's position. Former legal counsel was instructed to continue to work with Employee Q's attorney.

At the April 30, 2019 meeting, the Board appropriated \$600,000 for the back wages of Employee Q. Payments were issued to Employee Q on June 24, 2019.

On December 3, 2019, former in-house counsel advised the Board his review of other judicial decisions of similar cases found that reinstated employees are entitled to salary increments despite former legal counsel's comment that Employee Q was not eligible for salary increments as part of his reinstatement.

February 19, 2020, April 7 and 24, 2020, the Port issued checks payable to Employee Q to include salary increments in accordance with the former in-house counsel's opinion.

On July 23, 2020, Employee Q provided a letter to the Deputy General Manager, RE: Supplemental Document: Settlement Agreement, stating the terms and conditions outlined in CSC Decision and Judgment were fulfilled and released the Port of any future liability.

We believe the finding which states, “Without a valid formal agreement containing relevant and pertinent provisions, most importantly a liability release provision, Port risked the possibility of Employee Q, or his beneficiaries, pursuing further financial demands and litigation on the same termination lawsuit” is moot, since Employee Q did provide a letter dated July 23, 2020, to the Port stating the terms and conditions outlined in CSC Decision and Judgment were fulfilled and released the Port of any future liability. As such, Employee Q or his beneficiaries cannot pursue further financial demands and litigation on this termination lawsuit.

Deficiencies in Employee Q’s Liability Release Letter

In his liability release letter addressed to Port’s Deputy GM of Administration and Finance (DGMA), Employee Q stated that as of July 23, 2020, all the terms and conditions have been fulfilled by Port, and that his case with the Port is “closed.” In the same letter, Employee Q formally declared that he and Port mutually release all claims and further discharge one another from any and all liability and claims connected with their employment relationship to date and the recently “closed” adverse action (termination) lawsuit.

However, we found the following in the liability release letter that we refer to Port management for review and consideration:

- In using Port’s letterhead, Employee Q signed off as if he was also representing the Port in this matter.
- Neither the incumbent GM, nor the DGMA (the delegated Port representative), signed this “mutual” release letter.
- Neither a notary or witness signed this letter.
- This letter was written in a manner that implied that all the terms and conditions in Employee Q’s February 2020 “remedy request letter” were the same as the conditions of CSC’s Decision and Judgment. The remedy request letter contained conditions not required by CSC or courts’ judgments.

Therefore, we recommend the GM execute a comprehensive formal agreement that includes (1) the purpose, amounts, and terms of what Port paid for Employee Q’s back wages, benefits, attorney fees, and interest charge; (2) a liability release provision; and (3) the signatures of the relevant parties and witness.

***Response:** We agree that Employee Q should not have used a Port letterhead in releasing the Port of any liability of all claims. However, we do not find it of significant concern because no fraud or abuse was committed, and that the full force and effect of Employee Q’s liability release remains in effect, even if such were written on a napkin. Moreover, even though this draft audit states that a notary or witness nor acknowledgment by the GM or DGMA is lacking, the result is Employee Q provided a Port with a letter releasing the Port of any future claims. Therefore, Management believes that this finding is without merit.*

Regarding the draft audit's recommendation that the Port executes a formal agreement, Employee Q's payment of back wages, including increments and benefits, was not a result of terms and conditions outlined in letters from his and attorney's letters. It is inaccurate to refer to this as a settlement or imply that the Port "just accepted" all of Employee Q's demands, as continually referred to by this draft audit. Such payments were executed because of a Supreme Court order and not because of a settlement agreement. We also stated that the former in-house counsel accepted the terms and conditions in Employee Q's Attorney's letter and provided legal guidance relative to the process of payment for Employee Q's back wages.

Port Adhered to Employee Q's Terms and Conditions Not Required by CSC or the Courts' Judgments

Port calculated Employee Q's back wages based on CSC and the courts' judgments, as well as on the terms and conditions requested by the employee. These terms and conditions were communicated through the following:

- Employee Q's Attorneys declaration letter, dated July 11, 2018 and addressed to Port's former Legal Counsel; and
- Employee Q's remedy request letter, dated February 6, 2020 and addressed to and approved by the DGMA.

Employee Q's Attorney's Declaration Letter

With the attorney's declaration letter, he attached his calculation schedule of back wages and interest to be paid to his client, Employee Q. The calculation schedule contained terms, which are similar to the additional terms in Employee Q's remedy request letter. The terms contained the following statements, in which the attorney rendered several opinions regarding his client, Employee Q:

1. "Before termination of [Employee Q] on December 18, 2012, he received a performance evaluation from his supervisor, which entitles him [to] an increase [...]. Based on the prior years' performance evaluation[s] [...], his rating [was] Outstanding since 2005. This entitles him to receive the highest points or percentile on the subsequent years. The number of sub-steps for Outstanding ratings is 5 [five] sub-steps."
2. "In 2016, the Port Board approved a new pay scale increasing each position's pay range to match [the] 25% market percentile. This pay schedule is not showing [on] the Port's website. Therefore, [Employee Q's] salary range increased and it should affect [Employee Q's] calculation from the effective date of the new pay schedule to the work date prior to the official starting date he goes back to work at the Port."
3. "The final calculation also includes [a] six percent (6%) pre-judgment interest as allowed by law."

Employee Q's Remedy Request Letter

In his remedy request letter, Employee Q indicated that his terms and conditions were reasonable because they were in accordance with CSC and the Supreme Court of Guam's judgments and Guam law. According to Port, they followed all of Employee Q's terms and conditions, including the following statements, which were not specified in CSC or the courts' judgments, nor in Guam law:

1. "That [Employee Q's] reinstatement includes *all* salary increments that were due for the period of December 18, 2012 to the current date [February 6, 2020] using the last performance appraisal rating on record of "Outstanding" to adjust [his] salary accordingly."
2. "A 6% interest charge *per day*³ is effectuated. Payment to be made by the 60th day of management approval."

³emphasis added

Response: We disagree with your assertion that the Port followed all of the terms and conditions outlined in Employee Q's attorney's letter of July 11, 2018, and his letter of February 6, 2020, at face value. As explained in our letter of September 25, 2020, I recused myself on the litigation of the Port 7 employees and designated the former Deputy General Manager for Administration and Finance, Mrs. Connie J. Shinohara, to convene a task force to determine if it is in the Port's best interest to continue all on-going personnel cases whose appeals were before the Civil Service Commission or in the judicial courts.

In our September 25, 2020 letter, we explained that despite Employee Q's reinstatement of July 30, 2018, his personnel actions to be used to compute his back wages were not processed until almost ten months after his reinstatement. His first payment was not issued to him until two months after the former General Manager signed the personnel actions.

One year and ten months after Employee Q received his first payment, and his release of liability was still pending, the Deputy General Manager for Administration and Finance and the Personnel Services Administrator reviewed the initial personnel actions. They discovered the salary reconstruction for Employee Q was done in error. Consequently, the Port canceled the first personnel actions and issued new personnel actions on February 10, 2020, reflecting the salaries that Employee Q was entitled to per the former in-house counsel's presentation to the Board during the December 19, 2019 Board meeting.

Regarding his salary increments for 2013 to 2017, we went back three years (2010, 2011, and 2012) from the time Employee Q was employed at the Port, and took his overall performance rating for each year and simply averaged it. He received outstanding ratings during all those periods, and as such, the average sub-steps for each year he was entitled to a salary increment was five. As noted in our response above, we are providing you with a copy of the documents pertaining to Employee Q's 2011 increment.

In regards to the 6% interest charge, Employee Q conferred with his attorney on his letter of February 6, 2020, and was advised to include the interest rate as part of his calculation, which the Port's former legal counsel did not dispute. The 6% interest was initially included in his attorney's letter dated July 11, 2018, to former Port legal counsel. This 6% is a pre-judgment interest, allowed by law and included in the calculations. Based on a review of the documents related to Employee Q's case, both the former Port legal counsel and in-house counsel did not dispute this interest rate.

Additionally, we took into consideration how prior Port management continued to place salt on Employee Q's wounds and delay the administration of justice by:

- 1. Reinstating him at the salary he left—rather than reconstructing his salary as if though he never left the Port, a principle upheld following the Civil Service Commission's judgment;*
- 2. Not giving him his full certification authority as a Financial Affairs Controller, which we corrected when we came on Board in January 2019;*
- 3. Not processing his initial personnel actions until ten months after he was reinstated;*
- 4. Not processing his back wage checks for almost two months after his initial personnel action; and*
- 5. Erroneously processing the initial personnel actions, which had to be corrected almost eight months later.*

Highest Number of Incremental Sub-Steps Granted Based on Prior “Outstanding” Performance Evaluation Ratings

Port’s Annual Salary Increment System

On performance evaluation alone, the highest a Port employee’s salary increment can increase is up to five sub-steps (or 5%) every year. According to Port’s PRR 6.302, salary increments are based on an annual performance evaluation, for which the employee is given zero to five points for every performance factor evaluated. According to interim procedures approved by then Port GM in October 2010, employees are eligible to the increment sub-steps that correspond with the total points their overall performance earned, as shown in Table 3.

Table 3: Salary Increment Point System

Total Points	Overall Performance Rating	Sub-Steps
0-25	Unsatisfactory	0
26-34	Satisfactory (Marginal)	2
35-49	Satisfactory	3
50-59	Satisfactory (Highly)	4
60-65	Outstanding	5

Source: Port Inter-Office Memorandum, October 11, 2010.

PRR 6.302 also states that the salary increment will be granted by the GM’s certification (signature) that satisfactory service was rendered for the performance-rating period preceding such (incremental) increase.

Under Port’s salary increment point system, an employee’s salary increment can increase up to five sub-steps (or 5%) every year, as opposed to a more common *one*-step salary increment widely used by the rest of GovGuam.

An “outstanding” rating is immaterial under the one-step salary increment system widely used by the rest of GovGuam. However, the annual salary increase of five sub-steps (or 5%) that

corresponds to an “outstanding” rating under Port’s salary increment point system is financially significant.

Response: We would like to clarify that the annual salary increment system was approved by the Board of Directors in their meeting of September 13, 2010.

Two Prior Years’ Performance Evaluation Ratings Not Approved by Former GM Results in the Lowest Number of Incremental Sub-Steps

During our September 2020 meeting with the GM and the DGMA, the incumbent GM insisted that Port determined the five-sub-step salary increments by averaging the overall performance ratings of Employee Q’s last three years actively employed at Port (2010, 2011 and 2012). Upon review of the three performance evaluations that Port based the paid back wages on, we noted that the overall performance rating for all three periods was “outstanding.” However, we found that, of the three performance evaluations, two (for the 2011 and 2012 annual increments) did not bear the former GM’s signature to indicate her certification (or approval) of the overall performance rating.

It is the incumbent GM’s understanding that the GM is required to reject a performance rating recommendation “in writing and provide justification” as to why he/she does not want to grant a salary increment. Additionally, he stated that “Employee Q should not be penalized for prior Port management’s failure to adhere to the [PRR] and process his salary increment due to him [...] on a timely basis prior to his termination on December 2012.”

However, we found at least three sections in Port’s PRR explaining that the GM has the final say on all salary increments, as follows:

- All salary increments will require the GM’s approval (PRR 7.008).
- The salary increment will be granted by the GM’s certification (signature) that satisfactory service was rendered for the performance rating period preceding such increase (PRR 6.302).
- A Division Head shall submit a written recommendation to the GM regarding the performance appraisal of every employee. The GM shall make a final performance appraisal accepting or rejecting said recommendation and make the corresponding salary adjustments. (PRR 7.010).

Based on the same sections of the PRR, Employee Q was not eligible to receive a salary increment for years 2011 and 2012 because the corresponding performance evaluations were not approved by the former GM. See Table 4 for what Port granted versus what Employee Q was eligible for.

Table 4: What Port Granted vs. What Employee Q Was Eligible For

Performance Rating Period Ending	Overall Performance Rating*	GM's Signature Approval**	What Port Granted	Increment Sub-Steps
				What Employee Was Eligible For
10/12/2012	Outstanding	X	5	0
10/12/2011	Outstanding	X	5	0
10/13/2010	Outstanding	√	6	6
Average			5	2

Sources: Employee Q's Performance Evaluation Reports; Notifications of Personnel Actions; Port Inter-Office Memorandum, October 11, 2010; PRR.

* Division Head's written recommendation to the GM regarding the employee's performance appraisal.

**The GM's final performance appraisal accepting or rejecting said recommendation for the corresponding salary adjustment.

When averaging the sub-steps allowable under Port's PRR and salary increment point system, Employee Q would be eligible for only "2" sub-steps (as shown in Table 4) or a "marginal" satisfactory" rating (as shown in Table 3). Employee Q's eligibility for increments of only *two sub-steps* results from the prior 2011 and 2012 performance evaluations that were not signed by the former GM. The absence of such signature signifies that there was no valid basis for granting Employee Q the highest number of incremental sub-steps to be applied to the five-year termination period.

Response: In our response stated earlier, we explained that during a further review of Employee Q's performance evaluation reports, we found the following documents and apologize for not making this available for your review earlier:

1. Performance evaluation period from October 13, 2010 to October 12, 2011:

- i. Employee Q's performance evaluation report was signed by his supervisor, the Corporate Services Manager, and Employee Q. Overall evaluation rating is Outstanding. The Human Resources staff reviewed the report on December 31, 2012;*
- ii. Notice of Results of Performance Evaluation Report dated December 31, 2012, which reflected the Overall Rating as Outstanding was presented to the most immediate former General Manager;*
- iii. Port's Human Resources worksheet stating his salary will be \$83,900.00 per annum;*
- iv. Memorandum dated February 6, 2013, from Interim Deputy General Manager, Mr. Felix R. Pangelinan, Subject: Salary Increment; Ref: Jose B. Guevara III and Frances T. Arriola, addressed to Acting Financial Affairs Controller and Acting Corporate Services Manager. The memorandum authorizes payment in accordance with Section 7.008 of the Personnel Rules and Regulations;*

- v. A copy of the signed performance evaluation for 2011 by the Interim Deputy General Manager is provided for your review. Note that the former General Manager was on leave and did not rescind this action at any time upon her return to work; and
- vi. Notification of Personnel Action No. 317-13 dated January 9, 2013, Effective Date of October 13, 2011, Remarks: Approved by the Board of Directors in their regular meeting of December 14, 2012.

As noted in the exhibits, the 2011 salary increment was signed by the former Interim Deputy General Manager, who was at that time Acting General Manager because of the General Manager's absence during that period, and note that the former General Manager at that time did not revoke that action upon her return to work.

2. *Performance evaluation period from October 13, 2011 to October 12, 2012:*

- i. *Performance evaluation report was signed by his supervisor, Corporate Services Manager. Employee Q signed the evaluation on December 26, 2012. Overall evaluation rating is Outstanding. The report was reviewed by the Human Resources staff on August 20, 2013;*
- ii. *Port's Human Resources performance evaluation point worksheet;*
- iii. *Notice of Results of Performance Evaluation Report dated February 22, 2013, which reflected the Overall Rating as Outstanding. The document was not signed by the General Manager. However, there is no written letter denying Employee Q his increment, therefore, Employee Q's increment for 2012 has been effectuated; and*
- iv. *Notification of Personnel Action No. 652-13 dated August 16, 2013, Nature of Action: Salary Increment; Effective Date: October 13, 2012; salary to: \$88,180.00 per annum.*

According to the HR staff, the performance evaluation rating for 2012 and Notification of Personnel Action were returned unsigned by the former General Manager in November 2013. And, the former General Manager did not submit a written letter denying Employee Q his increment.

Under Section 6.302 – Salary Increment – Procedure states: “When a division head determines that a particular employee shall not be granted a salary increment, the division head shall notify the General Manager of such denial prior to the employee's anniversary date. If the General Manager does not receive a performance report or a notification of denial of an employee's salary increment, no action will be taken to adjust the employee's pay.”

For the 2012 salary increment, Employee Q's immediate supervisor, who was also a division head, submitted his performance evaluation rating in December 2012. The overall evaluation rating was Outstanding. The Human Resources staff, based on the documents accompanying the 2012 performance evaluation rating form, processed and forwarded to the General Manager on August 16, 2013. According to the Human Resources staff, the documents were returned, unsigned by the former General Manager, in November 2013.

According to Section 6.302, his division head did comply by submitting his performance evaluation. However, the former General Manager did not comply with the rule by denying in writing his salary increment. As such, we determined that Employee Q's increment for 2012 was not rejected according to the Port's Personnel Rules and Regulations and recognized for purposes of reconstructing his back wages and current salary. No General Manager should ever be allowed to sit on any pending performance evaluation. Leaving a performance evaluation, unsigned should not be akin to rejecting it. Furthermore, there is no statute of limitation on when to act upon a performance evaluation, and once the performance evaluation is acted on, then there is a retroactive application to the date the respective increment is effective. In fact, the Port's PRR, Section 7.010 mandates that "The General Manager shall make a final performance appraisal accepting or rejecting said recommendation and make the corresponding salary adjustments." We are confident that this audit will have the same conclusion because although no employee is entitled to a salary increment, employees are entitled to due process.

Based on this, Table 4 would need to be corrected to reflect both the 2011 and 2012 to be 5 each.

Comparison of Annual Salary Increments Based on the Last Performance Rating

In our initial discussion, in July 2020, the DGMA explained that, although not stated in CSC's judgment, it is implied that Port will apply the last performance evaluation rating to the entire termination period's back wages. The DGMA, Employee Q's immediate supervisor, further stated the Port assumed Employee Q's performance evaluations would have been consistently rated "outstanding" had he not been unlawfully terminated. He further emphasized that Port's performance standards have not changed.

We acknowledge the immediate supervisor's determination to grant Employee Q an "outstanding" performance rating, however, his assumption that an employee's performance would not, or could not, have changed over time seemed unrealistic. It is possible for an employee's work performance to change because of external or internal factors that could influence a person's behavior. Even if an employee maintained the same quality of work performance, it is still possible for the performance evaluation rating to change if the evaluator or the evaluator's perception changed.

In apply his prior "outstanding" rating to five non-working (inactive) years, Port granted Employee Q the highest number of incremental sub-steps on the assumption that his work performance could not have possibly changed. See Table 5 for a comparison of the annual salaries using the different performance ratings.

Table 5: What Port Assumed vs. Eligible Satisfactory

Effective Date of Salary Increment	Port's Assumed Outstanding *****			Eligible "Marginal Satisfactory" **			
	Pay Grade /Step	Annual Salary	Hourly Rate	Pay Grade /Step	Annual Salary	Hourly Rate	Variance
10/13/2013	N 11D	\$92,678	\$44.56	N 8C	\$81,432	\$39.15	\$11,246
10/13/2014	N 13A	\$97,405	\$46.83	N 9A	\$83,069	\$39.94	\$14,336
10/13/2015	N 14B	\$102,374	\$49.22	N 9C	\$84,739	\$40.74	\$17,635
10/13/2016	NN 9D	\$109,808	\$52.79	NN 4B*	\$88,220	\$42.41	\$21,588
10/13/2017	NN 11A	\$115,410	\$55.49	NN 4D*	\$89,993	\$43.27	\$25,417
Total		\$517,675			\$427,453		\$90,222

Sources: Notifications of Personnel Actions; Port's Pay Plan.

*These are only estimates because they are dependent on the salary range Port would have granted for the 2016 agency-wide pay adjustment. Despite our requests, Port did not provide us with their detailed policy on how to migrate their employees' salaries into the pay plan that was first adopted in October 2009.

Under *Port's Assumed "Outstanding"* column, the October 2013 increment's pay range increased based on the five-sub-step pay ranges Port granted for years 2011 and 2012. Under the *Eligible "Marginal Satisfactory"* column, we did not factor in the 2011 and 2012 increments' pay ranges because their supporting evaluations lacked the former GM's signature approvals, as required by Port's PRR. If Port used the "marginal satisfactory" rating (or averaged "2" sub-step) in its calculation of annual increments, it would save approximately \$90K, as shown in Table 5.

While we acknowledge Port management's efforts to provide Employee Q with all the expected benefits "to make the employee whole" as if he was not terminated, we refer this calculation for Port's management's review and consideration.

Response: *As explained in our September 25, 2020 letter, the Port took the last three years of his performance evaluation ratings and averaged it. As noted in our responses above, the 2011 salary increment was signed by then Interim Deputy General Manager in the absence of the former General Manager who was on leave status. For 2012, because the former General Manager did not reject the performance evaluation of Employee Q, he is eligible for the salary increment.*

Regarding the statement that Employee Q's performance would not have changed over time seemed unrealistic. This finding is capricious and inconsistent with Employee Q's long-standing record of exemplary performance. We informed your auditors that during the time period, he earned his master's degree in public administration with the University of Guam, received the Professional Master Business Certification from the Association of Government Accountants in 2017, and held the position of Regional Vice President of the Pacific Rim for the Association of Government Accountants for June 2017 to June 2018. Through his discussions with his former

employers. Employee Q was praised for his work ethics and professionalism. To make the finding that his overall evaluation ratings for 2013 to 2017 should have been "marginal satisfactory" based on unsigned performance evaluations for 2011 and 2012 by the former General Manager is troublesome to not only Management, but also Employee Q or any other employee in this type of situation. Again, we are confident that in the justification, we offer as reasons why 2011 and 2012 were accepted and used to calculate Employee Q's back wages.

Employee Q Paid a 6% Interest Charge Without Court Order Requirement and Negotiated Terms

Port paid Employee Q \$95K in interest for the period of December 19, 2012 through September 15, 2018. According to 18 GCA Chapter 47 §47106, the legal rate of interest is 6% per year on accounts "after demand or judgment rendered in any court of the territory." Section 47106 further states that *it is acceptable for the parties involved to contract in writing an interest rate that does not exceed* the interest rates specified in 14 GCA, the Uniform Consumer Credit Code.

Interest Charge Paid Without Court Order Requirement

Neither CSC or the courts ordered Port to pay a 6% interest charge (or \$95K) to Employee Q. Yet, Port did not exercise its option to negotiate an interest rate lower than 6%, as allowed by 18 GCA §47106. According to the incumbent GM, Port's former contracted Legal Counsel and Port's former "in-house" Staff Attorney did not dispute the 6% interest rate.

Interest Charge Paid Without Negotiated Terms

In his February 2020 remedy request letter, Employee Q requested a 6% interest charge *per day* (or 2,190% per year). Upon approving such letter immediately, the following day, the DGMA apparently accepted the following issues surrounding this interest charge, as shown in Figure 2:

- Interest at 6% per day is effectuated. A daily 6% interest rate translates into interest of 2,190% per year, which is exceptionally above the legal rate. However, Port applied and paid the 6% interest on, generally⁴, an annual basis.
- The principal amount to be charged with interest was not stated and fixed.
- The time, or period (start and end date), in which interest was to be charged was not stated and fixed.

⁴This is further explained under the sub-header, "Interest Charge Paid Without Considering Time in the Calculation."

Figure 2. What Port Accepted vs. Simple Interest Formula

What Port Accepted	vs.	Simple Interest Rate Formula
? x 2,190% x ? = /[] [] \$		\$ x % x month/day = /[] [] \$
Principal x Rate x Time = Interest		Principal x Rate x Time = Interest

Source: Employee Q's Remedy Request Letter.

Port's \$95K payment is based on an interest calculation schedule containing the following note, (disclosure) which reads as if Employee Q could still claim nine more months of interest.

“Interest calculation was from December 19, 2012 to September 15, 2018. Initial check payments for the salaries owed during my absence was cut on June 24, 2019. *Any interest owed from unpaid salary from September 16, 2018 to June 23, 2019 is not included in the interest calculation⁵.*”

⁵Emphasis added.

Therefore, we reiterate our recommendation to execute a comprehensive formal agreement that includes the provisions we previously stated.

Federal Interest Rates Used for Computation of Back Pay

In the U.S. Office of Personnel Management’s (OPM) chart of annual interest rates used for the computation of back pay⁶, the interest rate gradually increases from 3% to 5% over the time/period Employee Q charged Port. If Port had meant to negotiate the terms of the interest charge and used OPM’s graduating interest rate, the Port could have saved at least 2% a year, based on Table 6.

⁶<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/interest-rates-used-for-computation-of-back-pay>

Table 6: What Port Accepted vs. OPM Interest Rates

Applicable Period Start	Applicable Period End	Annual Interest Rate Port Accepted	Interest Rate Port Applied	OPM’s Annual Interest Rates
12/19/2012	3/31/2016	2190%	6%	3%
4/1/2016	3/31/2018	2190%	6%	4%
4/1/2018	9/15/2018	2190%	6%	5%
Average		2190%	6%	4%

Sources: Port’s Interest Calculation Schedule; OPM Fact Sheet.

Response: As stated in our September 25, 2020 letter, Employee Q’s attorney in his letter dated July 11, 2018, to the former Port legal counsel included the 6% interest in his calculation of the back wages. His attorney claimed that the interest was a pre-judgment interest as allowed by law. Employee Q conferred with his attorney about his February 6, 2020 letter, and was advised to update the July 11, 2018 calculation of his interest rate. We informed your auditors that both former legal counsel and former in-house counsel did not dispute this interest rate.

Please elaborate how the Port could be in a position to negotiate the 6% interest when this entire matter resulted from a Supreme Court Order CVA-16-018 and both Port former legal counsel and in-house counsel did not dispute such interest rate with Employee Q’s attorney?

Significant Deficiencies in the Basis of Port’s Calculations for Back Wages and Interest That Resulted in Overpayments

We found significant deficiencies in the basis of Port’s calculations, which resulted in overpayments of back wages, benefits, and interest charge, as shown in Table 7. We considered the following deficiencies in Port’s calculation basis, such that:

- Annual salary increments were included for the termination period without duly accomplished performance evaluation reports approved by (and accountable to) the incumbent GM.
- Back wages included three pay raises not covered by CSC or the courts' judgments and retroactive to their authorization dates.
- Interest charge was paid without considering time in the calculation.

Summary of Overpayments of Back Wages, Benefits, and Interest

Based on our audit calculations, Port's payments to Employee Q resulted in a net overpayment of \$21K, as follows and as shown in Table 7:

- The net \$2K overpayment of total wages is attributed to mainly a difference in the work days and workhours calculated by Port.
- The net \$291 overpayment for retirement and the net \$822 overpayment for Medicare tax are attributed to the overpayment of total wages. Retirement contributions and Medicare tax are dependent on the amount of wages paid. Port might want to consider coordinating with the Government of Guam Retirement Fund, Guam Department of Revenue and Taxation and the U.S. Treasury to address the overpayments.
- The \$18K overpayment of interest is attributed to Port mainly not considering time in its calculation.

As a matter of disclosure, our audit calculations (and the resulting overpayments) in Table 7 did *not* factor in the averaged two sub-steps (or "marginal satisfactory") salary increments, as our audit determined.

Table 7: What Port Paid vs. What OPA Calculated

Remedy	What Port Paid	What OPA Calculated	Variance
Back Wages – Base Salary, minus \$209K of Outside Income	\$242,907	\$239,814	\$3,093
Back Wages – Pay Raise Changes during Termination	\$118,569	\$118,402	\$167
Pay Raise Changes after Reinstatement	\$19,273	\$19,135	\$138
Pay Raise Changes before Termination	\$771	\$1,743	-\$972
Total Wages	\$381,520	\$379,094	\$2,426
Retirement Contribution – Back Wages	\$18,548	\$18,208	\$339
Retirement Contribution – Pay Raise Changes after Reinstatement	\$1,186	\$1,186	\$0
Retirement Contribution – Pay Raise Changes before Termination	\$39	\$87	-\$49
Total Retirement Contribution	\$19,773	\$19,482	\$291
Medicare Tax – Back Wages	\$6,028	\$5,194	\$834
Medicare Tax – Pay Raise Changes after Reinstatement	\$279	\$277	\$2
Medicare Tax – Pay Raise Changes before Termination	\$11	\$25	-\$14
Total Medicare Tax	\$6,318	\$5,497	\$822
Attorney Fees & Legal Costs	\$40,043	\$40,043	\$0
Interest Charge	\$94,621	\$76,799	\$17,822
Total Remedy Cost	\$542,275	\$520,915	\$21,360

Source: Port's Check and Deposit Documents; OPA Analyses.

In our audit calculation used the average two sub-steps salary increments and excluded the 2012 increment, which performance rating was not approved, Port paid approximately \$96K more in addition to the \$21K overpayment. See Table 8.

Table 8: What Port Paid vs. What Employee Q Was Eligible For

Salary Increment Year	Performance Evaluation Deficiency	Eligible Sub-Steps	Eligible Pay Raise Changes	What Port Paid for Pay Raise Changes	Variance
2011	Not Approved	0	\$0	\$0	\$0
2012	Not Approved	0	\$0	\$7,604	\$7,604
2013	None Prepared	2	\$1,602	\$12,584	\$11,253
2014	None Prepared	2	\$3,257	\$17,644	\$14,386
2015	None Prepared	2	\$4,796	\$22,108	\$17,312
2016	None Prepared	2	*\$8,415	\$29,627	\$21,212
2017	None Prepared	2	*\$9,428	\$33,673	\$24,246
Total			\$27,497	\$123,510	\$96,013

Sources: Table 4; Table 5; Table 7.

*These are only estimates because they are dependent on the salary range Port would have granted for the 2016 agency-wide pay adjustment. Despite our requests, Port did not provide us with their detailed policy on how to mitigate their employees' salaries into the pay plan that was first adopted in October 2009.

We refer the above calculation of overpayments to Port's management for review and final decision.

Response: We respectfully disagree with your auditor's assertion that overpayment was made to Employee Q. Reiterating our September 25, 2020 letter of response, had the Port initially complied with CSC and judicial courts' decisions in reinstating Employee Q to his position as Financial Affairs Controller and awarded him his full back pay and benefits from the date of his termination until the Port complied with the order and judgments, the erroneous initial personnel actions and the re-issuance of the correct personnel actions would not have provided your auditors with the perception that the Port erroneously calculated his back wages.

In our teleconference with your auditors on September 29, 2020, we stated we would re-look at the calculations and determine if the Port overpaid Employee Q by \$17,000. In our November 13, 2020 teleconference, we informed your auditors that a recalculation was made and it revealed we owe Employee Q approximately \$4,729.26 in interest. According to staff, who was a former employee of your agency, she noted OPA used network days and hourly rate per year to compute the estimated annual salary and used the number of days for the interest payment. With this method of calculation, it would show the Port did overpay Employee Q by \$17,000. However, the Port's review notes that when interest was paid to Employee Q, a significant balance in salary payable was not settled. As such, the Port underpaid Employee Q \$4,729.26.

Because Employee signed a document releasing the Port from any future liability, how are we now supposed to reconcile this finding of an underpayment?

Annual Salary Increments Included Without Performance Evaluation Reports Approved by and Accountable to the GM

Our audit calculation of back wages followed Port's method of compounding the annual increments to the base salary. When there is no work interruption (e.g., termination), this is the regular calculation method for annual increments, which should be supported with a duly accomplished and approved performance evaluation report.

If we consider Employee Q's \$79,828 annual base salary (as of reinstatement) and compare it to the \$126,222 annual salary given for the last pay raise Port included in his back wages, the total salary increase is only \$46,394. However, on the same pay raises, Port paid Employee Q \$139K for the increments alone (without the base salary), because of the cumulative (compounding) method Port applied as if no termination occurred. The prior year's annual increment rate per hour was added to the succeeding year's increment per hour, and the pattern continued until the end of the period set by Port.

We respect that Port's calculation was based on the understanding that Employee Q's back wages and benefits should be processed using the regular method as if there was no work interruption. However, the annual increments granted for 2013 through 2017 were not supported with duly accomplished performance evaluation reports, which need to be approved by (and accountable to) the incumbent GM in order to standardize the process, in compliance with the PRR. Even without the approved evaluation reports, Port prepared personnel action forms for these annual increments.

In line with the existing PRR for annual increments, we recommend that the GM and the Board standardize a salary increment process for back wages to include a required performance evaluation report (of sort) accountable to the incumbent GM who signs the personnel action forms.

Response: This finding is baseless. The Port does have a standardized salary increment process provided for in the Port's Personnel Rules and Regulations. Such rules were followed to reconstruct the back wages for Employee Q.

Back Wages Included Three Pay Raises Not Covered by CSC or the Courts' Judgments and Retroactive to Their Authorization Dates

Requoted in Table 1 is CSC's order that Port fully compensate Employee Q for all the time *following his termination* on December 18, 2012 *until the date he is reinstated* to his prior position of employment (July 30, 2018).

There were six pay raises within the scope of back wages – five salary increments and one pay adjustment, as shown within Table 9's green box. However, Port paid three pay raises retroactive to their authorization dates even though these were not covered by CSC or the courts' judgments, as shown in Table 9's red boxes.

Table 9: What Port Paid as Back Wages and Retro Base Pay

Effective Date	Pay Raise Type	Eligibility Date	Authorization Date	Time Lapse	Port Paid as Back Wages
10/13/2011	Salary Increment	X	2/10/2020	8.3 years	
10/13/2012	Salary Increment	X	2/10/2020	7.3 years	Paid
10/13/2013	Salary Increment	7/30/2018	2/10/2020	1.5 years	Paid
10/13/2014	Salary Increment	7/30/2018	2/10/2020	1.5 years	Paid
10/13/2015	Salary Increment	7/30/2018	2/10/2020	1.5 years	Paid
10/1/2016	Pay Adjustment	7/30/2018	2/10/2020	1.5 years	Paid
10/13/2016	Salary Increment	7/30/2018	2/10/2020	1.5 years	Paid
10/13/2017	Salary Increment	7/30/2018	2/10/2020	1.5 years	Paid
9/16/2018	Pay Adjustment	9/16/2018	2/10/2020	1.4 years	Paid
9/16/2019	Salary Increment	9/16/2019	2/10/2020	4.8 months	Paid

Sources: Notifications of Personnel Action; Employee Q’s Performance Evaluation Reports; Port’s Check and Deposit Documents; Port’s Calculation Schedules; PRR.

According to 4 GCA Chapter 6 §6218.1, “whenever a classified or unclassified employee of the Government of Guam, including all departments, agencies and instrumentalities, *whether or not autonomous*⁷, receives an increase in pay resulting from step increase, pay range increase, promotion or any other cause, such increase in pay *shall not be retroactive from the date of its authorization, unless so specified by law.*”⁸

⁷Emphasis added.

⁸Emphasis added.

As a matter of disclosure, we did not consider this law’s application on the retroactive pay raises that resulted from CSC or the courts’ judgments. The retroactive payment of the six eligible pay raises would have been available to Employee Q as early as his reinstatement, but because of differing legal opinions, these six eligible pay raises were not authorized until a year and a half later (as shown in Table 9) or paid until almost two years later (as shown in Table 2). We did not seek a legal opinion on this matter. We plan to cover this issue together with the other reinstated employees in our subsequent reports.

Response: *In our response above, we provided our review regarding Employee Q’s 2011 and 2012 performance evaluation reports. Regarding the three (3) pay raises your auditors are referencing—these are not to be considered pay raises because these salary adjustments for 2016 and 2018 resulted from a market percentile implementation which the Board approved for all Port employees. We respectfully caution against referencing an authority-wide salary correction made due to an authority-wide pay reclassification based on the market percentiles as a pay raise. In reconstructing Employee Q’s salary structure as if he never left the Port, the two times—and not three (3) which your auditors keep referencing—these compensation studies were implemented during the affected period. Therefore, since this is not a pay raise, then there is no illegal retroactive application.*

Retroactive Salary Increments Not Approved by Former GM and Its Domino Effect on Subsequent Years' Salary Increments.

Port authorized the October 2012 salary increment in February 2020, which is seven years after its effective start date and potentially noncompliant with 4 GCA §6218.1. In May 2020 (almost three months after authorizing it in February 2020), Port paid the October 2012 salary increment, retroactive to October 2012.

After Port did not make a retroactive payment for the October 2011 salary increment, the NPA supporting the October 2011 salary increment of five sub-steps had a domino effect on the subsequent years' pay raises. This 2011 NPA became the basis for subsequent pay raises – salary increments of 2012 through 2017, 2016 and 2018 pay adjustments, and the 2019 salary increment. See Table 5 and Table 8 for the financial effect on the salary increments for 2013 through 2017.

To reiterate, the financial effect of the 2011 and 2012 annual salary increments, for which performances were not approved by the former GM, needs to be reviewed by the incumbent management.

Differing Legal Opinions Resulted in Retroactive Payments of Raises Not Covered by Judgments

Also in February 2020, Port authorized and paid the September 2018 pay adjustment more than one year after its effective (and eligibility) date, and the September 2019 salary increment almost five months after its effective date.

Also previously explained, Port received differing legal opinions on which Employee Q's back wages included salary increments for the termination period. Employee Q was reinstated at his base salary without any prior pay raises factored in. Later, when Port's former Staff Attorney opined that back wages did include salary increments, the salary ranges of these eligible pay raises had a domino effect on subsequent pay raises – the 2018 pay adjustment and the 2019 salary increment. As such, Port updated the salary ranges and made retroactive payments on the 2018 and 2019 pay raises.

Response: We disagree with your auditor's assertion that the retroactive payment of raises were not covered under the judgments. As explained above and in our September 25, 2020 letter, although judgment or decision did not expressly state salary increments and pay adjustments, Employee Q is entitled to salary increments and market percentile implementations. We are providing you with past CSC decisions, which provides the justification for paying the salary increments and market percentile implementations to Employee Q.

Interest Charge Paid Without Considering Time in the Calculation

Port's \$95K interest payment (for the period of December 19, 2012 through September 15, 2018) was \$18K over compared to our audit calculation of only \$77K. See Table 7. This overpayment was due to primarily Port's method of using a 6% flat rate regardless of how much time had actually passed, be it 11, 300 or 365 days. Port did not consider time in its interest calculation.

Response: We respectfully disagree that Employee Q was overpaid in his interest payment. Based on our recalculation, the Port underpaid him \$4,729.26.

Other Matters

Although not directly related to our audit objective, we became aware of other matters that warrant Port's, and possibly the Guam Legislature's, attention.

Port Unified Existing Employees' Anniversary Dates to Reflect the Dates of Agency-Wide Pay Adjustments

In reviewing the personnel action forms of the five reinstated employees in our initial audit scope, we noticed identical increment anniversary dates among four of them. When Port implemented its new pay plan's first, agency-wide, pay adjustment in October 2009, it unified the existing employees' anniversary dates to reflect the transfer from the Hay Plan to Port's Compensation and Classification Plan. Similarly, when Port implemented the September 16, 2018 agency-wide pay adjustment, the existing employees' increment anniversary dates changed in uniformity to the pay adjustment's effective date.

According to PRR 6.301(C)(1), the pay grade reassignment for classes of positions (Port-wide pay adjustment) will not change increment anniversary dates. Furthermore, the salary increment of all Port employees shall be based on an annual review of performance (PRR 7.008), and the performance appraisal is *every 12 months* of service (PRR 7.007(A)).

When Port unified the increment anniversary dates in October 2009, for some employees, it likely shortened the performance appraisal period to less than 12 months. Before the September 16, 2018 agency-wide pay adjustment, we know that at least three of the reinstated employees had an October 13 incremental anniversary date. After the 2018 pay adjustment, their increment anniversary changed to September 16, which is 20 workdays (or two pay periods) less than "12 months of service."

Calculating the potential financial impact of unifying increment anniversary dates is not covered in our audit scope. However, because of the unification may have potentially negative financial impacts on Port's resources, and in compliance with PRR 6.301(C)(1), we recommend that the GM and the Board reconsider their practice of unifying employees' increment anniversary dates moving forward.

Response: In our response of September 25, 2020, we did agree with your auditor's statement that the salary increment anniversary dates should not have changed when the Port mitigated into the 2018 market percentile. We explained when we talked to the Human Resources staff about the changes, we were told they were being guided by former Port management to change the employees' salary anniversary dates to reflect the pay adjustment into the 25th market percentile.

Port's PRR Does Not Have a Cap on Salary Increments

According to 4 GCA Chapter 6 §6202, employees (autonomous agency employees included) at Steps 7 through 9 are entitled to an increment after 18 months of satisfactory performance, while employees at Steps 10 through 20 are entitled to an increment that is 3.5% of the employee's base

salary after 24 months of satisfactory performance. It was in 1991 when P.L. 21-59 amended §6202 by placing caps (limits) on the salary increments of employees at higher pay steps.

However, Port grants salary increments on an annual basis. According to PRR 7.008, the salary increment of all Port employees shall be based on an annual review of performance, and according to PRR 7.007(A), the performance appraisal period is every 12 months of service. It was in 2009 when the Guam Legislature adopted the PRR into Port's enabling legislation (12 GCA Chapter 10).

Although salary increment caps were passed by law in 1991, Port's PRR, adopted in 2009, did not incorporate the relative provisions of 4 GCA §6202, or any other cap, on its salary increments.

It is the GM's understanding that the salary increment caps required by 4 GCA §6202 were intended for those entities that rely on the General Fund. The GM explained that because Port is autonomous and generates its own income, Port employees are not subject to the salary increment caps required in §6202. Combined with Port's generous salary increment point system (as shown in Table 3), a Port employee's salary can increase by 2% to 5% each year without a cap. This presents a potentially negative financial impact on Port's resources.

As such, we recommend the Board consider incorporating in its PRR the relative (or similar) provisions of 4 GCA Chapter 6 §6202.

Response: We do not think this recommendation is feasible as a matter of practical application. The Port's PRR was adopted by statute, so the Board does not have the unilateral authority to simply "incorporate into the Port's Personnel Rules and Regulations the provisions of 4 GCA Chapter 6 §6202 moving forward." Moreover, we are perplexed that this is even a finding? This audit should focus on a determination if the law and rules and regulations applicable to the Port were followed in the execution of complying with Supreme Court Order No. CVA16-018.

Regarding the salary increment caps in the Department of Administration please check the latest Hay Plan implementation whereby increments do go beyond Step 20.

Port Interpreted Superior Court Decision as Employee Q Did Not Have to Mitigate the Wages Earned During His Termination

Port paid Employee Q his back wages, minus \$209K for the outside income he earned during his termination, as indicated in Tables 1, 2 and 7. According to the GM, Port mitigated (reduced) the back wages because Employee Q *requested* that his back wages be mitigated by his earnings during the period he was terminated. Based on his reading of the Superior Court's September 26, 2016 Decision and Order, it is the incumbent GM's understanding that:

- Port is obligated to pay Employee Q his full reinstated salary *without* mitigation; and that
- Employee Q did not have to mitigate the income he earned in the private sector and, as such, could have insisted that Port pay him his full back pay, in compliance with the Superior Court's order.

See Appendix 2 for a copy of the Superior Court's ruling. The GM's understanding of the Superior Court ruling in the September 26, 2016 Decision and Order could open up the possibility of Employee Q's supposed entitlement to the \$209K of outside wages he "voluntarily agreed" to be deducted from his back wages. Again, we reiterate our recommendation to execute a comprehensive formal settlement agreement that includes the provisions we previously stated.

Response: In our response letter of September 25, 2020, we went into great detail about the Hauser versus the Department of Law 2005 Guam 14 case when determining if an employee is qualified for full back pay. Based on the Decision and Order by Superior Court Judge Vern Perez on September 26, 2016, he found that there were no substantially equivalent jobs on Guam during the time period in question for Employee Q. It should be noted that Employee Q held positions with his private employers as a Bookkeeper and Accountants, which is not equivalent to his position as Financial Affairs Controller.

In our exit conference, we also explained that it was Employee Q's attorney who informed him to mitigate his outside wages he earned from 2014 to 2018 in the amount of \$102,748.75, which they did not have to do based on Judge Perez's decision. However, Employee Q submitted his calculations based on mitigation because his attorney advised him to do so.

This finding is moot since Employee Q's back wages included mitigation, and also since Employee Q submitted his liability release to the Port on July 23, 2020.

Conclusion and Recommendations

Our audit found that Port paid \$542K for Employee Q's back wages, Medicare tax, retirement contribution, interest charge, and attorney's fees and legal costs. Port's legal remedies with Employee Q were generally made in accordance with administrative and judicial review judgments. However, our audit calculated a total of \$521K, or a difference of \$21K, following Port's annual salary increment calculation.

Our audit amount did not factor in Employee Q's eligibility for only two sub-steps annual salary increments instead of the five sub-steps Port gave. Port granted five sub-steps based on three prior years of "outstanding" performance evaluation ratings, for which two were not approved by the former GM. If our audit calculation used the average two sub-steps and excluded the 2012 increment, for which the performance evaluation was not approved, Port paid approximately \$96K more in addition to the \$21K overpayment. While we acknowledge Port management's efforts to provide Employee Q with all the expected benefits "to make the employee whole" as if he was not terminated, Port's rules and regulations should be followed to support such a significant payment. As such, we refer this calculation for Port's GM and Board to review and consider.

Moreover, in executing Employee Q's legal remedies, we found instances of potential noncompliance with applicable laws, regulations, and internal policies, as well as lapses in Port's internal processes. These included: a) unorganized remedial actions; b) legal remedies not ratified by the Board; c) legal remedies without a formal comprehensive agreement and liability release; d) highest incremental sub-steps not required by CSC or the courts but based on two "outstanding" performance evaluations that were not approved by the prior GM; e) a 6% interest payment not

required by court order and improperly calculated; f) annual salary increments without performance evaluation reports; and g) apparent retroactive pay raises.

We became aware of other matters not related to our audit objective that warrant Port's, and possibly the Guam Legislature's, attention – i.e., the uniformity of exiting employees' anniversary dates and no caps on Port's salary increments.

As a result of our audit, we recommended the following:

- The GM seek the Board's ratification, via board resolution, on the total back wages and interest paid to Employee Q.

Response: This recommendation is not necessary as Management believes it complied with statutory authority expressly provided to the General Manager, and wherever it was prudent and necessary, the Board provided the appropriation when it adopted a motion on April 30, 2019, which authorized a payout not to exceed \$600,000.

- The GM execute a comprehensive formal agreement that includes (1) the purpose, amounts, and terms of what Port paid for Employee Q's back wages, benefits, attorney fees, and interest charge (2) a liability release provision; and (3) the signatures of the relevant parties and witness.

Response: This recommendation is not necessary. Employee Q submitted his liability release to the Port on July 23, 2020.

- The GM and the Board standardize a salary increment process for back wages to include a required performance evaluation report (of sort) accountable to the incumbent GM who signs the personnel action forms.

Response: This recommendation is unnecessary. The Port does have a standardized salary increment process provided for in the Port's Personnel Rules and Regulations. Such rules were followed to reconstruct the back wages for Employee Q.

- The GM and the Board reconsider their practice of unifying employee's increment anniversary dates moving forward.

Response: As stated in our response, going forward, an incumbent employee's anniversary date will remain the status quo when the Port implements a market percentile in the future.

- The Board consider incorporating in its PRR the relative (or similar) provisions of 4 GCA Chapter 6 §6202 moving forward.

Response: We do not agree with this recommendation. Public Law 30-43, which approved the Port's Compensation and Classification Plan, also codified our Personnel Rules and Regulations into the Guam Code Annotated. As such, the Board does not have the unilateral authority to simply incorporate into the Port's Personnel Rules and Regulations the provisions of 4 GCA Chapter 6, Section 6202 moving forward.

In thinking very analytically of how to conclude our response to this draft audit, we are focusing on your letter of November 6, 2020, and our teleconference of November 13, 2020, wherein your auditors expressed that some documents they requested have yet to be provided by the Port. This revelation is deeply concerning to us, especially since we pride ourselves on being transparent and accountable in our work.

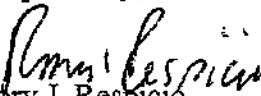
Mr. Public Auditor, please recall that no specifics were provided to us when we inquired during our teleconference on what documents were still pending. As a result of your auditors' non-response and the lack of specificities of outstanding documents, we are conducting an internal review to determine what documents your auditors requested and deemed pending. We have yet to find any non-compliance, but our review is still ongoing. Port employees involved with this particular audit are currently being asked to review all their correspondences with your auditing team.

Our hope and trust are that your audit examines the payments made to nine (9) affected Port employees would encompass a thorough review based on all of the documents surrounding these cases. This letter, therefore, respectfully requests that this draft audit be held in abeyance, so your auditors can provide us with an inventory of documents requested and allow the Port sufficient time to transmit such documents.

There are ethical requirements to produce a full and thorough audit based on all matters' collective knowledge. In order to uphold these ethical standards, a temporary pause is warranted so that your auditors can provide us with an actual inventory of outstanding documents. We are also requesting additional time to compile the migration study documents. Because of the magnitude of this audit and its impact on the subsequent related matters, we believe that it is in the public's best interest that all of the documents needed for your auditing team are before them for consideration.

Should you have any questions, or require additional information, please do not hesitate to contact me directly. *Si Yu'os Ma'ase!*

Respectfully,


Rory J. Respicio
General Manager



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

December 29, 2021

The Honorable Benjamin J. Cruz
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Hafa Adai Mr. Public Auditor:

Thank you for allowing us the opportunity to review the draft report. We truly appreciate your acknowledgment that we handled the appeals of these employees properly. In fact, the conclusion states, "*Our performance audit of the back wages of two reinstated Port employees found that Port's reinstatements of Employee S & Employee T were generally made in accordance with administrative and judicial review judgments and orders. The legal remedies stipulated in the Agreement to Satisfy Judgment and Settlement Agreement were likewise generally complied by the Port.*" We are grateful for this acknowledgment of how we handled these very complicated settlement agreements regarding the wrongful terminations of these employees.

We do recognize that we are in disagreement over the acceptance of the personnel evaluations which were neither approved or disapproved by the former General Manager. However, one thing remains certain and that is that when the analysis was conducted on the methodology we utilized for the reconstruction of these salaries, it was determined that we had in fact underpaid two reinstated employees. As such, this would mean there were no overpayment made, so far to any of the audits conducted.

Regarding the pay raise freeze mandate and potential violation on retroactive pay raises, as we pointed out in our response to you dated September 25, 2020, that based on our discussion with the Bureau of Budget and Management Research Office, we were informed that Public Law 34-116 does not apply to the autonomous agencies since we do not receive general fund appropriations. Additionally, we were also being guided by a policy issued by the Consolidated Commission on Utilities (CCU), dated October 2, 2018, which determined that Public Law 34-116 does not apply to the agencies under the CCU's purview. Thankfully, in your final report of February 2021 (OPA Report No. 21-03), you did not include this finding, and as such, we are perplexed that this is again being cited in this draft audit.

Regarding the incumbent Deputy General Manager's alleged appearance of conflict of interest, we disagree with this section of the audit. Simply put, the incumbent Deputy General Manager does not have a conflict of interest because he has no personal or financial interest gained by him in his involvement with these personnel matters in his present capacity at the Port. We are enclosing the Deputy General Manager's declaration under penalty of perjury that he did not have a financial gain or any consideration as a result of his participation in these matters you cited in this draft audit.

Additionally, just as we have done with your prior audit on these similar matters and in the interest of transparency, we will be forwarding your audit along with our response to the Attorney General requesting for his review and guidance so that the Attorney General may determine if any post actions are required based on this audit.

Again, thank you for allowing us the opportunity to respond to the draft report conducted by your auditors and welcome any discussions and/or clarifications before the report is published.

S' Yu'os Ma'ase,



Rory J. Respicio
General Manager

Enclosure



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

December 29, 2021

The Honorable Benjamin J. Cruz
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

RE: Declaration of Mr. Luis R. Baza, Deputy General Manager (“DGM”) of Finance and Administration of the Port Authority of Guam (“PAG”), in Support of PAG’s Response to the Office of Public Accountability’s (“OPA”) Draft Final Report of Performance Audit of PAG Back Wages Series B.

Hafa Adai Mr. Public Auditor:

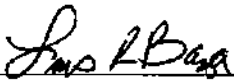
I, **Luis R. Baza**, hereby declare as follows:

1. I am the Deputy General Manager (“DGM”) of Finance and Administration at the Port Authority of Guam (“PAG”). I submit this declaration in support of the PAG’s response to the Office of Public Accountability’s (“OPA”) Draft Final Report of Performance Audit of PAG Back Wages Series B. I have personal knowledge of the following matters and, if called upon to testify, I would and could competently testify thereto.
2. I was appointed as the Chairman of the Board of the Guam Civil Service Commission (“CSC”) in June 2003, until my resignation in December 2015. Thereafter, I was reappointed as a Commissioner on the CSC Board in September 2018. I was then appointed as Chairman by the CSC Board in January 2019, and served as Chairman of the CSC Board until my resignation on December 12, 2019.
3. I was appointed by the Governor of Guam to serve as PAG DGM on December 13, 2019, and have continued to serve in such capacity to date.
4. As Deputy General Manager of Finance and Administration, I signed the Agreement to Satisfy Judgment and NPA’s for Employees S and T’s reinstatement and salary increments from 2012 to 2019, which were all prepared in January 2020.
5. As Deputy General Manager of Finance and Administration, I did not have nor receive a personal or financial gain as a result of my official actions in my capacity as the PAG DGM, nor am I related in any way to Employees S and T.
6. As Deputy General Manager of Finance and Administration, I also did not receive any consideration in any way shape or form as a result of my participation in the signing of Port documents related to Employees S and T’s reinstatement.

7. I have reviewed the applicable provision of 4 GCA Chapter 15, Standard of Conduct for Elected Officials, Appointed Officers and Public Employees of the Government of Guam §15210-Restrictions on Post Employment Title 4 GCA § 15210, and upon information and belief, my participation in the CSC and signing of Port documents related to the employees' reinstatement did not portray an appearance of a conflict of interest.

I declare under penalty of perjury of the laws of Guam that the foregoing is true and correct to the best of my knowledge.

Executed on this 29th day of December, 2021.



**Luis R. Baza, Deputy General Manager
Finance and Administration
Port Authority of Guam**



OFFICE OF PUBLIC ACCOUNTABILITY

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January 14, 2022

Mr. Rory J. Respicio
General Manager
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

Dear Mr. Respicio,

Buenas yan Hafa Adai!

Thank you for your acknowledgment of the audit results and recommendations embodied in OPA Report No. 21-03 and OPA Report No. 21-09. I sincerely appreciate your proposed corrective actions in accordance with the audit recommendations.

In a draft Resolution 22-01, it stated, *“the Board of Directors accepts and ratifies the General Manager’s submission (to be filed as Board Policy 2022-01), which establishes and standardizes a salary increment process for back wages of reinstated employees to include performance evaluation report to be signed by the incumbent General Manager who approves the number of sub-steps on the personnel action forms”*. This resolution is in accordance with the audit recommendation, which means that a performance evaluation report is required for all performance-based annual increments for reinstated employees to be signed by the incumbent GM.

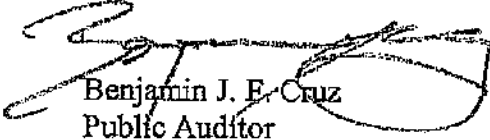
In your letter, you specified a proposed policy stating that:

- Salary increments of reinstated employees shall be based on the average ratings of the employee’s last three (3) years’ employment at the Port.
- The incumbent General Manager shall accept submission of performance evaluation (unsigned, delayed or lack of letter from GM rejecting performance evaluation or increment certification) for purposes of reconstructing employee’s back wages.

To be consistent with the proposed Resolution 22-01, the proposed Board Policy 22-01 **must specify the requirement of performance evaluation reports for annual increments of reinstated employees to be signed by the incumbent GM.** The use of average ratings of the employee's last three years' employment at the Port to calculate for the annual salary increments *is not an audit recommendation*, but the Port management's proposal. If the Board ratifies this management proposal, OPA will acknowledge and respect the Board action.

Again, thank you for communicating with us your corrective action plan and soliciting the Office of Public Accountability's feedback.

Sincerely yours,



Benjamin J. E. Cruz
Public Auditor



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 11, 2022

The Honorable Benjamin J. Cruz
Public Auditor
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Dear Mr. Public Auditor:

Buenas yan Hafa Adai! Thank you for keeping the communication lines open between your office and the Port Authority of Guam in all matters facing our respective entities. Enclosed, please find a draft resolution and draft board policy which we will submit to the Port's Board of Directors at its upcoming Board Meeting on January 20, 2022. We will be presenting these two documents as post-audit actions outlined in OPA Audits 21-03 and 21-09.

Supporting documents accompany the draft resolution 2022-01, i.e., documents supporting the reconstruction of back wages for the seven wrongfully terminated Port employees, including spreadsheets, retirement fund statements, W2s, as well as a signed release from each of these employees. We sincerely understand how it may appear to you and your team of professional auditors that the Port did NOT exercise due diligence to ensure that mitigation was applied and verified. The claim of a violation of the Port's Personnel Rules and Regulations stems from the fact that some of these performance evaluations, which were neither approved nor disapproved by the former General Manager, were used to reconstruct back pay. These unsigned performance evaluations were used to determine the affected employee's annual increment.

We also understand that since your office and the Port fundamentally disagree on how those unsigned performance evaluations should have been applied or not applied determined in these audits, the audit findings concluded that overpayments were made. However, one thing remains certain: when the analysis was conducted on the methodology we utilized for the reconstruction of these salaries, it was determined that we had underpaid two reinstated employees. As such, this would mean there was no overpayment made, so far to any of the audits conducted.

Letter to Hon. Benjamin J. Cruz/OPA Audits 21-03 and 21-09

January 11, 2022

Page 2 of 2

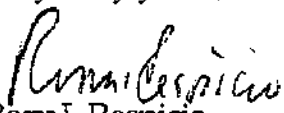
In order to address that specific concern, and in line with your recommendations, we will be proposing draft Board Policy Number 2022-01, which among other things, provides for the following policy:

The salary increment for back wages of reinstated employees found to be wrongfully terminated in a judgement or order from the Guam Civil Service Commission or the courts of Guam shall be based on the average ratings of the employee's last three (3) years' employment at the Port. If for whatever reason the employee's performance evaluation or increment certification was unsigned or somehow delayed, and a letter from the General Manager rejecting the performance evaluation or increment certification was NOT submitted at the time the employee's performance evaluation was submitted to Human Resources, then the incumbent General Manager shall so accept such submission of the performance evaluation for purposes of reconstructing the employee's back wages.

In retrospect, Mr. Public Auditor, we concede that had this Board Policy been in place before executing these judgments and orders, there may NOT have been any determination that overpayments were given to these affected Port employees.

Again, Mr. Public Auditor, thank you for being receptive to reviewing our corrective action plan relative to the recommendations contained in OPA Audits 21-03 and 21-09. We are hopeful that you will provide your feedback on our corrective action plan in time for the Port's upcoming board meeting. Our Board members and our management team will surely benefit from you and your team's involvement in our plan's corrective action plan and implementation. *Si Yu'os Ma'ase!*

Very truly yours,


Rory J. Respicio
General Manager

Employee Frances T. Cepeda

Row Labels	Sum of PAG	Sum of GGRF	Sum of Difference
2013	\$ 46,845.84	\$ -	\$ 46,845.84
2014	\$ 68,568.70	\$ 2,365.09	\$ 66,203.61
2015	\$ 69,580.74	\$ -	\$ 69,580.74
2016	\$ 73,116.33	\$ 14,432.00	\$ 58,684.33
2017	\$ 78,351.13	\$ 31,806.08	\$ 46,545.05
2018	\$ 82,460.55	\$ 33,692.99	\$ 48,767.56
2019	\$ 85,324.31	\$ 32,260.80	\$ 53,063.51
2020	\$ 75,799.26	\$ 28,220.96	\$ 47,578.30
Grand Total	\$ 580,046.86	\$ 142,777.92	\$ 437,268.94

Conclusion:

Calculation matched with the settlement amount.

**CONFIDENTIAL
SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into on the date indicated below by and between **FRANCES TARCISIA CEPEDA** aka **FRANCES TARCISIA ARRIOLA** ("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 In the Matter of Frances Arriola v. Port Authority of Guam, which appeal resulted in a revocation of the adverse action and thereafter Management filed a Petition for Judicial Review and then an appeal to the Supreme Court of Guam, which resulted in the matter now being returned to the Superior Court of Guam and then to the Civil Service Commission and is now titled as In the Matter of Frances Arriola v. Port Authority of Guam; Case No. 12-AA28T SP (hereinafter referred to as the "Litigation");

WHEREAS, Employee and Management agree that the terms of this Settlement Agreement are a personnel matter and privacy 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;

WHEREAS, Management reviewed 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 approves that this Agreement shall be offered to Employee;

WHEREAS, the Deputy Director of Administration and Finance is authorized through Board Resolution to offer settlement terms to Employee and to execute this Agreement following its execution by Employee; and

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 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 Personnel Specialist IV, at the Human Resources Division, earning \$41.89 per hour, and with all benefits, rights, privileges, obligations, duties and responsibilities according to the laws of Guam, and the Rules and Regulations of the Port Authority of Guam. Employee shall be reinstated effective June 29, 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"). 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. The total amount of Back Wages after setoff is calculated to be \$437,268.94.

4. 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). Management shall also pay appropriate Medicare contributions. Within sixty (60) days Management will provide assurance to Employee that such withheld amounts have been timely paid to the appropriate entity.

5. Management shall restore to Employee credit of 656 hours of annual leave and 328 hours of sick leave, which represents the amount that Employee would have accrued had Employee remained in employment at the Port Authority of Guam. Management shall further pay Employee's attorneys' fees, and legal costs and expenses, in the amount of \$87,453.78, payable as stated below.

6. Payment Schedule.

All payments made under this agreement shall be made as follows:

- a. Within seven (7) days of Agreement execution, Management shall pay to McDonald Law Office, LLC Trust Account the amount of \$87,453.78. ²² 7/17/20
- b. Within thirty (30) days of Agreement execution, Management shall pay to McDonald Law Office, LLC Trust Account the amount of \$144,298.75.
- c. On or before January 10, 2021, Management shall pay to McDonald Law Office, LLC Trust Account the amount of \$144,298.75.
- d. On or before January 10, 2022, Management shall pay to McDonald Law Office, LLC Trust Account the amount of \$148,671.44.

7. Management agrees to expunge Employee's record of this termination and the adverse action pertaining to the Litigation.

8. Management agrees that any payment hereunder, may, upon Employee's election, become immediately due and payable to Employee upon termination or resignation of 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 Employee and Management are aware of their respective rights, and have had a full and fair opportunity, to consult with their legal 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 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 all liabilities and all claims between the parties. 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 is intended to avoid litigation and to be final and complete in full.

11. Upon execution of this Agreement, Management 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 "Releasors") 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.

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 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.

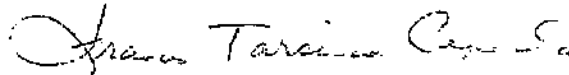
15. Any Party who has to enforce this Agreement may disclose only such parts of this Settlement Agreement as are necessary to enforce its terms.

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:

EMPLOYEE:

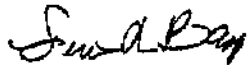
Dated: 7/1/2020



**FRANCES TARCISIA CEPEDA aka
FRANCES TARCISIA ARRIOLA**

MANAGEMENT:

Dated: July 1, 2020



**LUIS R. BAZA, Deputy General Manager
for Port Authority of Guam, Authorized
Representative**



BERNADETTE MENO
 FULL BACK PAY & BENEFITS CALCULATION
 December 19, 2012 to July 4, 2020

I. Back Pay Calculation from 2012 to 2020

A Employee Evaluation Period	B			C				D				Recalculation	
	Pay Range	Salary	Hourly Rate	From	To	Network Days Calculation	Hours Based on Network Days	Network Days Calculation	Hours Based on Network Days	Recalculated Gross Salary	Recalculated Gross Salary		
December 19, 2012 to October 12, 2013	N-7C	78,255.00	37.62	12/19/2012	10/12/2013	213.00	1,704.00	213.00	1,704.00	\$ 54,108.90	\$ 54,108.90		
October 13, 2013 to October 12, 2014	N-8D	82,247.00	39.64	10/13/2013	10/12/2014	260.00	2,080.00	260.00	2,080.00	\$ 82,247.00	\$ 82,247.00		
October 13, 2014 to October 12, 2015	N-10A	86,442.00	41.56	10/13/2014	10/12/2015	261.00	2,088.00	261.00	2,088.00	\$ 86,774.47	\$ 86,774.47		
October 13, 2015 to September 30, 2016	N-11B	90,651.00	43.66	10/13/2015	9/30/2016	254.00	2,032.00	254.00	2,032.00	\$ 88,754.44	\$ 88,754.44		
October 1, 2016 to October 12, 2016	NN-5C	92,720.00	44.58	10/1/2016	10/12/2016	8.00	64.00	8.00	64.00	\$ 2,852.92	\$ 2,852.92		
October 13, 2016 to October 12, 2017	NN-6D	97,448.00	46.85	10/13/2016	10/12/2017	261.00	2,088.00	261.00	2,088.00	\$ 97,823.80	\$ 97,823.80		
October 13, 2017 to September 15, 2018	NN-8A	102,420.00	49.24	10/13/2017	9/15/2018	241.00	1,928.00	241.00	1,928.00	\$ 94,935.46	\$ 94,935.46		
September 16, 2018 to September 15, 2019	NN-8D	106,524.00	50.73	9/16/2018	9/15/2019	260.00	2,080.00	260.00	2,080.00	\$ 105,524.00	\$ 105,524.00		
September 16, 2019 to July 4, 2020	NN-10A	110,906.00	53.82	9/16/2019	7/4/2020	210.00	1,680.00	210.00	1,680.00	\$ 89,577.92	\$ 89,577.92		
TOTAL										\$	\$ 712,598.92		

Conclusion:

Settlement Amount:	\$ 646,988.76
Recalculated Gross Salary	\$ 712,598.92
Difference	\$ (65,610.16)

Calculated amount is more than the settlement amount by \$65,610.16

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into on the date indicated below by and between Bernadette Sterne Meno ("Employee") and PORT AUTHORITY OF GUAM ("Port") 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, denominated as, *Bernadette Sterne Meno (Employee) vs. Port Authority of Guam (Management)*, Civil Service Commission Case No. 13AA03T; and,

WHEREAS, at the request of Management, at a hearing that Employee was neither noticed nor allowed to participate, the Civil Service Commission stayed the proceedings on this appeal until the matter of Josette Javalosa was determined, which has led to years of Employee being unable to be heard on her appeal the fall of the year 2019 which resulted in determination in Employee's favor in C.S.C. No.: 2020-018 Ruling by Administrative Law Judge filed on March 11, 2020; and

WHEREAS now Employee and Port desire to amicably resolve this 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, in order to avoid further acceleration of liability; 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

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

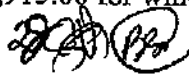
TERMS AND CONDITIONS OF AGREEMENT

1. Employee and Management shall enter into a Stipulated Judgement in furtherance of this settlement, which shall be presented in simple form of incorporation of this settlement by reference, but not disclosure or attachment, to be entered by the Civil Service Commission of

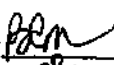

CONFIDENTIAL SETTLEMENT AGREEMENT between
BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

the Government of Guam, and by which Employee's appeal of the adverse action taken against Employee by Management shall be fully resolved. The Parties agree that this settlement shall not be disclosed, 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 Judgement.

2. Management agrees to rescind the adverse action taken against Employee and reinstate Employee to the position of Marketing Administrator earning \$53.32 per hour, 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 no later than June 29, 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 (herein 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 by Employee during the period of Employee's termination, which amount shall be that amount already disclosed to Management by Employee. As of June 29, 2020, the total amount of Back Wages after off-set is calculated to be \$646,988.76. 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 contributions); Medicare; and all applicable taxes and withholdings; and within sixty (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 the installments set forth in the attached schedule marked hereto as "Attachment 1" which bears the initials of Employee and Management's representative.
4. Management shall restore to employee credit for all annual leave that Employee would have accrued had she remained employed at the Port Authority of Guam which is 1,498.50 hours.
5. Management shall restore to employee credit for all sick leave that Employee would have accrued had she remained employed at the Port Authority of Guam which is 890 hours.
6. Management shall further pay Employee's attorney fees, and legal costs and expenses, according to Guam Code Annotated §4406.1 by making direct payment to Attorney Curtis Vandeveld in the amount of \$11,915.00 for which Management will issue an IRS form 1099

3 

CONFIDENTIAL SETTLEMENT AGREEMENT between
BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

Initial: 
Initial: 

reflecting such payment to the tax authority. Such attorney fees shall be payable upon presentation of invoices to Management after execution of this agreement, on ~~June 29, 2020.~~

July 10, 2020

7. Management agrees to expunge Employee's record of this termination and the adverse action upon which it is based pertaining to Litigation.
8. Management agrees that any payment deferred hereunder shall become immediately due and payable to Employee upon termination of Employee or resignation of Employee or to Employee's estate upon death of Employee, should such events 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 such terms 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 legal counsel or seek legal advice in negotiation, executing and understanding the legal effect of this Agreement.
10. It is understood by parties, each of them, that this Settlement Agreement is complete and shall not be subject to any claim of mistake or fact of 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, and regardless of the adequacy of inadequacy of the consideration exchanged, this Agreement is 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 "Releasors") hereby mutually release any and all claims 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.

CONFIDENTIAL SETTLEMENT AGREEMENT between
BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

Initial: BDM
Initial: AS

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 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:

Employee:

Dated: June 26, 2020



 Bernadette Sterne Meno

PORT:

Dated: July 29, 2020



 Mr. Luis Baza, REPRESENTATIVE FOR
 PORT AUTHORITY OF GUAM

CONFIDENTIAL SETTLEMENT AGREEMENT between
 BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

ACKNOWLEDGEMENTS

Territory of Guam)
CITY OF Hagatna) ss:

On this 26th day of June 2020 before me, a Notary Public in and for Guam, personally appeared **EMPLOYEE BERNADETTE STERNE MENO**, known to me to be the person whose name is subscribed to the foregoing **SETTLEMENT AGREEMENT** and acknowledged to me that she 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.



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

PORT AUTHORITY OF GUAM)
VILLAGE OF HAGATNA)

On this 26th day of June 2020, before me, a Notary Public in and for Guam, personally appeared Mr. Luis Baza, a duly authorized representative for the Port Authority of Guam, whose name is subscribed to the foregoing **SETTLEMENT AGREEMENT** and acknowledged to me that she executed the same as 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.



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

CONFIDENTIAL SETTLEMENT AGREEMENT between
BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

Initial: BM
Initial: CA

"EXHIBIT 1"

PORT AUTHORITY OF GUAM
BERNADETTE MENO - PROPOSED PAYMENT PLAN

BACK WAGES (NET GROSS
PAY AFTER MITIGATION) \$ 646,988.76

PERCENTAGE	AMOUNT	PAYMENT DETAILS
13%	\$213,506.29	within 30 days of execution of Agreement
33%	\$213,506.29	within 120 days of execution of Agreement
50%	\$219,976.18	within 240 days of execution of Agreement

Employer agrees:

- * to reinstate the 880 sick leave hours owed to employees
- * to reinstate the 1,488 annual leave hours owed to employees
- * pay legal fees directly to Attorney in the amount of \$111,918
- * back pay retirement benefits owed to employee

3 *3/10/02* *BR*

CONFIDENTIAL SETTLEMENT AGREEMENT between
BERNADETTE STERNE MENO AND THE PORT AUTHORITY OF GUAM

Initial: *BR*
Initial: *BR*

Employee Josette Javelosa

Row Labels	Sum of PAG	Sum of Mitigation	Sum of Difference
2013	\$ 42,494.53	\$ -	\$ 42,494.53
2014	\$ 66,203.61	\$ 5,460.00	\$ 60,743.61
2015	\$ 69,580.74	\$ 22,540.00	\$ 47,040.74
2016	\$ 73,116.33	\$ 22,880.00	\$ 50,236.33
2017	\$ 78,351.13	\$ 34,524.40	\$ 43,826.73
2018	\$ 82,460.55	\$ 17,620.00	\$ 64,840.55
2019	\$ 85,324.31	\$ 31,134.96	\$ 54,189.35
2020	\$ 72,279.24	\$ 26,294.40	\$ 45,984.84
Grand Total	\$ 569,810.44	\$ 160,453.76	\$ 409,356.68

Conclusion:

Calculation matched with the settlement amount. Rate used was the actual rate in the NOPA.

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between The Port Authority of Guam (hereinafter "Management"), and Josette J. Javelosa (hereinafter "Employee"). Management and Employee are referred to herein collectively as the "Party" or "Parties."

RECITALS

WHEREAS, on December 18, 2012, Employee was served a Final Notice of Adverse Action (FNAA) for her alleged involvement in processing a fraudulent Worker Compensation Claim for Bernadette S. Meno, Port Authority of Guam (PAG) Marketing Administrator who filed a claim after a slip and fall in the ladies restroom on September 22, 2011; and

WHEREAS, Employee filed an adverse action appealed of her termination with the Port Authority of Guam to Civil Service Commission (CSC) titled Josette Javelosa vs. Port Authority of Guam, Adverse Action Appeal Case NO 13-AA01T. After six days of hearing on the merits, the appeal resulted in a determination of 4-3 votes in favor of Employee; and

WHEREAS, Management disagreed with CSC decision and judgement and filed an appeal with the Superior Court of Guam; and

WHEREAS, on July 7, 2016 the Supreme Court ordered the case to be remanded back to the CSC to determine the correct standard of review. Employee filed an appeal with the Supreme Court of Guam Court Case No. CVA 15 which resulted in the decision remanding the case back to Superior Court and has resulted in the matter now being returned to the Civil Service Commission and now designated as Josette Javelosa vs. Port Authority of Guam Adverse Action Case No. 13-AA01T SP (hereinafter referred to as the "Litigation"); and

WHEREAS, on December 19, 2019, Port Authority of Guam Board of Directors executed Resolution No. 2019-22 Relative To Authority To Settle Litigation Between the Port Authority of Guam And Certain Appellants at the Civil Service Commission allowing Staff Attorney to offer settlement terms to Employee, and allowing Deputy General Manager of the Port Authority of Guam to execute this Agreement; and

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: 

Management's Initials: 

WHEREAS, the Parties to the Litigation have agreed to amicably resolve and settle the claims and defenses in the Litigation; now

THEREFORE, the Parties have agreed to resolve this dispute and the Litigation; and, intending to be legally bound, the Parties hereby agree as follow:

TERMS AND CONDITIONS OF AGREEMENT

1. It is expressly understood that this Settlement Agreement and the settlement it represents are entered into solely for the purpose of allowing the Parties to avoid further litigation. Employee and Management shall enter into a Stipulated Judgment to be entered by 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 the disclosure of the terms of this Agreement. Employee and Management agree that the Civil Service Commission shall retain jurisdiction to enforce the Stipulated Judgment.
2. In consideration of Management's agreement to the terms and conditions called for herein, the Employee completely releases and forever discharge Management, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation which the Employee now has, or which may hereafter accrue or otherwise be acquired.

In consideration of the release set forth above, Management hereby agrees to:

- a. Rescind the adverse action taken against Employee and reinstate Employee to her position of Program Coordinator IV with the Marketing Division effective June 18, 2020, at the salary of \$43.16 per hour, and with all benefits, rights, privileges, obligations, duties and responsibilities related to such employment with the government of Guam according to the laws of Guam, and the Personnel Rules and Regulations of the Port Authority of Guam.
- b. Make Employee whole for all compensation, benefits, or other recompense that Employee would have earned had the adverse action not been executed against Employee (hereinafter referred to as "Back Wages"), Compensation of full back pay, to include pay increases as stipulated on Exhibit Schedule A. The Back Wages are subject to mitigated income earned by Employee during the period of her termination of which is stipulated on Exhibit Schedule A.
- c. Deduct from Back Wages and make payment to the Government of Guam Retirement Fund for Employee's share of retirement fund contributions to

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial:

Management's Initials:

restore Employee to what Employee would have contributed or paid had Employee been an active employee with the Port Authority of Guam, along with Management's matching contribution; Medicare; and all applicable taxes and withholdings at a rate of 25%; and within thirty (30) days provide assurance to Employee that such withheld amounts have been timely paid to the appropriate entity for which the deduction was made. Employee's Back Wages shall be payable in three installments as follows:

- 33% (\$135,087.70) within 30 days of execution of Agreement
- 33% (\$135,087.70) within 120 days of execution of Agreement
- 34% (\$139,181.27) within 240 days of execution of Agreement

d. Restore to Employee credit for all annual leave and sick leave that Employee would have accrued had she remained in employment at the Port Authority of Guam, as stipulated on Exhibit Schedule B, to the extent permitted by Guam law and the Port's Rules and Regulations.

3. Management shall be responsible for paying the entire amount of any and all attorney's fees and costs that have incurred or did incur in connection with, representing and resolving legal matters relative to the Litigation as provided by 4 Guam Code Annotated §4406.1. Payments shall be made to John C. Terlaje in the amount of \$48,437.50 upon presentation of invoices to Management after execution of this Agreement.

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

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

6. It is expressly understood that this Settlement Agreement and the settlement it represents are entered into solely for the purpose of allowing the Parties to avoid further litigation. This Settlement Agreement does not constitute an admission by either Party of any wrongdoing, contractual obligation, or of any duty whatsoever, whether based in statute, regulation, common law, or otherwise, and each Party expressly denies that any liability or any such violation has occurred.

7. Management agrees and represents that it has no other pending legal actions or claims against Employee, including in any court, arbitration forum, governmental

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: _____

Management's Initials: _____

or administrative forum or agency, or other dispute resolution forum that are in any way related to the Litigation or dispute described herein.

8. The Parties represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement. This Settlement Agreement comprises the entire agreement between the Parties and supersedes any and all prior oral and written agreements between them. This Settlement Agreement may not be altered, amended, or modified except by a further writing signed by the Parties.

9. In entering into this Settlement Agreement, the Parties represents that it has relied upon the legal advice of its attorneys/representatives, who are the attorneys/representatives of its own choice and that the terms of this Settlement Agreement, have been negotiated and carefully reviewed by both parties, and that those terms are fully understood and voluntarily accepted by it.

10. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

11. The Parties hereby agree that this Settlement Agreement, its terms, and all facts and information relating to this case, including but not limited to the fact and amount of settlement thereof, shall be kept in the strictest confidence and shall not hereafter be disclosed to any person, unless required by law. Notwithstanding the foregoing, the Parties may disclose information about this settlement to their attorneys, auditors, or accountants in the context of the attorney-client or accountant-client relationship.

12. Upon execution of this Agreement, Management and Employee, hereby irrevocably and unconditionally release and discharge one another, from any and all actions, claims, demands, appeals, and causes of action from the beginning of time to the date of this Settlement Agreement, known or unknown, asserted or unasserted, along with their respective agents, spouses, heirs, executors, administrators, directors, officers, insurers, successors and assigns as well as all other parties and entities.

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: _____

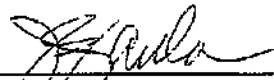
Management's Initials: _____

13. Management and Employee agree that the consideration for this Release and Agreement is a fair and reasonable settlement and that this Agreement is made and entered into in good faith.

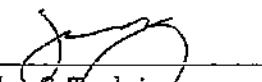
14. If any of the provisions, terms, or clauses of this Settlement Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be modified to the extent necessary to render such term or provision enforceable, and such that all other provisions, terms, and clauses of this Settlement Agreement shall remain valid and binding upon both Parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement to be executed as of the date(s) set forth below.


Dated: 6/26/2020

By: 
Josette J. Javelosa
Employee

Dated: 6/26/2020

By: 
John C. Terlaje
Attorney for Employee

Dated: June 26, 2020

By: 
Deputy General Manager for the
Port Authority of Guam
Management

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: 

Management's Initials: 

City of Hagatna)
(ss:
Guam, U.S.A.)

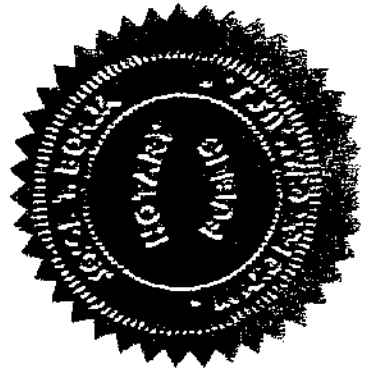
BEFORE ME, a Notary Public in and for Hagatna, Guam, U.S.A., personally appeared **JOSETTE J. JAVELOSA and LUIS JOSEPH RIVERA BAZA**, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they voluntarily executed the same for the purposes stated therein.

WITNESS MY HAND and official seal this 26th day of June, 2020.



NOTARY PUBLIC

JOICE T. BORJA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **DEC. 10, 2022**
P.O. Box 24223 Barrigada, Guam 96921



JOSE B. GUEVARA III
 FULL BACK PAY & BENEFITS CALCULATION
 December 19, 2012 to January 30, 2020

AGENCY: Port Authority of Guam
 POSITION TITLE: Financial Affairs Controller
 DIVISION: Finance Division

I. Back Pay Calculation from 2012 to 2020

SCHEDULE 1

A	B	C	D	E	F	G	H	I
December 19, 2012 to October 12, 2013	N-10C	58,180.00	71,222.31		71,222.31	71,222.31		75,495.65
October 13, 2013 to October 12, 2014	N-11C	82,678.00	92,678.00	21,512.05	71,159.95	142,822.26		79,702.83
October 13, 2014 to October 12, 2015	N-13A	97,405.00	97,405.00	42,865.68	54,439.92	197,262.18		68,249.25
October 13, 2015 to September 30, 2016	N-14B	102,374.00	99,224.03	52,907.75	45,315.28	242,577.46		60,904.59
October 1, 2016 to October 12, 2016	NN-8C	104,478.00	5,214.74	0.00	2,214.74	244,792.20		17,895.98
October 13, 2016 to October 12, 2017	NN-9D	109,808.00	109,808.00	60,203.68	29,588.34	304,380.54		77,955.43
October 13, 2017 to September 15, 2018	NN-11A	115,410.00	108,975.19	44,789.10	65,181.09	369,561.63		63,653.75
September 16, 2018 to September 15, 2019	NN-11D	118,907.00	118,907.00	0.00	118,907.00			118,907.00
September 16, 2019 to January 30, 2020	NN-13B	128,222.00	48,540.82	0.00	48,546.82			48,546.82
TOTAL			747,982.89	289,385.64	638,596.55		91,044.85	628,641.24

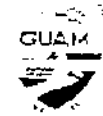
Notes:

- * Interest calculation was from December 19, 2012 to September 15, 2016. Initial check payments for the salaries owed during my absence was cut on June 24, 2019. Any interest owed from unpaid salary from September 16, 2018 to June 23, 2019 is not included in the interest calculation.
- * PAG made initial payments based on the personnel actions issued in May 2019 and regular salaries were received since the hire date

Date	Check No.	Gross Pay
6/24/2019	68123	\$ 58,312.95
6/24/2019	68124	\$ 36,865.32
6/24/2019	68125	\$ 26,822.65
6/24/2019	68126	\$ 29,620.74
6/24/2019	68128	\$ 63,994.24
6/24/2019	68129	\$ 27,291.22
TOTAL		\$242,907.12



PORT OF GUAM
ATURIDATI PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

July 23, 2020

Luis R. Baza
Deputy GM, *Admin. & Finance*
Port Authority of Guam

RE: Supplemental Document; Settlement Agreement

Dear Mr. Baza:

Hafa Adai! On a letter written to you dated February 6, 2020 regarding *CSC's ADVERSE ACTION APPEAL CASE – NO: 13-AA02T – DECISION AND JUDGEMENT* which stated conditions of my compensation after my reinstatement. Thereafter, the same letter was approved on February 7, 2020.

As of this date, all the terms and conditions have been fulfilled by the Port. Therefore, this Agreement is intended to avoid Litigation and to be final and complete in full. It is with full acknowledgement that my case with the Port is "CLOSED" and hereby formally declare the following on my behalf:

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 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.

Si Yu'os Ma'ase!

Respectfully,

JOSE B. GUEVARA III
Financial Affairs Controller, PAG

THE CONTENT OF THIS LETTER IS INADMISSIBLE PURSUANT TO GUAM
RULE OF EVIDENCE 408

MR. JOSE B. GUEVARA III
[REDACTED]
[REDACTED]

February 6, 2020

MR. LUIS R. BAZA
Deputy General Manager, Admin and Finance
Port Authority of Guam
1026 Cabras Highway, Ste. 201
Piti, GU 96925

RE: Civil Service Commission ADVERSE ACTION APPEAL CASE -
NO: 13-AA02T -DECISION AND JUDGMENT

Dear Mr. Baza,

In July 30, 2018, I returned back to work in the Port Authority of Guam (PAG, Port) after the Port's Legal counsel, Mr. Michael F. Phillips, informed my lawyer in June of 2018 that the Port Authority will no longer appeal the Supreme Court of Guam's decision. The Supreme Court's decision, which was originally released in February 2018, affirmed the Superior Court and Civil Service Commission's (CSC) decision in my favor. The CSC ordered the Port in May of 2013 to fully compensate me for all the time following my termination on December 18, 2012 until the date of reinstatement. The compensation shall include all employer's contribution to the Government of Guam Retirement Fund as well as the accumulation of vacation and sick days for all the pay periods between December 18, 2012 and the reinstatement date.

After almost 1 year since my return to the Port, personnel actions were issued to me in May 2019, which indicates my original base pay when I was terminated minus income I received in my work during my separation to the Port. The base pay used in each of the personnel action did not take into consideration any increments that was owed to me. Although the acting Personnel Administrator initially provided me the salary calculation with increments that was owed to me from the time that I was terminated to the reinstatement date, management made the decision to use the base pay listed in my termination personnel action despite two increments were owed to me from prior years' performance evaluation.

The purpose of this letter is to address what is owed to me by the Port Authority of Guam based on the CSC order. These items are listed below:

1. My compensation (Salary)
2. Benefits (Medical, Dental & GovGuam Life Ins.)
3. Sick and Annual leave Accrual
4. Retirement benefits due (Define Benefit Member and GovGuam Contributions)
5. Interest payment
6. Remaining balance of unpaid attorney's fees ; and
7. Payment Schedule for Installments; and

The following are my terms & conditions

1. That I be fully compensated for all the time following my termination on December 18, 2012 until my current date of employment by the 30th day from the date of management approval.

That my reinstatement includes *all* salary increments that were due for the period of December 18, 2012 to the current date using the last performance appraisal rating on record of "Outstanding" to adjust my salary accordingly.

*Mitigated my employment salary with the private firms I worked during my separation with the Port Authority of Guam in the amount of \$209,385.64.

Private Entities Salary Breakdown

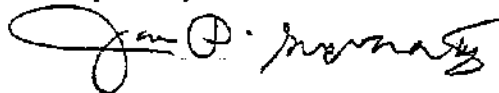
COMPANY	POSITION	YEAR	SALARY
[REDACTED]	Accountant	2014	19,567.97
[REDACTED]	Accountant	2014	1,950.08
		2014 Total	21,518.05
[REDACTED]	Accountant	2015	26,790.24
[REDACTED]	Accountant	2015	10,988.52
[REDACTED]	Accountant	2015	5,186.32
		2015 Total	42,965.08
[REDACTED]	Finance Manager	2016	48,880.25
[REDACTED]	Accountant	2016	4,027.50
		2016 Total	52,907.75
[REDACTED]	Finance Manager	2017	50,209.66
		2017 Total	50,209.66
[REDACTED]	Finance Manager	2018	41,785.10
		2018 Total	41,785.10
		Grand Total	209,385.64

2. Medical, Dental and Life Insurance Benefits reinstated from GGRF to PAG with no break in benefit coverage.
3. Reinstatement of *all* Annual and Sick Leave accrued for the period of December 18, 2012 to July 30, 2018.
4. Remit Define Contribution Plan (DC Plan) Retirement Member and Government of Guam Contributions:
5. Any remaining unpaid balance of attorneys fees by the 5th working day after the date of management approval.
6. A 6% interest charge per day is effectuated. Payment to be made by the 60th day of management approval.

My terms and conditions are reasonable as they are in accordance with CSC's May 13, 2013 Decision & Judgment, Supreme Court of Guam's February 7, 2018 Judgment and Guam Law.

Thank you for your prompt attention to this matter. I am looking forward to discussing this matter with you in the very near future. I may be reached at 727-2172.

Respectfully,



Jose B. Guevara III

Approved by:



Luis R. Baza
Deputy General Manager- Admin and Finance

2/7/2020
Date

VIVIAN LEON
 BACK PAY CALCULATION
 October 13, 2012 to June 30, 2020

I. Back Pay Calculation from 2012 to 2020

Annual Work Hours 2,080

A	B	C	D	E	D
Employee Evaluation Period	Pay Range	Salary	Hourly Rate	No. of Hours	Gross Salary
October 13, 2012 to December 18, 2012		5,240.00	2.52	376	947.23
December 19, 2012 to October 12, 2013	P-9A	107,957.00	51.90	1,680	87,196.04
October 13, 2013 to October 12, 2014	P-10B	113,464.00	54.55	2,080	113,464.00
October 13, 2014 to October 12, 2015	P-11C	119,251.00	57.33	2,080	119,251.00
October 13, 2015 to September 30, 2016	P-12D	121,648.00	58.48	2,016	117,904.98
October 1, 2016 to October 12, 2016	PP-7A	129,014.00	62.03	64	3,959.66
October 13, 2016 to October 12, 2017	PP-8B	135,595.00	65.19	2,080	135,595.00
October 13, 2017 to September 15, 2018	PP-9C	142,512.00	68.52	1,928	132,097.66
September 16, 2018 to September 15, 2019	PP-10B	146,830.00	70.59	2,080	146,830.00
September 16, 2019 to June 30, 2020	PP-11C	154,320.00	74.19	1,856	122,862.46
TOTAL					980,118.04

Gross Salary	980,118.04
Less Retirement Annuities	684,036.00
Net Gross Salary	\$296,082.04

Post Office Box 78
Hagatna, Guam 96932

January 11, 2022

Mr. Luis R. Baza
Deputy General Manager, Administration & Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925

Subject: Release of Claims

Hafa Adai Mr. Baza:

On July 23, 2020, a settlement agreement was signed between the Port Authority of Guam and myself. Based on this agreement and stipulated judgement of settlement and dismissal filed with Civil Service Commission on August 12, 2020, all terms and conditions have been fulfilled by the Port.

In light of the above, this letter is to provide the Port with full acknowledgment that my case is closed and I hereby declare the following:

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 "Releasors") hereby mutually release any and all claims 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.

Si Yu'os Ma'ase,


VIVIAN C. LEON

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between Vivian Castro Leon ("Employee") and the PORT AUTHORITY OF GUAM ("Management" or the "Port") (collectively hereinafter the "parties") upon the terms and conditions provided herein.

RECITALS

WHEREAS, Employee filed an adverse action appeal of her December 18, 2012, adverse action termination (the "adverse action") from employment with the Port Authority of Guam, entitled Vivian Castro Leon vs. Port Authority of Guam, Civil Service Commission Case No. 13-AA04T (the "adverse action appeal"), 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, and which adverse action appeal is currently before the Civil Service Commission; and

WHEREAS, Employee and Management through this Agreement desire to resolve the adverse action appeal, rescind and void the December 18, 2012 adverse action, reinstate the Employee to the position at the Port which she held prior to termination, make the Employee whole and pay her all compensation, entitlements, and benefits that she would have received and would have been entitled to had the adverse action not issued, and to take other actions and measures as set forth in this Agreement; and

WHEREAS, Employee and Management agree that the terms of this Agreement are a personnel matter and confidentiality hereof is required in order to preserve such privacy; therefore, this Settlement Agreement shall be confidential and only disclosed by the parties to the Guam Public Auditor for review, or as necessary to enforce the rights of either party hereunder; and

WHEREAS, the Deputy General Manager, Administration & Finance of the Port has been authorized through Port Board Resolution 2020-04 of June 25, 2020 to negotiate final settlement terms with Employee and to execute and deliver this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the compromise of their respective claims and contentions, and the mutual promises, covenants, representations, and warranties contained in this Agreement, Employee and Management agree to end, settle and terminate the adverse action appeal upon the following terms and conditions:

TERMS AND CONDITIONS OF SETTLEMENT

1. Management shall and does hereby rescind, void, and expunge the adverse action taken against Employee and shall reinstate the Employee to the position of Corporate Services Manager at the Port's Corporate Service Department, with all benefits, rights, privileges, obligations, duties and responsibilities related to such employment according to the laws of Guam,

and the Personnel Rules and Regulations of the Port. Employee shall be reinstated to her position at the Port at the pay range level to which the Employee would be entitled at the time of reinstatement had the adverse action not been taken against the Employee. The Port represents that Employee's base pay range level as of July 1, 2020, would be no less than Pay Range PP-11C (hourly rate of \$74.19). Employee shall be reinstated to the Corporate Services Manager position at the Port with an effective date of July 1, 2020, and shall be under the Defined Contribution Plan of the Government of Guam Retirement Fund (GGRF). Prior to reinstatement, Employee's GGRF Defined Benefit Plan annuity which she has been receiving since 2013 shall be temporarily suspended, and Employee shall have the ability to subsequently reinstate and receive her Defined Benefit Plan retirement annuity payments at any time upon any subsequent separation from the Port or upon reactivation of her retirement.

2. Management shall and hereby does rescind, void, and expunge Employee's entire record of termination, including but not limited to the Port's December 2012 notice of proposed adverse action and the notice of final adverse action. Management further rescinds and expunges from the Employee's personnel file all documents reflecting negatively on the Employee that are related to, or that arise from or are associated with, the adverse action or adverse action appeal. Employee shall not have to report, state, indicate, affirm, answer, or otherwise disclose in any manner whatsoever that she has ever been the subject of any adverse action by the Port, or that she has ever been terminated or fired from her employment at the Port.

3. Settlement Amount.

(a) Management shall make Employee whole and pay her all compensation, benefits, and other remuneration or compensation that Employee would have been entitled to had the adverse action not been taken against Employee (hereinafter "Settlement Amount"), and shall provide to Employee assurances of completion of these obligations.

(b) The Settlement Amount owed to Employee under this Agreement is **\$296,082.04** and represents a considerable savings to the Port. The Port shall pay Employee the Settlement Amount of \$296,082.04 within ten (10) days of the parties' execution of this Agreement. Within the parameters of this Agreement the Port may opt to pay later or in subsequent installments, and in that instance the Port shall give Employee prior written notice of such and shall make installment payments to the Employee in accordance with the settlement payment schedule attached hereto as "**Exhibit 1**" and incorporated herein by reference as if fully set forth, with interest accruing at 6% per annum until the entire amounts owed to the Employee are paid in full. The Port may make installment payments and pay off the balance owed to the Employee sooner than the schedule set forth in Exhibit 1, but interest shall still accrue at a rate of 6% per annum until the entire amounts owed to the Employee are paid in full. Any payments by the Port shall be applied to accrued interest first and then to principal. If the Port defaults on its payment obligations or on any other terms under this Agreement, the Port shall pay the Employee's reasonable attorneys' fees and costs in connection with the Employee's efforts to enforce the Agreement.

(c) Except as otherwise provided for in subsection 3(d) below, Management may only withhold the following from the gross Settlement Amount or any portion thereof upon consultation with and approval from the Employee: (a) appropriate Guam income tax withholdings which shall be based on Employee's completed W-4 form that the Port shall obtain from the Employee prior to any deductions or withholdings being made; and (b) if required by law, Employee's share of Medicare tax. The Port shall timely remit to the government of Guam any income tax withheld from Employee's payments, and shall remit to the appropriate federal government entity all of the Employee's and Port's share with regard to any applicable Medicare taxes withheld from any of the payments to Employee. No deductions or withholdings shall be made by the Port on any accrued interest paid on the Settlement Amount (or on any portion thereof); Employee shall be responsible for paying any Guam income taxes owed by the Employee on any interest amounts paid to the Employee by the Port on the Settlement Amount or any portion thereof.

(d) With regard to Employee's backpay compensation for the period December 19, 2012 to January 1, 2013, which pay is included as part of the Settlement Amount, in addition to the Medicare and income tax withholdings provided for under subsection 3(c) above, Management may only withhold the Employee's share of retirement contributions for the GGRF Defined Benefit Plan for such period upon consultation with and approval from the Employee and GGRF. Management shall timely remit to the GGRF the Employee's share of such retirement contributions, and shall pay to the GGRF the employer's share (government's share) for such retirement contributions plus any required interest and penalties assessed by the GGRF. In addition to rescinding Employee's adverse action termination of December 18, 2012, and reinstating employee as of July 1, 2020, to the position of Corporate Services Manager, all as provided for under the terms of this Agreement, Management shall also process a personnel action for the Employee for retirement (service) under the Defined Benefit Plan effective January 2, 2013, to reflect Employee's prior activation of her retirement as of that date.

4. Management shall restore to the Employee credit for all annual leave that Employee would have accrued had she not been terminated on December 18, 2012, and had she remained in employment with the Port from that date until the date of her reinstatement, in accordance with Guam law and the Port's Personnel Rules and Regulations. In the event that Employee desires separation from her position immediately after reinstatement, Management shall pay to the Employee a cash out of her annual leave, as permitted by Guam law and the Port's Personnel Rules and Regulations. If Employee separates from the government of Guam at a later date, the cash out amount of annual leave shall be 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 she not been terminated on December 18, 2012, and had she remained in employment with the Port from that date until the date of her reinstatement, in accordance with Guam law and the Port's Personnel Rules and Regulations. In the event that Employee desires separation from her position immediately after reinstatement, Management shall pay to the

Employee a cash out of her sick leave, as permitted by Guam law and the Port's Personnel Rules and Regulations. If Employee separates from the government of Guam at a later date, the cash out amount of annual leave shall be according to Guam law and Port's Personnel Rules and Regulations.

6. Employee has incurred reasonable attorney's fees and costs in connection with this matter. As part of the settlement, Management shall directly pay such attorney fees by making direct payments to Attorney Ignacio Cruz Aguiqui in the total amount of \$307,545.55 and to Attorney Georgette B. Concepcion in the amount of \$1,102.50. The Port shall make such direct payments in full to such attorneys within ten (10) days of the execution of this Agreement.

7. Management agrees that any payments required by this Agreement shall become immediately due and payable to the Employee upon termination, resignation, or retirement of Employee, should any such event occur before the date that any payment provided for hereunder is due.

8. Any amounts under this Agreement not timely paid per the terms of this Agreement shall accrue interest at 6% per annum, and such interest shall be due and owing, until all amounts including interest are paid in full. Any partial payments shall be applied toward accrued interest first and then to principal.

9. The parties agree that the terms of this Agreement are a personnel matter and confidentiality hereof is required in order to preserve such privacy; therefore, this Agreement shall be kept confidential and only disclosed by any of the parties to the Guam Public Auditor for review, or as necessary to enforce the rights of either party hereunder.

10. Upon execution of this Agreement, Employee and Management shall jointly inform the Civil Service Commission that this matter has settled, and the parties shall execute a Stipulated Judgment of Settlement which is to be submitted by the parties to the Civil Service Commission without disclosure of the terms of this Agreement unless and until such time as either party may determine in good faith that it is necessary to enforce such terms. The parties agree that the Civil Service Commission and/or the courts of Guam shall have jurisdiction to enforce the terms of this Agreement as the case may be. Any party who has to enforce this Agreement may disclose only such parts of this Settlement Agreement to the appropriate tribunal or court as may be necessary to enforce its terms.

11. Management understands and agrees that full performance and satisfaction of all of the foregoing terms and conditions are fundamental, essential, and integral parts and elements of the settlement bargain and agreement made by the Employee without which the Employee would not have agreed to a settlement and would not have entered into this Agreement, unless otherwise specifically provided for herein.

12. If any term or provision of this Agreement is found by a court or tribunal of competent jurisdiction to be invalid or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement if the absence of such term or provision would not materially alter the fundamental settlement bargain of the parties or if the absence of such term or provision is waived by the party benefitting from such term or provision. If such term or provision can be deemed modified to the extent necessary in the court's or tribunal's opinion to render such term or provision enforceable, without materially altering the fundamental bargain of the parties, then the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and purposes of the parties herein set forth.

13. The failure of either party in any one or more instances to insist upon strict performance of any of the terms, conditions, or provisions of this Agreement, or to exercise any right or privilege in this Agreement conferred, shall not be construed as a waiver. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

14. This Agreement may be executed by email, fax, or in counterparts, and if so executed, each email, fax or counterpart shall have the force and effect of an original, which together shall constitute one and the same instrument. If this Agreement is executed by the parties after the date of performance of any act required by the terms herein, then this Agreement shall be construed to apply and shall be effective retroactively as of such date.

15. This Agreement shall be binding on and inure to the benefit of, the respective heirs, successors, assigns, agents, directors, employees, representatives, managers, officers, trustees, receivers, administrators, executors, and/or personal representatives of any of the parties hereto.

16. The parties shall take all further steps and execute all additional documents or instruments that may reasonably be required to effectuate the intents and purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement consisting of a total of seven (7) pages plus the single-page Exhibit 1, as of the date that the signatory last to sign this Agreement executes it.

EMPLOYEE:

Dated: 7/23/20



VIVIAN CASTRO LEON

MANAGEMENT:

Port Authority of Guam:

Dated: July 23, 2020

Luis R. Baza

By: LUIS R. BAZA
Deputy General Manager, Administration &
Finance for the Port Authority of Guam, as
authorized by the Board of Directors

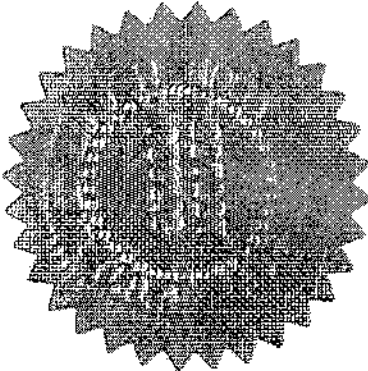
ACKNOWLEDGEMENTS

Guam U.S.A.)
City of Piti) ss:
)

ON THIS 23rd day of July, 2020, before me, a Notary Public in and for Guam U.S.A., personally appeared **VIVIAN CASTRO LEON**, known to me to be the person whose name is subscribed to the foregoing **SETTLEMENT AGREEMENT**, and she acknowledged to me that she executed the same as 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.

Edna M. Topasna
NOTARY PUBLIC

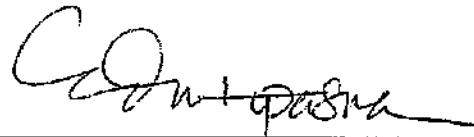


EDNA M. TOPASNA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JULY 28, 2021**
P.O. Box 138 Hagatna, Guam 96932

Guam U.S.A.)
City of Ptoto) ss:
)

ON THIS 23rd day of July, 2020, before me, a Notary Public in and for Guam U.S.A., personally appeared LUIS R. BAZA, known to me to be the person whose name is subscribed to the foregoing SETTLEMENT AGREEMENT, and he acknowledged to me that he executed the same as his free and voluntary act and deed, in his stated capacity and for and on behalf of the entity therein specified, 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.



NOTARY PUBLIC

EDNA M. TOPASNA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: JULY 28, 2021
P.O. Box 138 Hagana, Guam 96932

Employee Francine T. Rocio

Row Labels	Sum of PAG	Sum of GGRF Mitigation{	Sum of Difference
2013	\$ 61,489.16	\$ -	\$ 61,489.16
2014	\$ 86,899.46	\$ -	\$ 86,899.46
2015	\$ 91,331.81	\$ -	\$ 91,331.81
2016	\$ 95,972.93	\$ 6,272.00	\$ 89,700.93
2017	\$ 102,750.93	\$ 40,768.00	\$ 61,982.93
2018	\$ 108,132.30	\$ 45,624.00	\$ 62,508.30
2019	\$ 111,889.33	\$ 43,908.80	\$ 67,980.53
2020	\$ 26,948.51	\$ 11,977.49	\$ 14,971.02
Grand Total	\$ 685,414.43	\$ 148,550.29	\$ 536,864.14

Conclusion:

Calculation matched with the settlement amount. Rate is based on actual rate in NOPA.

January 11, 2022

Mr. Luis R. Baza
Deputy General Manager, Administration & Finance
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925

Subject: Release of Claims

Hafa Adai Mr. Baza:

On December 13, 2019, a settlement agreement was signed between the Port Authority of Guam and myself. Based on this agreement and decision and judgment issued by Civil Service Commission on November 7, 2019, all terms and conditions have been fulfilled by the Port.

In light of the above, this letter is to provide the Port with full acknowledgment that my case is closed and I hereby declare the following:

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 "Releasors") hereby mutually release any and all claims 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.

Si Yu'os Ma'ase,


FRANCINE T. ROCIO

AGREEMENT TO SATISFY JUDGMENT
ROCIO v. PORT CSC CASE NO. 12AA29T-SP

This is the parties' agreement to satisfy judgment issued by the CSC in 12AA29T-SP.

The parties met with respective counsels on 12/6/19 to discuss satisfaction of judgment. At that meeting the parties discussed amounts of pay, retirement contributions, interest, attorney's fees, and leave owing as a result of the judgment. It was decided that the principals will meet and confer to drive resolution without involvement of the attorneys. Should the parties not come to a final resolution, the attorneys would attempt resolution. Should that fail, the employee would be free to file her grievance.

The principals met and conferred time permitting up to 12/11/19 and produced the following terms that satisfy judgment:

1. Total wages owing net of wages earned: \$426,839.30 (Base Amt. \$536,864.14)
 - a. First installment of \$213,418.65 to be paid within 60 days of
 - b. Second installment of \$213,418.65 to be paid Sept. 29, 2020.
 - c. All withholdings shall be made in accordance with law.
 - d. Interest shall be imposed at 6% per annum should the Port fail to make an installment or any portion thereof.

2. Total hours sick leave to be accrued to employee: 372 Hours

3. Total hours annual leave to be accrued to employee: .744 Hours

4. Total attorney's fees to employee's attorney: \$40,000.00
 - a. First installment of \$25,000 due within 30 days of the date of the execution of this agreement by the Port's representative. This amount made payable to "Law Office of Georgette Bello Concepcion"
 - b. Second installment of \$15,000 due within 30 days of the first installment paid to employee. The installment less \$1,537.44 for payments made by the employee. This second installment check be made payable to "Brooks Concepcion Law, PC." The difference of \$1,537.44 made payable to "Francine T. Rocio."

5. Employee represents that she will retire on or before September 29, 2020 and management is reasonably relying on that representation so that it may fill employee's position as it sees fit. Such representation notwithstanding, employee and management remain subject to the statutes, Supreme Court of Guam cases, rules and regulations applicable to Port Authority of Guam employees in the civil service.

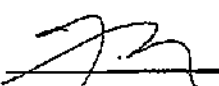
6. Employee promises that the following tasks/projects/deliverables will be accomplished prior to September 29, 2020 and such shall be incorporated into her performance evaluation to include at least the following seven projects:
 - a. Updating the 2009 Personnel Rules & Regulations
 - b. Work with Consultant to begin review of Work Performance Evaluations to indicate key performance indicators.
 - c. Update Standard Operating Procedures for HR.
 - d. Conduct periodic classification reviews as mandated in the PR & R.

AGREEMENT TO SATISFY JUDGMENT
ROCIO v. PORT CSC CASE NO. 12AA29T-SP


- e. Establish a secured HR Records Mngt Room.
 - f. Conduct a training needs assessment that would help identify high potential staff as well as formalize MngtTrng
 - g. Provide a draft training plan which would identify critical skills in areas that need to be addressed at the Port.
7. Management and employee have consulted as necessary with their attorneys and believe this satisfaction to be in full compliance with the laws and personnel rules and regulations. Should an audit reveal that a term in satisfaction of the judgment was not in accordance with the law or personnel rules, corrective action to the audit shall prevail over the term in satisfaction, which employee understands, acknowledges and agrees may require a claw-back of an amount of money or hours of leave.
8. Once the respective party to this agreement performs according to the terms applicable to it herein, the parties agree that no further action at law or administrative law shall lie with respect to the judgment in CSC Case No. 12AA29T-SP.

So bound as of this 13th Day of December 2019.

Date: 12/13/19


FRANCINE ROCIO
EMPLOYEE

Date: 12/13/19


DOMINIC MUNA AUTHORIZED REPRESENTATIVE
FOR MANAGEMENT

Employee: Leonore V. Leon Guerrero

Row Labels	Sum of Recalculation	Sum of Mitigation	Sum of Difference 2
2013	\$ 22,884.00		\$ 22,884.00
2014	\$ 40,186.93		\$ 40,186.93
2015	\$ 41,745.78	\$ 30,807.58	\$ 10,938.20
2016	\$ 43,444.76	\$ 24,815.47	\$ 18,629.29
2017	\$ 46,400.31	\$ 26,007.76	\$ 20,392.55
2018	\$ 48,277.89	\$ 34,814.40	\$ 13,463.49
2019	\$ 49,897.00	\$ 8,681.44	\$ 41,215.56
2020	\$ 15,974.64	\$ 4,056.75	\$ 11,917.89
Grand Total	\$ 308,811.31	\$ 129,183.40	\$ 179,627.91

Conclusion:

Settlement Amount	\$ 189,316.15
Total Calculated Amt based on approved rate	\$ 179,627.91
Difference	\$ 9,688.24

Initial basis of calculation was the rate provided by HR. If we calculate based on the approved rate, the difference of the settlement and mitigated amount is \$9,688.24.

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

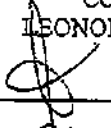
WHEREAS, Employee filed an adverse action appeal of her termination from employment with the Port Authority of Guam titled *Leonora Leon Guerrero vs. Port Authority of Guam*, Civil Service Commission Case No. 13-AA11T as permitted by Guam law creating administrative rights to redress termination of non-probationary 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 4, 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~~ (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 contribution shall be deducted percentage pro rata from the second and third installments.

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

Employee's Initials: *LLG*

Management's Initials: *LLG*

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.

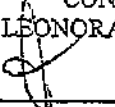
6. Management shall further pay Employee's attorney's fees, and legal costs and expenses, as provided by 4 Guam Code Annotated §4406.1 by making direct payment to Attorney Leevin T. Camacho in the amount of \$21,754.50 and making payment to Attorney Curtis C. Vandeveld in the amount of \$28,800.00 for 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

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

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

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

Employee's Initials:

Page 4

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:

[Signature]
Leonora Leon Guerrero

Management:

Dated: 12/23, 2019

[Signature]
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
LEONORA LEON GUERRERO and PORT AUTHORITY OF GUAM

Employee's Initials: [Signature]

Management's Initials: [Signature]

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.

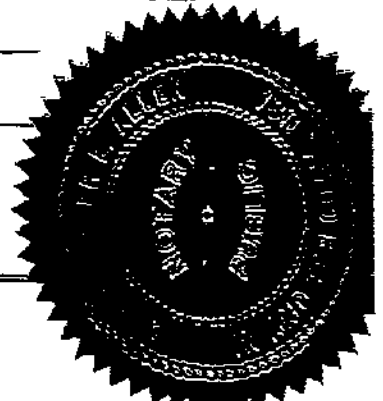
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.

) S E A L (

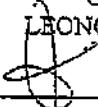



NOTARY PUBLIC

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



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

Employee's Initials: 

Management's Initials: 



PORT OF GUAM
ATURIDAT / PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com




Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 20, 2022

MEMORANDUM

TO: Board of Directors

FROM: Rory J. Respicio, General Manager 

SUBJECT: Resolution No. 2022-02 Relative to the approval of Cementon Micronesia, LLC's request to pledge its leasehold interest in Parcel 3-1

Hafa Adai! On September 28, 2018, the Board of Directors passed Resolution No. 2018-07 allowing Cementon to pledge their leasehold interest for the sole purpose of expanding and constructing a 12,000-ton cement silo. Cementon now asks the Port to consider either amending the lease agreement, or executing another Board resolution, that would allow Cementon to pledge its leasehold interest without limitation or restriction to the type of project or financing. Section 23 of the lease agreement governing "Liens" provides:

Except where contested in good faith in a court of appropriate jurisdiction, and except for liens arising from taxes or tax assessments, Lessee shall keep the leased premises and all improvements thereon free from liens of any kind or nature arising out of its operations. In connection with the construction, erection or installation of improvements made upon the leased premises, or additions, alterations or repairs thereto, the party making the same agrees that it will, at all times, indemnify and save the Lessor free and harmless from and against all liens, claims, demands, costs, and expenses for work done, labor performed, or materials or other things furnished in connection therewith, and the costs of defending against any such lien, claim, demand, cost and expense, including reasonable attorney's fees.

Recently, Cementon has expressed interest in pursuing future capital improvement projects on the leased property for their current operations and facilities. Although the lease agreement allows Cementon to essentially pledge their leasehold interest in connection with construction and capital improvement projects on the property, it does not allow Cementon to pledge its interest without limitation. First, the lease agreement provides that Cementon shall keep the leased premises and all improvements thereon free from liens of any kind or nature arising out of its operations. Second, should Cementon pledge any leasehold interests in connection with construction or capital improvements, Cementon must indemnify and hold PAG free from and against all liens, claims, and costs therefrom.

Memo to Board of Directors/Resolution No. 2022-02 Relative to the approval of Cementon
Micronesia, LLC's request to pledge its leasehold interest in Parcel 3-1
January 20, 2022
Page 2 of 2

Notwithstanding the indemnification clause in the lease agreement, to allow Cementon to pledge its leasehold interest without limitation or restriction to the type of project or financing could be problematic. Section 4 of the lease agreement provides that Cementon shall not make, construct, or rebuild any improvements on the leased premises without the prior written consent and approval of the PAG. Therefore, the PAG, before approving any leasehold interests for the purposes of construction or capital improvements, should require Cementon to submit their requests and plans in writing to PAG management for approval and concurrence.

Thus, I am respectfully requesting your approval of Resolution No. 2022-02, which would authorize Cementon to pledge its leasehold interest solely for the purposes of construction and capital improvement projects on Parcel 3-1 only. Any deviations from construction or capital improvements on the property directly related to Cementon's current operations and facilities would need prior approval and concurrence from PAG management. Similarly, Cementon is not authorized to make any permanent capital improvements without PAG management's review and approval. Accordingly, it would be in the PAG's best interest to grant Cementon such authorization as it would support overall operations and financially benefit the Port.

I am available for any questions you may have. *Si Yu'os Ma'ase!*

BOARD OF DIRECTORS
Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guthertz, Member



Resolution No. 2022-02

**RELATIVE TO THE APPROVAL OF CEMENTON MICRONESIA, LLC'S
REQUEST TO PLEDGE ITS LEASEHOLD INTEREST IN PARCEL 3-1**

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

WHEREAS, the Port Authority of Guam ("PAG") granted Cementon Micronesia, LLC ("Cementon") a lease for that portion of Parcel 3-1 containing an area of 49,290 square feet; and

WHEREAS, Cementon proposes to pledge its leasehold interest in order to pursue future capital improvement projects on the leased property for their current operations and facilities; and

WHEREAS, Cementon shall indemnify and hold harmless PAG and any and all of PAG's boards, officers and employees from and against any and all actions, suits, proceedings, claims, demand, damages, losses, liens, cost, expenses and liabilities of any kind and nature whatsoever, which may be brought, made, filed against, imposed upon or sustained by the Lessor, its boards, officers or employees and arising from or attributable to Cementon's lien of Cementon's leasehold interest herein; and

WHEREAS, this Board of Directors has determined that it is in the best interest of PAG to grant Cementon authorization to pledge Cementon's leasehold interest in that portion of Parcel 3-1 containing an area of 49,290 square feet for solely for the purpose of construction and capital improvement projects directly related to Cementon's current operations and facilities only; and

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, hereby authorizes Cementon to lien Cementon's interest in that portion of Parcel 3-1 containing an area of 49,290 square feet solely for the purposes of construction and capital improvement projects directly related to Cementon's current operations and facilities; and be it further

RESOLVED, that any deviations from construction or capital improvements on the property directly related to Cementon's current operations and facilities shall require prior approval and concurrence from PAG management; and be it further

RESOLVED, that Cementon shall not make any permanent capital improvements without PAG management's prior review and approval; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
DIRECTORS THIS 20th DAY OF JANUARY, 2022.**

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

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

Digitally signed by Isa Koki
Date: 2022.01.21 10:22:56
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PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

GENERAL MANAGER PERFORMANCE AND DEVELOPMENT EVALUATION FORM

Name of General Manager: Rory J. Respicio	Name of Reviewer/Title: Francisco G. Santos, Port Board Chairman
Period Covered: From: 01/08/2021 To: 01/07/2022	Date of Review: January 12, 2022

GENERAL INSTRUCTIONS:

1. This form is to be used for initial and bi-annual performance evaluation for the General Manager. The performance evaluations are to occur six (6) months into the General Manager's employment with the Port Authority of Guam and every twelve (12) months thereafter.
2. The ratings to be assigned by the Rater for each individual factor are indicated in Part I; for each individual Performance Objective in Part II; and for the Overall Rating in Part III.
3. The Performance Objectives and factors may be weighted at the Rater's discretion.
4. The Reviewer is the Board of Directors.

PART I: CORE PERFORMANCE FACTORS

1. The Board of Directors evaluates the General Manager's proficiency in the following performance factors using a single rating on the following scale:

A = Exceptional Performance
B = Superior Performance
C = Average Performance
D = Acceptable Performance
E = Needs Improvement

Performance Factors	Rater's Rating
<p>1. Leadership</p> <p>Displays courage, passion and caring in work. Sets a professional example. Motivates other to work toward common goals. Uses authority responsibly. Addresses problems proactively. Gains support and seeks buy-in-through participation of others. Demonstrates interest in professional growth of others. Shows good judgment and accepts ownership for decisions in areas of responsibility.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>2. Commitment to the Port's Mission, Vision and Values</p> <p>Articulates or shows appreciation for the importance of shared vision. Demonstrates civility in relations with others. Requires supervised employees to show civility in their relations toward others. Participates regularly in activities beyond immediate areas of responsibility which support the mission of the Port. Demonstrates consideration of the Port's values when making decisions. *(Diversity and civility are examples of University values to be considered.)</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>3. Management Practices</p> <p>Demonstrates commitment to good customer services. Demonstrates competency in labor-management relations activities necessary to effectively manage the areas of responsibility. Questions existing practices for continued relevancy. Effectively initiates and promotes necessary change in the areas of responsibility. Sets and enforces performance standards effectively. Recognizes and rewards good performance. Plans effectively and shows good project management skills. Shows awareness of "good practices" for areas of responsibility. Encourages employees to improve performance and grow by actively supporting and encouraging employees to participate in training and development activities.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>

Performance Factors	Rater's Rating
<p>4. Relational Skills</p> <p>Works effectively with others. Works collaboratively and negotiates effectively. Maintains confidentiality. Accepts constructive criticism without offense. Demonstrates sensitivity to the rights and opinions of others, even in disagreement. Presents a positive image of the Port to external publics. Respects cultural differences and embraces activities which support a diverse community.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>5. Commitment to Diversity</p> <p>Respects cultural differences and embraces activities which support a diverse community. Utilizes recruitment strategies designed to attract diverse applicant pools. Actively engages in diversity initiatives, such as, mentoring, training and employee networks. Displays a commitment to diversity.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>6. Resource Management</p> <p>Recruits, selects and retains capable, productive employees. Effectively deploys staff, equipment and technology to accomplish work. Shows good stewardship of financial resources. Demonstrates knowledge of budget and use of financial reporting systems. Displays creativity/innovative in managing resources.</p> <p>Supportive information: See attached.</p>	<p style="text-align: center;">A</p>
<p>7. Communication Skills</p> <p>Shares appropriate information with internal and external audiences in a timely and responsible manner. Manages meetings effectively. Possesses effective listening skills. Articulates clearly and writes effectively. Displays effective presentation skills.</p> <p>Supportive information: See attached.</p>	<p style="text-align: center;">A</p>

Performance Factors	Rater's Rating
<p>8. Accountability</p> <p>Takes responsibility for fulfilling job duties. Meets attendance and punctuality guidelines. Demonstrates accuracy and thoroughness. Completes work on time. Follows instructions and directions.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>9. Responsiveness/Customer Service</p> <p>Consistently demonstrates respect, responsiveness and professionalism. Provides each customer with the same high quality services. Fosters and models a commitment to customer service. Builds customer and confidence and increases customer satisfaction. Makes customers and their needs a primary focus. Developing and sustaining productive customer relationship.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>10. Decision Making/Problem Solving</p> <p>Identifies and understands issues, problems and opportunities. Make timely and rational decisions based on analysis of relevant information/data Accepts responsibility for decisions and takes proper action when necessary. Uses effectively approaches for choosing a course of action or developing appropriate actions. Takes action that is consistent with available facts, constraints, and probable consequences.</p> <p>Supportive information: See attached.</p>	<p style="text-align: center;">A</p>
<p>11. Work Environment/Safety</p> <p>Promotes and supports a respectful workplace; comply with laws, policies and procedures. Models ethical behavior and decision making and ensures compliance.</p> <p>Supportive information: See attached.</p>	<p style="text-align: center;">A</p>

PART II: JOB SPECIFIC PERFORMANCE OBJECTIVES

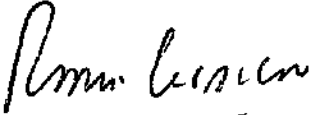
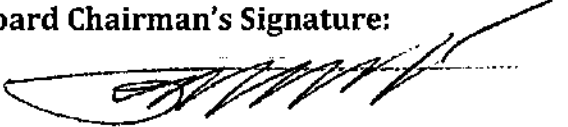
Instructions: Part II creates the performance deliverable which will be measured. The General Manager and Board of Directors should identify below between 5 and 8 significant deliverable in the form of major initiatives or projects. They may include annual program objectives or project-related work. The intent is that there should be some collaboration between the General Manager and Board of Directors when assigning the deliverables and they should be prioritized if at all possible, with the most important in block 1, next most important in block 2, etc. If more than 8 deliverables require listing, those in excess of 8 may be listed in the back of the last page. (NOTE: It is typical for some priorities to change over the course of the year, and it also foreseeable that some objectives set at the beginning of the cycle may prove unachievable for reasons outside the General Manager's control.)

Job Specific Performance Objectives	Rater's Rating
1. Objective: <i>Refer to attached memorandum for performance objectives and expected results.</i>	
Expected Results:	
Actual Results:	
2. Objective:	
Expected Results:	
Actual Results:	
3. Objective:	
Expected Results:	
Actual Results:	

Job Specific Performance Objectives	Rater's Rating
4. Objective:	
Expected Results:	
Actual Results:	
5. Objective:	
Expected Results:	
Actual Results:	
6. Objective:	
Expected Results:	
Actual Results:	
7. Objective:	
Expected Results:	
Actual Results:	

Job Specific Performance Objectives	Rater's Rating
8. Objective:	
Expected Results:	
Actual Results:	

The General Manager and the Board of Directors have met, discussed and agreed to the above initiatives as measurable deliverables for the performance cycle.

Employee' Signature: 	Date: 1/12/2022
Board Chairman's Signature: 	Date: 1-12-22

PART III: SUMMARY OF OVERALL PERFORMANCE:

The space below is provided for a narrative summary of the General Manager's performance over the immediate cycle to be completed by the Board of Directors (Rater).

Refer to attached memorandum.

PART IV: OVERALL PERFORMANCE EVALUATION RATING: (Please checkmark ✓)

- Exceptional Performance
- Superior Performance
- Average Performance
- Acceptable Performance
- Needs Improvement

PART V: PERFORMANCE DEVELOPMENT PLAN:

In the blocks below, the Board of Directors should make specific recommendations designed to identify strategies to enhance the General Manager's current competencies (first block) or correct performance issues (second block).

Professional Growth Strategies:

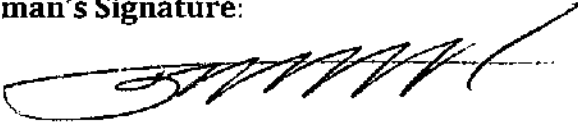
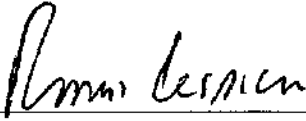
Refer to attached memorandum.

Remedial Strategies:

Refer to attached memorandum.

PART VI: SIGNATURES:

The General Manager and Board of Directors are required to sign the instrument after completing it and concluding the performance interview. The General Manager is only attesting to having been afforded the opportunity to review the evaluation and discuss the evaluations with the Board of Directors. The General Manager's signatures does not necessary indicate that he/she agrees with the Board of Directors' measurement of his/her performance. Employee's comments are optional.

Board Chairman's Signature: 	Date: 1-12-22
Employee' Signature: 	Date: 1/12/2022

Employee comments:	Date:
I would like to discuss with the Board of Directors: <input type="checkbox"/> Yes <input type="checkbox"/> No	
As requested, the Board of Directors discussed report.	
Board Chairman's Signature:	



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
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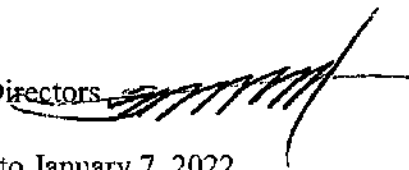


Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 12, 2022

MEMORANDUM

TO: Rory J. Respicio, General Manager

FROM: Francisco G. Santos, Chairman, Board of Directors 

SUBJECT: Performance Evaluation – January 8, 2021 to January 7, 2022

Hafa Adai! Title 12 Guam Code Annotated, Chapter 10, Section 10111(c), authorizes the Board of Directors to employ and compensate under the terms and conditions fixed by at the pleasure of the Board for the General Manager position. Title 5 Guam Code Annotated, Government Operations, Chapter 43, Boards and Commissions, Article 2, Performance Evaluation of Agency Heads, required the Board to issue performance reviews of the General Manager six (6) months after employment and every twelve (12) months thereafter.

On January 28, 2021, the Board of Directors approved the performance evaluation for your second year as General Manager. At this meeting, the Board provided you with the following goals and objectives we would like for you to achieve within the second year of employment.

- Revenue Bond Projects, Hotel Wharf and Other CIP Projects
- Removal of Port's Inoperable Assets
- Standard Operating Procedures
- Staffing and Manpower Requirements
- Union Contract Provisions
- Cyber security system plan implementation
- Federal grants
- Update of rules and regulations
- 5-year equipment plan
- Training, certification and re-certification of employees
- Real estate issues
- Micronesian cruise ship development

During the evaluation period, you also were able to accomplish the following significant milestones:

A. Port Modernization/Master Plan Update:

1. **Master Plan Update:** In July 2020, you and your team engaged with its Owner Agent Engineer (OAE) consultants in updating its 2013 Master Plan. The purpose of the update is to assist the Port in defining its near-term and long-term approach to modernization, maintain

fiscally sustainable operations and promote increased awareness and consensus on its approach among all affected stakeholders and rate payers of Guam. In August 2021, OAE consultants briefed management, Governor, Lt. Governor and several senators who participated in the zoom brief on the master plan status, project planning and analysis, demand forecast, port modernization – build back better, current and new OAE contract, transshipment task force and diversification of commercial activities and revenues. The first draft of the 2020 master plan update report is expected to be submitted to the Port during the first quarter of 2022 and if all goes well, the Port should anticipate completing the administrative adjudication process by summer of 2022.

2. **Hotel Wharf Rehabilitation and Reconstruction Project:** The Port awarded the construction management services for the rehabilitation of the hotel wharf and Route 11 roadway reconstruction projects in March 2021. The construction manager worked hand-in-hand with the Port's Planning, Procurement, and Engineering divisions and our Owner's Agent Engineer in the procurement solicitation for this rehabilitation project. This project is being funded through a \$10 million federal grant and local Port funds. The upgrades to this facility will bring into compliance with U.S. Coast Guard criteria to regain certification as a designated waterfront facility. It will also expand the Port's wharf capacity to alleviate congestion at the main cargo terminal due to Guam being a major transshipment for the Micronesian region.

3. **Revenue Bond and Budget Funded Projects:** Through collaboration with the division heads of Procurement, Engineering, Finance, and Port's in-house counsel, we ensured the Port meets the expectations of our bond investors by issuing the following procurement solicitations:

- a. Hotel Wharf Rehabilitation and Access Roadway Repair
- b. Golf Pier Repair and Upgrade
- c. Warehouse 1 Building Repair
- d. Waterline Repair
- e. EQMR Building Repair
- f. JDE EnterpriseOne (E1) Financial Management System

When we issued procurement on the architectural and engineering (A&E) designs for the revenue bond projects and based on the engineering estimates provided in the designs, the construction cost associated with the repairs exceeded the allocations outlined in Public Laws 34-70 and 35-44. The engineering cost estimates outlined in the revenue bond mandates were obtained in 2014, and the reality is that the costs of construction pegged in 2014 for these projects were all severely underfunded. Because the laws specifically identified the revenue bond project costs to be funded by the revenue bond proceeds, it did not allow the Port to reallocate the proceeds to address the anticipated shortfalls of the construction costs. Upon knowledge of this, we actively submitted federal grant applications to fund some of these revenue bond projects, such as the fuel connectivity line, which U.S. Economic Development Administration (EDA) awarded \$2.4 million for this project and allowed us to free up a portion of the proceeds. In July 2021, through a resolution, the Board authorized the General Manager to use Port revenues, unrestricted Port funds and/or other revenues, and federal grants to supplement the shortfall funding for the revenue bond projects.

You, the Deputy General Managers and division heads ensured the following procurement packages were either awarded or issued:

- a. Owner's Agent Engineer Consultants
- b. CCTV for Port Terminal and Agat Marina facility
- c. Demolition and Disposal of Port assets (gantry cranes, RTGs, mobile harbor crane and barge)
- d. Performance Management Contract for gantry cranes
- e. Fendering system repair for F3 to F6 wharves
- f. Real Estate Appraisal & Consulting Services
- g. Renovation and repair of Harbor of Refuge Phases 2 through 5
- h. Oracle consultant
- i. Terminal Operating System (TOS) hardware maintenance & support

4. **Federal Grants:** During this period, the Port was awarded the grants below to assist in the modernization of the port:

(a) **EDA Grant:** U.S. Economic Development Administration (EDA) awarded the Port \$2.4 million grant to make disaster-resilient infrastructure improvements needed to ensure continuity of operations. The EDA grant will be matched with \$603K in Port investment bringing the total funding to \$3 million and will fund the installation of a fuel pipeline system for F1 and Golf Pier connectivity project.

(b) **FEMA Grants:** The Port was notified that FEMA allotted it \$366,251 in federal grants for the FY2021 Port Security Grant Program to fund for the acquisition of radar intrusion and vessel tracking system. This system will protect against unauthorized vessels entering Apra Harbor. The Port was also awarded \$165,001 funding for the acquisition of Transportation Workers Identification Card (TWIC) readers and Credentialing system. The Port's share of this award is \$55,000 bringing the total project cost to \$220,001. The TWIC readers and credentialing system will allow the Port to leverage the full security benefit by electronically verifying individuals' identities with existing databases. This acquisition will upgrade the Port's existing assets as they are outdated and gone through several repairs and ensure compliance with the TWIC program mandated by U.S. Congress through the Maritime Transportation Security Act. This will also allow the Port Police division to work more effectively and efficiently by relieving the burden of visual TWIC inspection and allowing them to focus on more specialized duties.

- (c) Other Federal grants awarded to the Port were:
- i. Office of Insular Affairs – Welding Shop Repair
 - ii. FEMA Port Security Grant Program – Generator maintenance, CCTV and ACS system upgrade, IDEN Technology 2-way radio communication service, X-ray van maintenance, acquisition and installation of prime power generator and components at Load Center 3, radar intrusion and vessel tracking system, TWIC reader and credentialing system upgrade
 - iii. FEMA Public Assistance Program – fendering system repair: phase 1

- iv. FEMA Hazard Mitigation Grant Program – fendering system – phase 2, warehouse 1 repair
- v. U.S. Department of Agriculture – harbor of refuge moorage repair, Agat Marina Dock B upgrade
- vi. U.S. Department of Transportation (RAISE Grant Program) – F1 to F6 marine service life extension project
- vii. U.S. EPA Diesel Emissions Reduction Act – DERA – Acquisition of 4 tractors
- viii. DPW Office of Highway Safety – Operation Adai He’Hao.

5. **MARAD Double Designation:** U.S. Department of Transportation’s Maritime Administration (MARAD) announced the designation of 6 new Marine Highway Projects and a new Marine Highway Route as part of the America’s Marine Highway Program. The program encourages the use of America’s navigable waterways for the movement of freight and people as an alternative to land-based transportation. This new route and project designations included Guam and the Commonwealth of Northern Marianas (CNMI) Route Designation and allowed the expansion of existing containerized freight service between Guam and CNMI and designed to expand and promote inbound and outbound cargo within the islands. This designation also allowed both islands eligible for grants when funding is available.

6. **Oracle Enterprise 1 Migration Phase:** In 2019, we initiated a project to upgrade the Port’s JDE World Management Financial Management System to a more robust and technological system. To steer this huge undertaking, we created a Port Team comprised of Finance and IT personnel. We worked closely with the Port team and Oracle Project team. After successfully getting through the proof of concept and procurement stages, Enterprise 1 was launched in August 2020.

Upon full implementation, the system aims to improve reporting capabilities and will have the ability to streamline a process that reduces non-value activity. Examples include paper filing, spreadsheet reconciliations, manual calculation of interests and collection of late payments, manual inventory processes, and manual financial document delivery. This system will have the ability to fully implement a job costing and work order system that integrates to the Port’s general ledger and other financial modules, which was not possible with the previous system. The new system will also have the ability to integrate the Port’s old system, such as special service request invoicing, operations time entry, check printing W2 processing, requisition and purchase order processing for local GSA transactions, tax table update, and financial required reports into the new system.

7. **Acquisition of Ship-to-Shore (STS) Gantry Cranes:** A recent assessment by the Port’s OAE found there is a dire need to replace the POLA cranes. The POLA cranes were originally built in 1983/1984. Although these cranes were refurbished in 2009, they were all reaching the end of their expected service life. And, would need to be replaced by 2024. Because of the importance of the Port as the lifeline to sustain economically and Department of Defense military build-up construction activities on Guam, Governor Lou Leon Guerrero made the acquisition of new STS gantry cranes to replace the Port’s aging fleet one of her top priorities. Through management’s guidance, Port planning staff submitted a grant application to EDA for the

acquisition of two gantry cranes under the Cares Act Funded Recovery Assistance Program, and developed a loan application to U.S. Department of Agriculture for one gantry crane as a back-up to its EDA application. At the same time, Operations and Maintenance division heads worked closely with our OAE consultants in developing the specifications for the gantry cranes. We, as a Board, understood the dire need to replace the gantry cranes and the procurement timeline to acquire such cranes and as such, approved a resolution authorizing you, as the General Manager, to proceed with the procurement acquisition of at least two gantry cranes. This will ensure that all businesses, residents, and neighboring islands will not lose access to essential goods and always have what they need to operate and survive.

8. **Performance Management Contract for Gantry Cranes:** Public Law 31-145 enacted in 2011 required the Port to contact the services of a Performance Contractor to manage the performance, operation, and maintenance of the Port's gantry cranes, as well as other cranes utilized in Port's operations. When you came on board in 2019, the 2012 contract had expired. In 2021, the Operations and Maintenance division heads and following your directives, worked collaboratively with Legal Counsel, Finance, and Procurement staff in the successful negotiation of a contract, which will be a task order-based contract. Guam Public Utilities Commission approved this procurement award.

9. **Port Wharves Assessment and Upgrades:** You and your team continue to work closely with our OAE consultant on the assessment of the Port's wharves; Tristar's subcontractor on F1 dolphins and pier; and Mobil's subcontractor on the bathymetric surveys for the fuel piers. The reports will provide the Port and its fuel pier manager a realistic picture of the condition of the piers and dolphins and the depth of the pier to safely berth vessels for mooring and berthing.

B. Procurement:

1. **Legal Counsel relative to procurement matters:** The Port's Procurement and Supply Division issued procurement solicitations for the acquisition of surveillance cameras for the Agat marina and terminal facilities; demolition of Port assets; Hotel Wharf/Route 11 construction management and construction; F3 and F5 fendering system; Owner's agent engineer consulting services; Management and Operation of F1 Fuel Pier facility; and the performance management contract for Gantry cranes 4, 5 and 6. As a result of the regular case management meetings held with the Deputy General Manager and Port in-house counsel, together with our procurement and commercial divisions, we successfully negotiated on option leases with SPPC, Hansen, and Mobil. These leases have been operating on a month-to-month basis for the last ten years. We standardized such agreements for the marina, open, dry dock, antenna, and office spaces. And, also together with Port in-house counsel and the Board's approval, developed a process for the notice of the availability of properties process and procedure and the authority of contract term approval for the General Manager and Board of Directors.

2. **Procurement Delegation:** Through your close working relationship with the Chief Procurement Officer (CPO), the CPO again granted a full delegation of procurement authority to the Port for Fiscal Year 2022. Through your leadership guidance provided to the Procurement and

Supply staff and technical guidance from Port Legal Counsel as the Special Assistant Attorney General designation, the Agency was able to:

- a. processed 511 purchase orders;
- b. minimized the overstocking of parts and supplies which lessened the cost overruns and waste;
- c. issued the following procurement solicitations:
 - i. Eleven (11) Construction Invitation for Bids;
 - ii. Four (4) Professional Services Request for Proposals; and
 - iii. Seven (7) Goods and Services Materials.

These are the most solicitations the Port has issued over the last five years in a fiscal year. One of the huge accomplishments under your leadership was issuing and awarding the demolition and removal of Port's inoperable assets. Based on historical records, the Port attempted to dispose of these inoperable equipments for over a decade. As a result of this procurement award, the Port will now be able to expand the use of its container yard, access the container yard, and free up wharf and waterfront area, increasing our Wharfage and dockage revenues.

C. FINANCES: You, together with the Deputy General Managers, worked closely with the Financial Affairs Controller and respective division heads on the financial audits conducted by the:

1. **Office of Public Accountability (OPA)**. The results of the Fiscal Year 2020 audit were:

a. **Designation as Low-Risk Auditee:** The Port achieved 2nd consecutive year as a Low-Risk Auditee during the annual financial audit, which revealed a clean audit with no deficiencies. The auditors rendered a clean opinion on the Port's Fiscal Year 2020 financial statements and compliance over major federal programs. The auditors identified no material weaknesses and significant deficiencies in internal controls.

b. **Financial Audit:** Port recognized operating revenues of \$54.6 million. The number of containers handled was 85,143 containers, an increase of .02% compared to Fiscal Year 2019's container count of 84,954. In comparison to FY 2019, we experienced a decrease in revenues by 1% (\$608K) from \$55.2M in FY 2019 to \$54.5M in FY 2020. The drop in proceeds was from the Port's primary source of revenue, cargo thru-put charges, as well as from the crane surcharge, wharfage charges, special services and other operating income. However, the Port experienced an increase in equipment and space rental revenues compared to the prior fiscal year.

The Port experienced an increase in our operating expense by 15% (\$7.3M) from \$48.4M in FY 2019 TO \$55.7M in FY 2020. The increase in operating expenses includes management and administration expenses, equipment maintenance, transportation services, stevedoring services, retiree healthcare, and other benefits, terminal services, insurance, and facility maintenance. A decrease was recognized compared to the previous fiscal year for expenses in depreciation (\$405K), general expenses (\$182K), and utilities (\$208K).

The result of the net operating expenses minus operating expenses in Fiscal Year 2020 was \$5.9 million income from operations before depreciation. After adding depreciation expenses, non-operating expenses, and federal grant revenues, the Port's net position decreased by \$919K primarily due to the recognition of Other Post-Employment Benefits and pension expenses as required by the Government Accounting Standards Board (GASB) regulations.

c. **Resolution of Past Audit Findings:** The audit recognized that the Port resolved some issues with several commercial leases that had been flagged as an audit finding since 2015. This could not have been done without the due diligence in the negotiations on the expired option term leases from you, Deputy General Manager and Commercial staff.

2. **Removal from Credit Watch:** More good financial news for the Port during this performance period was received. Moody's Investor Service issued a credit report that removed the Port from credit watch based on strong finances with financial stability expected to grow over the next year. The report indicated that despite the COVID-19 pandemic, the Port continued to have the same rating since 2018. The credit watch was issued last year due to COVID-19 pandemic's potential impact on the Port's finances. You, together with the team, worked tirelessly to provide responsible and transparent financial management and demonstrated good cost control in the year 2020 and year-to-date fiscal year 2021.

3. **S&P Global Rating:** Upgraded its outlook for the Port to stable from negative and affirmed its "A" long term rating on the Agency's outstanding series 2018 Port Revenue Bonds. This outlook revision reflects the Port's view that despite the economic disruption caused by the global COVID-19 pandemic, volume levels at the Port have remained relatively stable and resilient from 2019 to 2020 and continue into 2021. We, together with the team, continued to work tirelessly to make these successes a reality for the Port and the people of Guam.

D. **HUMAN RESOURCES**

1. **Litigation:** During this evaluation period, the Port had before the Civil Service Commission four (4) employee appeals. Under your leadership, together with expertise by the Deputy General Manager for Administration and Finance in the adverse action appeal procedures and legal guidance from Port's in-house counsel, the Port recently prevailed in two cases. Most recently, however, one case was remanded back to CSC by Supreme Court and is currently in settlement discussions. Another case is on status quo pending outcome of judicial court decision. Unfortunately, you and the Board still have to clean up long-standing personnel matters; however, since your employment in 2019, punitive actions are taken based on the Rules of Progressive Disciplining.

2. **Protection of the Merit System:** On January 28, 2021, a complaint filed by a senator requested Civil Service Commission to conduct a post-audit into the hiring practices utilized by the Port and to confirm whether these practices are in accordance with the laws of Guam and the rules and regulations of the Government of Guam. Through their review, your team ensured the documents needed by the Commission's staff were provided in a timely manner. On June 15, 2021, the Civil Service Commission, by a vote of 5-0 affirmed there were no Port employee hired in violation of any statutory prohibition.

3. **Training:**

a. **Internal:** After several years of non-compliance and through our guidance to Human Resources staff, the Port, at your direction, was able to reinstate the certification training for crane operators, hazardous waste operation, incident response to terrorist training, and prevention and response to suicide incidents.

When you and your team reviewed the seniority of our operators, it was noted a number of crane operators were eligible for retirement and if all were separated with the Agency, such departure could cause a decrease in productivity against vessel operations. To ensure the flow of goods are not disrupted, you and your team reinstated the on-the-job training for crane operators. Together with the HR staff, you, the Deputy General Managers, worked with the Operations division heads to identify those employees within the Stevedoring and Terminal divisions who were willing to undergo cross-training on the operation of the cranes to enable them the opportunity for upward mobility, which resulted in promotions for two employees.

Port Police personnel have not received annual refresher trainings as required by our enabling act. During this period, the Deputy General Managers worked closely with the Acting Port Police Chief to ensure incumbent Port Police personnel receive CPR and mandated law enforcement trainings to include the safe use of taser and OC-Baton and firearms certification.

Additionally, in-house training for basic supervisory, procurement process, and progressive disciplinary action was conducted by the Deputy General Manager for Administration & Finance. The feedback provided by the employees who participated was positive.

b. **External:**

i. **Guam National Guard:** You, together with the Deputy General Managers and Commercial staff, coordinated the use of Port facilities along Route 18 for the students of the Guam National Guard's ongoing Advanced Leaders Course for training exercises. The training included the use of blank ammunition and "flash-bang" simulators and was critical to the success of our Guam and the security of our island.

ii. **Department of Public Works – Office of Highway Safety:** You saw to it that the Port continue its involvement with the Office of Highway Safety's "Click It or Ticket" campaign, in which Planning and Port Police personnel participated. The campaign's focus was to place awareness on seat belt enforcement. The Port's participation helped spread the lifesaving message that seat belts save lives and to remember to buckle up.

iii. **Guam Army National Guard:** With the Guam Power Authority's power plants occasionally releasing harmful gases in the air and the Port's close proximity to the power plants, employees expressed concerns about the air they breathe. The Port owns 4 air monitoring devices that detects volatile, toxic and combustible gases and radiation. Your management team coordinated a briefing with Guam Army National Guard on equipment

familiarization with the Port's QRAE Air Monitoring devices. The training taught the Port employees how to read and identify airborne hazards on such devices.

4. **Workers' Compensation Program and Light Duty Accommodations:** When you first came on board, you inherited over twenty employees who were on the extended absence or light duty status accommodation, supposedly due to work-related injuries. An extensive review of each case was conducted with Human Resources and Port Police staff and such cases decreased to five existing workers' compensation cases.

The Port also during your time inherited several employees who were placed on light duty status over the many years because of a non-work-related injury. As each case was reviewed, and wherever applicable, the employee was placed in positions for which they qualify and can physically perform such duties and responsibilities. These actions have resulted in a demotion, separation through retirement, long-term disability with the Retirement Fund, or medically cleared to return to their official positions. The Port is now ensuring that light-duty accommodation is only limited to job-related injuries.

5. **Employment Practical Test Reinstated:** Individuals applying for Port positions were evaluated and hired based solely on the information provided on the employment applications submitted, a practice that was done for more than ten years ago. The skill assessment tests now used by the Port in the hiring process narrows down their list of candidates and allows you and your team to make well-informed, data-backed decisions, which was discontinued by past management. Through management's guidance, Human Resources Division reinstated the skills assessment test to help us evaluate the practical competence of the job candidates.

6. **Application of U.S. Department of Labor Rules in Defining Exempt and Non-Exempt Positions:** On August 23, 2004, Governor's Executive Order 2005-28 took effect and listed all bona fide exempt positions in the executive, administrative, professional, and other categories within the Executive Branch. With the guidance of the U.S. Department of Labor Wage and Hour, tests were conducted. It was determined that certain supervisory, administrative, and professional positions were found to be non-exempt.

In 2012, new federal regulations were issued on the exempt status, and U.S. Department of Labor Wage and Hour advised the Port to conduct tests to determine if the non-exempt positions previously identified continue to be non-exempt status. However, before Human Resources staff could finalize their review, the former General Accounting Supervisor for Expense in 2012 or early 2013 converted those non-exempt positions to exempt. Since then, Port employees occupying these positions were paid straight time status for actual hours worked over 40 hours instead of time and half. When HR staff completed their review in 2013 and presented their findings to the former General Manager, unfortunately, no action was taken to provide for fairness, parity, and proper implementation of the Governor's Executive Order.

On June 2, 2021, HR staff presented their findings to management and provided an updated listing of exempt and non-exempt positions for approval. You immediately approved the listing and informed all division heads of this change noting such implementation will be prospectively.

7. **Maintenance Employee Work Schedules:** You and the Deputy General Managers worked closely with the Acting Maintenance Manager in implementing the two-week work for Maintenance employees as mandated by the Personnel Rules and Regulations and as agreed upon in the union contract provisions.

8. **Monitoring of Union Contract Provisions:** You and your team continue to work closely with the Operations and Maintenance union stewards to monitor the contract provisions. Based on feedback from the union, we have been complying with the provisions that have been agreed upon.

9. **Premium Pay for Operations and Maintenance Employees:** As soon as you discovered that the certification for the hazardous premium pay had expired, you and the Deputy General Managers immediately worked closely with the Department of Labor in submitting the re-certifications for their review and approval. Additionally, you also discovered that “dirty premium pay” was not provided to Terminal and Fleet Maintenance employees when exposed to a dirty environment. After reviewing the environmental exposure, you determined that these employees were entitled to dirty pay when exposed to such environmental conditions, and took immediate administrative action to address those inequities.

10. **Staffing and Manpower Requirements:** You and your team worked closely with Operations, Maintenance, Control/Compliance and Administration & Finance divisions to ensure their primary functional responsibilities are met.

D. REAL ESTATE ISSUES: During this evaluation period, you and the Deputy General Managers worked closely with the Commercial staff and in-house Port counsel on the following real estate issues:

1. **Standardized Terms for Lease Agreements:** For the last 12 years, the leases for office, marina, open, and antenna space have been on a month-to-month basis. As a result of in-house Port counsel’s opinion in clarifying the lease terms, the lease agreements were standardized and Commercial staff amended the lease application form to reflect the desire of the prospective tenant if they wish to pursue below or over 5-year term. In line with in-house Port counsel’s guidance, the Commercial staff issued renewal leases to the tenants reflecting the new term of January 1 to December 31.

2. **Renewed Expired Lease Options:** After 11 years of operating under expired lease options, the Port through your directives and Board approval renewed the lease agreement options with Mobil, SPPC, and Hansen. The option executions have resulted in an increase of \$3 million for the next 10 years. This milestone was huge and addressed the deficiencies cited by our auditors from 2015 to 2019.

3. **Fuel Pier Management & Operation Agreement:** Under your leadership, the Deputy General Managers and Commercial staff worked diligently with Procurement personnel on the issuance of the management and operation of F1 Fuel Pier and was able to successfully negotiate with Tristar a new management and operation agreement.

4. **Customs & Quarantine Agency Relationship:** Management through the Governor and Lt. Governor and the Board's unwavering commitment to doing whatever is necessary to advance the interdiction of illicit drugs, invasive species, and counter-terrorism at our islands entry ports, you and your team worked in improving the working relationship with Customs. A memorandum of understanding was entered into with Customs to relocate their offices to a much larger work area at the former Horizon Building. Through this improved relationship, and since day one of the Leon Guerrero Administration, Customs officers have an all-access pass to go anywhere and everywhere within the Port facilities to inspect cargo coming into the Port and shared use of the Port's office washdown station.

5. **Commercial Cargo Activity Written Procedures:** To ensure standard operating instructions for the import and export of commercial cargo and clearly identify those areas to support such activity at the Gregorio D. Perez (GDP) Marina, we developed written procedures for vessel owners. The Port staff (Commercial and Harbor Master) worked in collaboration with law enforcement entities to establish these procedures. As a result of these procedures, the Port is now receiving revenues on the import and export of cargoes at the GDP Marina.

6. **Memorandum of Agreement with the Department of Public Works on Remaining Federal Highway Funds:** Commercial staff under management's guidance worked diligently with the Department of Public Works on the execution of the memorandum of agreement for the use of the remaining Federal Highway Administration seawall project funds. The funds will be used to expand the automobile lot expansion and paving of the shared entrance for Customs and Quarantine lot and the Port chassis staging lot.

7. **Removal of Abandoned Derelict Vessels:** Through the successful coordination with Guam Environmental Protection Agency, Harbor Master, the Governor, Guam Power Authority, and Commercial staff, the Port was able to remove and stage remnants of approximately 13 abandoned derelict vessels which were located inside the Apra Harbor. The removal has allowed safe travel for vessels in the inner part of the harbor.

8. **Motorized Water Recreational Course (MWRC) and Recreational Water Use Management Plan Permit (RWUMPP):** Department of Parks and Recreation advised the Port of our need to submit a Motorized Water Recreational Course and ensure our tenants are notified of acquiring permits for commercial and private recreational jet ski operators to operate within the Apra Harbor. Commercial and Harbor Master staff worked closely with Parks and Recreation in the proposed course and hours of operation, approved the same day we submitted the plan.

E. FACILITY UPGRADES: Working with you in the past three years, the philosophy you expressed to your management team and the Board is having properly managed facilities is important and will make maintenance issues fewer and far between, helping you save on costs significantly. You have shown that focusing more on prevention rather than treatment will allow you to deal with problems before they arise. During this period, facility upgrades were made to:

1. **Repair of CMU Walls at Warehouse 1:** You and your team were able to avert a potential disaster with a structural failure in a wall inside Warehouse 1. In July, the tenant brought

to our attention that one of the CMU walls was leaning. Together with the Port's Engineering Manager, we coordinated with the Department of Public Works to conduct an on-site inspection of the wall. DPW's determination letter found that the wall and its associated support columns showed signs of structural failure and recommended immediate removal. Engineering, Procurement staff, and our in-house counsel immediately initiated an emergency procurement solicitation to address and resolve the imminent threat to public safety quickly and efficiently. Such solicitation was awarded by the Board, and the wall portions were demolished within a month. You and your team also coordinated the U.S. Army Reserve to remove the debris from the warehouse at no cost to the Port.

2. **Harbor Master's Office:** Infrastructure upgrade to the Harbor Master's walls, windows, and frames. The upgrade of this office was crucial to avoid huge electrical safety hazard and prevent flooding in the office as a result of heavy inclement weather and replace the deteriorated corroded doors and windows. A FEMA grant funded this project.

3. **Port Police:** Consolidated Port Police operations in a centralized area, Port Police Dispatcher, Supervisors and Officers lounge offices were relocated from the Port Police Building to the former Horizon Building.

4. **Operations:** The Operations administrative staff, superintendents, managers, and Transportation dispatchers relocated to the former Port Police Building. The Terminal Gatehouse was initially slated to be demolished, and operations were to be consolidated elsewhere in the terminal facility. As such, no upgrades were made during the modernization program. However, you and your team felt there is a need to keep the gatehouse at its current location to provide a smooth check and balance process for the truckers and Terminal personnel. Operations and Engineering staff worked with Procurement on the solicitation to renovate and expand the facility. Such procurement was completed during the evaluation period.

5. **Engineering & Safety:** The offices of Engineering and Safety were again infested with mold. After assessing the offices, it was deemed that it should be demolished and rebuilt when Warehouse 1 is renovated. To ensure the daily activities of Engineering and Safety are not disrupted, their offices were temporarily relocated to annex A adjacent to the Port's fuel tank farm.

6. **Maintenance Control:** To ensure that work orders for Equipment and Facility Maintenance are processed promptly, the Planners for the Maintenance department were consolidated in one office.

7. **Seawall:** To protect the integrity of the seawall, trees and shrubs were removed. The clearing of seawall allowed residents who walk the pavement or ride their bikes to view the ocean and its surrounding.

8. **Pedestrian gate:** A turnstile was installed at the pedestrian gate to control who is able to enter and exit the Port terminal facility.

F. MARKETING/PUBLIC RELATIONS: When you first came on board, the Board stressed to you that a marketing and public relations components of an organization go hand-in-hand. One strengthens the other, making them both more effective and beneficial to management and the employees, and plays a vital role in promoting the business and mission of the agency. Since the return of the Marketing personnel, through your support and guidance, we have seen the marketing division or two employees accomplish the following:

1. revive the Port's monthly newsletter, which has not been produced or published in years;
2. issued 90 new releases more than the previous ten years combined;
3. established Port social media pages on Facebook, Twitter, and Instagram, publishing hundreds of posts with combined more than 2,000 followers;
4. launched the first annual Port Photo contest for our employees;
5. published hundreds of updates on the Port's website; and
6. helped create together with Finance Division the award-winning Citizen-Centric Report.

This Division's most challenging accomplishment was successfully planning and coordinating two virtual Port week celebrations, including in-house production of videos and tributes focusing on the Port.

G. RELATIONSHIPS: You and your team continue to effectively engage with stakeholders and Port employees to make sure that the lines of communications are constantly opened and transparent. The involvement of our stakeholders and employees is shown in the cooperation and helping hand approach in projects in collaboration with other Government of Guam agencies, especially during the pandemic crisis.

1. Port Police Jurisdiction: In April 2021, a suit was filed stating the Port Police only had jurisdiction over a small area between Cabras Island and Dry dock islands and does not include Marine Corps Drive. In a Superior court decision, it was reiterated and established that the Port Police's jurisdiction did include Marine Corps Drive which is a facility necessary for the development and operation of the Port. Superior Court judge ruled that the Port Police were well within their statutory authority to execute traffic stops and issue citations to motorists found to be in violation of the Vehicle Code of Guam

2. Federal Case – Environmental Pollution: In January 2021, the U.S. Attorney General and U.S. Coast Guard thanked Port Stevedores for their assistance in a federal environmental case that occurred in October 2019. Specifically, a vessel operating company was sentenced in January in the federal court for illegal discharging oil into Apra Harbor and for maintaining false and incomplete records relating to the discharges of oil bilge water from Kota Harum vessel. Port Stevedores reported the oil discharge to U.S. Coast Guard and proper authorities. Out of the \$3 million environmental fine assessed to the company, the federal judge allocated a portion of \$2 million to the Port to fund projects in Apra Harbor and surrounding areas for direct remedial action against future pollution by seafarers. The Port employees' involvement in reporting such discharge ensured that polluters who threaten the Island's natural resources are held fully accountable under the law.

3. **Securing our Borders:** The Port continues to work hard to ensure our borders are protected at all entries that fall within the jurisdiction of the island's only commercial port. The work has been non-stop in all areas to include installation of new security systems, enhanced regulations for those wanting to conduct commercial cargo operations at the marinas, meeting with Port users and bringing together local and federal law enforcement to address the issues surrounding the safety of our borders. Through management's efforts to secure our borders from any potential drug and human trafficking and to provide for the safety of everyone who uses the Port marinas, the Port acquired and installed surveillance cameras at the Gregorio D. Perez marina. Additionally, we installed a temporary container office for Port Police and other law enforcement use at GPD marina. Port Police officers can now monitor the activity at the marina through the Port Command Center located at Cabras Island.

4. **Guam Customs & Quarantine Agency:** Management through the Governor and Lt. Governor and the Board's unwavering commitment to doing whatever is necessary to advance the interdiction of illicit drugs, invasive species, and counter-terrorism at our islands entry ports. Port management and staff worked diligently in improving the working relationship with Guam Customs through the following:

a. entered into a memorandum of understanding with Customs regarding the new office space at the Port. Customs will occupy 2,700 square feet of office space located at the former Horizon building and will be vacating their current office in the Port Administration Building.

b. granted Customs Officers an all access pass within the Port terminal facilities to carry out its mandates.

c. included in its 2020 master plan update a Guam Customs Inspection Feasibility Study, which has recently been completed and will be used to assist the Agency in obtaining funding for such construction of the building.

d. our OAE consultants worked with Customs to validate their requirements and confirm the planned facilities will integrate with the current traffic flows.

e. ensured Customs is directly involved in discussions relating to its initiative for Systems Integration that will provide an improved information sharing/reporting between stakeholders involved in the cargo supply chain.

f. dedicated a gated secured area in CFS warehouse for Customs inspection.

g. dedicated area at Seaplane Ramp for marine interdiction task order office and boathouse.

h. allowed shared use of the Port's equipment wash down station; and

i. provided an office space at the GPD Marina to be co-shared with Port Police and access to Port's surveillance cameras at the marinas and terminal yard.

5. **Commercial Cargo Vessel Operators at Gregorio D. Perez (GDP) Marina:** In May 2021, you advised the Board of increased commercial cargo activity being conducted at the GDP Marina. To ensure standard operating instructions for the import and export of commercial cargo and clearly identify those areas to support such activity at the GDP Marina, you and your team, namely the Commercial Division and Harbor Master's Office developed written procedures for vessel owners. Everyone, through your leadership, worked in collaboration with law enforcement entities to establish these procedures. As a result of these procedures, the Port is now receiving revenues on the import and export of cargoes at the GDP Marina.

6. **Department of Public Works Federal Highway Administration Funds:** Under our guidance of management, the Operations Manager and Commercial staff worked diligently with the Department of Public Works to execute the memorandum of agreement for the use of the remaining Federal Highway Administration seawall project funds. The funds will be used to expand the automobile lot expansion and paving of the shared entrance for Customs and Quarantine lot and the Port chassis staging lot.

7. **Removal of Abandoned Derelict Vessels:** Through the successful coordination with Guam Environmental Protection Agency, Harbor Master, the Governor, Guam Power Authority, and Commercial staff, the Port was able to remove and stage remnants of approximately 13 abandoned derelict vessels which were located inside the Apra Harbor. The removal has allowed safe travel for vessels in the inner part of the harbor.

8. **Historic Visit of Navy Ship Juan Sebastian De Elcano:** The Spanish navy training ship Juan Sebastian De Elcano stopped in Guam in late February 2021 on its journey to retrace the first circumnavigation of the globe 500 years ago. This expedition took the training ship across the Atlantic to Argentina, through the Straits of Magellan, and across the Pacific Ocean, passing Guam and the Philippines on their way back to the Spanish Port of Cadiz. Because of the COVID-19 pandemic, the sailors were not able to interact with locals or experience the island's beauty and hospitality. However, before setting off the Philippines, the ship made a quick visit to our Port and berthed at F3 for a commemorative ceremony in honor of the 500th anniversary of Magellan-Juan Sebastian De Elcano circumnavigation. Numerous island dignitaries were in attendance, including our Governor and Lt. Governor, and the sailors were entertained with Chamorro music and dancers. This symbolic visit at the Port and remembrance of the historical ties of the Chamorro and Spanish people could not have been done without the coordination of you, your staff, with the Governor's Office.

9. **GCC Summer Program Tour:** NTSI program is a federally funded program sponsored by U.S. Department of Transportation Federal Highway Administration. The purpose of the program is to expose participants to different transportation sectors in hopes of generating interest and developing a career path for these individuals in this field. After a short hiatus due to funding issues and the pandemic, the program was back for the 7th year. You and Operation's division heads allowed 28 students and two teachers to get a dock-side view of the Port's gantry cranes, wharves where vessel operations take place, and different sections within the terminal facilities.

10. **U.S. Army Reserve 797 Engineer Company (Vertical)**: You and your team met with representatives of the U.S. Army Reserve 797 Engineer Company (Vertical) regarding assistance they can provide to the Port on the removal and disposal of the partition wall at Warehouse 1, Port Beach demolition work and miscellaneous work at Family Beach. A memorandum of agreement was entered into outlining the scope of work to be performed by the military without any cost to the Port.

11. **Marina User Group**: A monthly meeting presided by you has been held with a marina user group, similar to the Port Users Group, to provide a forum to better serve our marina tenants and the Island's recreational, sustenance, and commercial boating communities by enabling all marina users an opportunity to address their concerns or ideas to the Port. Concerns raised the marinas have been addressed on a timely basis.

H. **COVID-19 RESPONSE**: This past year, you and your team saw that the surges from this pandemic is unprecedented. As we think there is some normalcy returning to our lifestyles, another strain would be identified causing us take appropriate measures to reduce the risk to our tenants and employees. Executive Order 2021-17 mandated all Government of Guam employees to be vaccinated no later than September 24, 2021—which to date 99% of the Port employees are vaccinated. During this period, you and your team held:

1. **Vaccination clinics**: To ensure the Port remains 100 percent operational, so the flow of goods and supplies into our community are not interrupted. As the number of positive cases rose amongst our employees, the Port sprang into action to take every step possible to protect the employees, tenants, and people of Guam. Besides the Port Clinic, you established a Port Contact Tracing Team with employees volunteering to take on additional duties and become nationally certified. These efforts helped ease some of the burdens placed on the Department of Public Health and Social Services by conducting our own contact tracing, making arrangements for testing, and keeping employees updated and informed through the consistent circulation of Port E-advisories. Care packages were issued to employees who became sick with the virus.

You coordinated with the Department of Public Health and National Guard to set up the vaccination clinics so our employees, their families, and tenants receive the COVID-19 vaccinations. Guam National Guard was pleased with the set-up for the clinics and informed us that we had set the bar high for any government agency or business on how they can run a successful vaccination clinic at their job site.

2 **Dock-side Vaccination Clinic**: One of the shipping agents requested assistance from the Port about the possibility of setting up a dock-side clinic to administer vaccinations to their crew members. You and your team was able to set up a vaccine clinic within 1 hour with the assistance of the Department of Public Health, FHP Clinic and U.S. Immigration and Guam Customs so the crew members could receive their dose of the vaccination on the Port's docks.

I. **PERSONAL DEVELOPMENT**: Personal development is a lifelong process and a way for employees to assess their skills and qualities, consider their aims in life and set goals in order to realize and maximize their potential. Since your employment in 2019, you gradually became

aware that in a typical day-to-day of port management, we sometimes become myopic and lose sight of the big picture of port operations. We saw that you have a huge desire to know and understand the workings of a maritime transportation industry and encouraged that you undertake any training or program which will provide you with a comprehensive knowledge of the fundamentals of port management and how the port terminal facility can operate as an integral intermodal connections to the world-wide transportation industry.

During the evaluation period, you received a certification from International Association of Maritime and Port Executives in partnership with Association of American Port Authorities a certification as a Maritime Port Manager. You are the first General Manager in the Port's autonomy since 1977 to receive such certification.

Public Law 32-131 mandated all Government of Guam personnel responsible in procuring goods, services or construction to receive training and continuing education through the Guam Community College Procurement Program or equivalent training. The program consisted of 4 modules—fundamentals and principles of basic procurement; the procurement solicitation process (advanced); the procurement review and remedies (administrative) and the management and administration of procurement (administrative). You began the program in 2019, however, it ceased as a result of the COVID-19 pandemic in 2020. During the evaluation period, you were able to complete modules 1 and 4 and received the procurement certification from Guam Community College. Again, you are the first General Manager since the inception of this law to receive this certification.

Last but not least, a significant accomplishment during your evaluation period was the **Climate Survey Participation**. Year 2020 was a tough year for everyone. To gauge the relationship between the Port organization and its employees and determine the Port's organizational culture, our Human Resources staff conducted a climate survey. Port employees were invited to anonymously speak their truths. Three hundred seventeen employees out of 356 turned in their responses, which is an 89 percent response rate. Their responses were overwhelmingly positive and revealed the morale is at an all-time high; employees were proud to work for the Port; management is accessible, approachable, fair, transparent, and accountable for their actions.

Regarding the COVID-19 situation, they felt positive that management made their work environment safe, kept them well-informed, cared about their safety and wellbeing, and provided them with the resources to do their jobs safely. On the topic of career development, the majority felt their superiors share their knowledge and skills on handling situations and felt training opportunities were provided, as well as promotional opportunities were available to everyone. Teamwork also garnered high remarks, and employees felt positive that they made an effort to be part of the team and support the vision of the administration.

In addition to the above accomplishments, you were able to continue to address day-to-day work activities in such an excellent manner to ensure divisions under your purview are not disrupted.

As a result, the overall evaluation for your third year is **Exceptional Performance**.

As required in Policy Memorandum 09-03, the following areas of responsibilities, objectives, and measures for the upcoming rating period is being provided:

1. **Revenue Bond Projects, Hotel Wharf and Other CIP Projects.** Continue to work with Engineering and Planning staff on the progress of projects awarded. Follow-up with Procurement and Port Staff Attorney on the required review of procurement packages to be issued.
2. **Master Plan Update and Associated Tasks:** Continue to work with our consultants in finalizing the tariff simplification task and master plan update.
3. **Standard Operating Procedures:** Continue to work with division heads under their purview in updating their standard operating procedures for review and approval by management or the Board whichever is applicable.
4. **Staffing and Manpower Requirements:** Continue to update the Port's human resources assessment for all divisions. Coordinate with the Deputy General Manager, Administration and Finance, to issue the procurement for temporary staffing to supplement human resources needs when the military build-up ramps up.
5. **Union Contract Provisions:** Continue to monitor and provide status on the implementation of the agreement's provisions.
6. **Cyber Security System Plan Implementation:** Continue to work with the Deputy General Managers in developing the framework in implementing the program and the financing of the plan through grants.
7. **Federal Grants:** Continue to work with Deputy General Managers on applying grants for the acquisition of equipment and projects related to the modernization program.
8. **Update of Rules and Regulations and Standard Operating Procedures:** Continue to work with the Deputy General Managers in updating rules and regulations and standard operating procedures.
9. **5 Year Equipment Plan:** Continue to work with respective division heads under your purview to refine the five-year equipment replacement need, which will serve as a planning tool and long-range perspective of the Port's equipment needs over the next 20 years.
10. **Training, certification, and re-certification of employees:** Continue to work with the Deputy General Managers and respective division heads:
 - a. Re-establish the apprenticeship program so employees may obtain the necessary academic knowledge and specific on-the-job training of the positions' trades.

- b. Develop a mentoring program and identify employees who have specific skills and knowledge with individuals who need or want the same skills and advantages to move up in work, skill level, or performance.
 - c. Ensuring training certifications required by the federal government are provided before their expiration.
11. **Real Estate Issues:** Continue to work with in-house Staff Attorney on the lease negotiations for Marianas Yacht Club and Agat Small Boat Restaurant. Present to the Board on whether the Port should continue with its lease arrangements or pursue the desire to terminate its leasehold with Aqua World.
12. **Micronesian Cruise Ship Development:** Because of the COVID-19 pandemic, discussions were temporarily ceased. When the island begins to return to normalcy, reach out to GEDA and GVB regarding developing the strategy for a regional small ship cruise industry.

This memorandum will be attached to your performance evaluation to justify Exceptional Performance's overall evaluation and provide specific performance objectives for the next rating period.

We humbly thank you and your team for a job well done.

International Association of Maritime and Port Executives

Am keeping with the standards set forth by the association
and having met the requirements of the Maritime Port Manager program

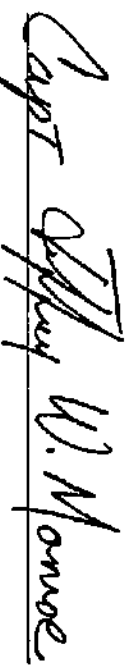
Rory Respicio, AMPA

is hereby certified as an

MARITIME PORT MANAGER



Executive Director, David Smith, AMPA



Director of Education and Standards, Capt. Jeffrey Monroe, AMPA

Awarded on this nineteenth day of November, two thousand twenty-one



IN PARTNERSHIP WITH
AVPA
ESSENTIAL, RESILIENT, UNITED.
SEAPORTS DELIVER



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

DEPUTY GENERAL MANAGER PERFORMANCE AND DEVELOPMENT EVALUATION FORM

Name of Deputy General Manager: Dominic G. Muna, Deputy General Manager Operations and Maintenance	Name of Reviewer/Title: Rory J. Respicio, General Manager
Period Covered: From: 01/08/2021 To: 01/07/2022	Date of Review: January 10, 2022

GENERAL INSTRUCTIONS:

1. This form is to be used for initial and bi-annual performance evaluation for the Deputy General Manager. The performance evaluations are to occur six (6) months into the Deputy General Manager's employment with the Port Authority of Guam and every twelve (12) months thereafter.
2. The ratings to be assigned by the Rater for each individual factor are indicated in Part I; for each individual Performance Objective in Part II; and for the Overall Rating in Part III.
3. The Performance Objectives and factors may be weighted at the Rater's discretion.
4. The Reviewer is the General Manager.

PART I: CORE PERFORMANCE FACTORS

1. The General Manager evaluates the Deputy General Manager's proficiency in the following performance factors using a single rating on the following scale:

A = Exceptional Performance
B = Superior Performance
C = Average Performance
D = Acceptable Performance
E = Needs Improvement

Performance Factors	Rater's Rating
<p>1. Leadership Displays courage, passion and caring in work. Sets a professional example. Motivates other to work toward common goals. Uses authority responsibly. Addresses problems proactively. Gains support and seeks buy-in-through participation of others. Demonstrates interest in professional growth of others. Shows good judgment and accepts ownership for decisions in areas of responsibility. Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>2. Commitment to the Port's Mission, Vision and Values Articulates or shows appreciation for the importance of shared vision. Demonstrates civility in relations with others. Requires supervised employees to show civility in their relations toward others. Participates regularly in activities beyond immediate areas of responsibility which support the mission of the Port. Demonstrates consideration of the Port's values when making decisions. *(Diversity and civility are examples of University values to be considered.) Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>3. Management Practices Demonstrates commitment to good customer services. Demonstrates competency in labor-management relations activities necessary to effectively manage the areas of responsibility. Questions existing practices for continued relevancy. Effectively initiates and promotes necessary change in the areas of responsibility. Sets and enforces performance standards effectively. Recognizes and rewards good performance. Plans effectively and shows good project management skills. Shows awareness of "good practices" for areas of responsibility. Encourages employees to improve performance and grow by actively supporting and encouraging employees to participate in training and development activities. Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>

Performance Factors	Rater's Rating
<p>4. Relational Skills Works effectively with others. Works collaboratively and negotiates effectively. Maintains confidentiality. Accepts constructive criticism without offense. Demonstrates sensitivity to the rights and opinions of others, even in disagreement. Presents a positive image of the Port to external publics. Respects cultural differences and embraces activities which support a diverse community.</p> <p>Supportive Information: See attached.</p>	<p>A</p>
<p>5. Commitment to Diversity Respects cultural differences and embraces activities which support a diverse community. Utilizes recruitment strategies designed to attract diverse applicant pools. Actively engages in diversity initiatives, such as, mentoring, training and employee networks. Displays a commitment to diversity.</p> <p>Supportive Information: See attached.</p>	<p>A</p>
<p>6. Resource Management Recruits, selects and retains capable, productive employees. Effectively deploys staff, equipment and technology to accomplish work. Shows good stewardship of financial resources. Demonstrates knowledge of budget and use of financial reporting systems. Displays creativity/innovative in managing resources.</p> <p>Supportive information: See attached.</p>	<p>A</p>
<p>7. Communication Skills Shares appropriate information with internal and external audiences in a timely and responsible manner. Manages meetings effectively. Possesses effective listening skills. Articulates clearly and writes effectively. Displays effective presentation skills.</p> <p>Supportive information: See attached.</p>	<p>A</p>

Performance Factors	Rater's Rating
<p>8. Accountability</p> <p>Takes responsibility for fulfilling job duties. Meets attendance and punctuality guidelines. Demonstrates accuracy and thoroughness. Completes work on time. Follows instructions and directions.</p> <p>Supportive Information: See attached.</p>	A
<p>9. Responsiveness/Customer Service</p> <p>Consistently demonstrates respect, responsiveness and professionalism. Provides each customer with the same high quality services. Fosters and models a commitment to customer service. Builds customer and confidence and increases customer satisfaction. Makes customers and their needs a primary focus. Developing and sustaining productive customer relationship.</p> <p>Supportive Information: See attached.</p>	A
<p>10. Decision Making/Problem Solving</p> <p>Identifies and understands issues, problems and opportunities. Make timely and rational decisions based on analysis of relevant information/data Accepts responsibility for decisions and takes proper action when necessary. Uses effectively approaches for choosing a course of action or developing appropriate actions. Takes action that is consistent with available facts, constraints, and probable consequences.</p> <p>Supportive information: See attached.</p>	A
<p>11. Work Environment/Safety</p> <p>Promotes and supports a respectful workplace; comply with laws, policies and procedures. Models ethical behavior and decision making and ensures compliance.</p> <p>Supportive information: See attached.</p>	A

PART II: JOB SPECIFIC PERFORMANCE OBJECTIVES


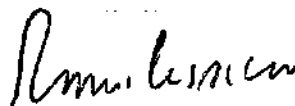
Instructions: Part II creates the performance deliverable which will be measured. The Deputy General Manager and General Manager should identify below between 5 and 8 significant deliverable in the form of major initiatives or projects. They may include annual program objectives or project-related work. The intent is that there should be some collaboration between the Deputy General Manager and General Manager when assigning the deliverables and they should be prioritized if at all possible, with the most important in block 1, next most important in block 2, etc. If more than 8 deliverables require listing, those in excess of 8 may be listed in the back of the last page. (NOTE: It is typical for some priorities to change over the course of the year, and it also foreseeable that some objectives set at the beginning of the cycle may prove unachievable for reasons outside the Deputy General Manager's control.)

Job Specific Performance Objectives	Rater's Rating
<p>1. Objective:</p> <p><i>Refer to attached memorandum for performance objectives and expected results.</i></p>	
<p>Expected Results:</p>	
<p>Actual Results:</p>	
<p>2. Objective:</p>	
<p>Expected Results:</p>	
<p>Actual Results:</p>	
<p>3. Objective:</p>	
<p>Expected Results:</p>	
<p>Actual Results:</p>	

Job Specific Performance Objectives	Rater's Rating
4. Objective:	
Expected Results:	
Actual Results:	
5. Objective:	
Expected Results:	
Actual Results:	
6. Objective:	
Expected Results:	
Actual Results:	
7. Objective:	
Expected Results:	
Actual Results:	

Job Specific Performance Objectives	Rater's Rating
8. Objective:	
Expected Results:	
Actual Results:	

The Deputy General Manager and the General Manager have met, discussed and agreed to the above initiatives as measurable deliverables for the performance cycle.

Employee's Signature: 	Date: 4/10/22
General Manager's Signature: 	Date: 1/10/22

PART III: SUMMARY OF OVERALL PERFORMANCE:

The space below is provided for a narrative summary of the Deputy General Manager's performance over the immediate cycle to be completed by the General Manager (Rater).

Refer to attached memorandum.

PART IV: OVERALL PERFORMANCE EVALUATION RATING: (Please checkmark ✓)

Exceptional Performance

Superior Performance

Average Performance

Acceptable Performance

Needs Improvement

PART V: PERFORMANCE DEVELOPMENT PLAN:

In the blocks below, the General Manager should make specific recommendations designed to identify strategies to enhance the Deputy General Manager's current competencies (first block) or correct performance issues (second block).

Professional Growth Strategies:

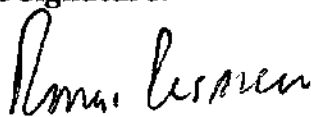
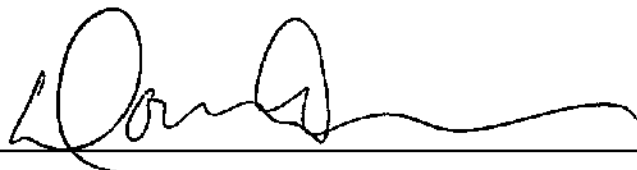
Refer to attached memorandum.

Remedial Strategies:

Refer to attached memorandum.

PART VI: SIGNATURES:

The Deputy General Manager and General Manager are required to sign the instrument after completing it and concluding the performance interview. The Deputy General Manager is only attesting to having been afforded the opportunity to review the evaluation and discuss the evaluations with the General Manager. The Deputy General Manager's signatures does not necessary indicate that he/she agrees with the General Manager's measurement of his/her performance. Employee's comments are optional.

General Manager's Signature: 	Date: 1/10/22
Employee' Signature: 	Date: 1/10/22

Employee comments:	Date:
I would like to discuss with the General Manager: <input type="checkbox"/> Yes <input type="checkbox"/> No	
General Manager's Signature:	



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 10, 2022

MEMORANDUM

TO: Dominic G. Muna, Deputy General Manager for Operations & Maintenance

FROM: Rory J. Respicio, General Manager *Rory Respicio*

SUBJECT: Performance Evaluation – January 8, 2021 to January 7, 2022

Hafa Adai! Title 12 Guam Code Annotated, Chapter 10, Section 10111(c), authorizes the Board of Directors to employ and compensate under the terms and conditions fixed at the pleasure of the Board for the Deputy General Manager position. Title 5 Guam Code Annotated, Government Operations, Chapter 43, Boards and Commissions, Article 2, Performance Evaluation of agency Heads required that the board issue performance reviews of the General Manager six (6) months after employment and every twelve (12) months thereafter. Policy Memorandum 09-04, Subject: Policy on Performance Evaluation for Deputy General Manager, states it is the intent of the Board and general policy to extend the application of the law to the Deputy General Manager.

On January 28, 2021, the Board of Directors concurred to the performance evaluation for your second year as Deputy General Manager for Operations and Maintenance. The following goals and objectives for your second year of employment were outlined in your evaluation as follows:

- Revenue Bond Projects, Hotel Wharf, and other CIP Projects
- Removal of Port Inoperable Assets
- Standard Operating Procedures
- Staffing and Manpower Requirements
- Union Contract Provisions
- Cyber Security System Plan Implementation
- Federal Grants
- Update of rules and regulations for Port Police and Harbor Master divisions
- Five-year Equipment Replacement Plan
- Training for employees

Reviewing your performance, goals and objectives, Board minutes, and correspondence, you and our division heads under your purview were able to achieve the following during your third year of employment:

1. **Crane Quadrennial Inspection**: Every year, the Port's gantry crane goes through routine inspection to ensure the structural integrity of the mammoth equipment. Every four (4) years, it goes through a more rigorous inspection that looks at the crane's structural integrity and

its electrical systems and mechanical functions for issues that may affect the safe operations of the container handling equipment. The quadrennial inspection also required a functional load test of the crane's capacity, plus an additional 25% of the maximum weight for lifting from the trolley to the boom tip and then back. The required load test of 110,000 pounds was conducted under the spreader of each crane. The safe working load of the cranes is 50 tons.

The Port's gantry cranes once again passed the rigorous quadrennial inspection. Since its acquisition in 2012, the gantries have never failed inspection. The typical life span of these cranes is 25 years. The gantry cranes were manufactured in 1984 and 1985. However, due to the care and attention given to these critical assets by our Equipment Maintenance Team, the lifespan of these gantry cranes has been extended to more than 36 years. With your oversight, the Maintenance team has done an exceptional job of keeping these massive machines up and running—taking ownership of these cranes, prolonging their usefulness, and ensuring they are functional for each vessel's operations.

2. Training:

a. Internal: After several years of non-compliance and through your guidance to Human Resources staff, the Port was able to reinstate the certification training for crane operators, hazardous waste operation, incident response to terrorist training, and prevention and response to suicide incidents. Through your leadership, together with DGMA, on-the-job training for crane operators were re-implemented. Because of the number of crane operators eligible for retirement, which if all separated with the Agency could have caused a decrease in productivity against vessel operations. Together with DGM for Administration and Finance, and the HR staff, we worked with the Operations division heads to identify those employees within the Stevedoring and Terminal divisions who were willing to undergo cross-training on the operation of the cranes to enable them the opportunity for upward mobility, which resulted in promotions for two employees. Additionally, you conducted in-house training for basic supervisory, procurement process, and progressive disciplinary action was held. The feedback provided by the employees who participated was positive.

Port Police personnel also have not received annual refresher trainings as required by our enabling act. During this period, you worked closely with the Acting Port Police Chief in ensuring that Port Police personnel received the training for CPR and mandated law enforcement training to include the safe use of taser and OC-Baton and firearms certification.

b. External:

(1) Guam National Guard: We, together with the DGM for Administration and Finance, and Commercial staff, coordinated the use of Port facilities along Route 18 for the students of the Guam National Guard's ongoing Advanced Leaders Course for training exercises. The training included the use of blank ammunition and "flash-bang" simulators and was critical to the success of our Guam and the security of our island.

(2) Department of Public Works – Office of Highway Safety: You coordinated Office of Highway Safety on the Port's involvement in the "Click It or Ticket" campaign, in which Planning and Port Police personnel participated. The campaign's focus was to place awareness on seat belt enforcement. The Port's participation helped spread the lifesaving message that seat belts save lives and to remember to buckle up.

(3) Guam Army National Guard: With the Guam Power Authority's power plants occasionally releasing harmful gases in the air and the Port's close proximity to the power plants, employees have expressed concerns about the air they breathe. The Port owns 4 air monitoring devices that detect volatile, toxic and combustible gases and radiation. You coordinated a briefing with Guam Army National Guard on equipment familiarization with the Port's QRAE Air Monitoring devices. The training taught the Port users how to read and identify airborne hazards.

3. Employee Work Schedules: We worked closely with the Acting Maintenance Manager in implementing the two-week work for Maintenance employees as mandated by the Personnel Rules and Regulations and as agreed upon in the union contract provisions.

4. Relationships: We continue to effectively engage with stakeholders and Port employees to make sure that the lines of communications are constantly opened and transparent. The involvement of our stakeholders and employees is shown in the cooperation and helping hand approach in projects in collaboration with other Government of Guam agencies, especially during the pandemic crisis.

a. External:

(1) Federal Case – Environmental Pollution: In January 2021, the U.S. Attorney General and U.S. Coast Guard thanked Port Stevedores for their assistance in a federal environmental case that occurred in October 2019. Specifically, a vessel operating company was sentenced in January in the federal court for illegally discharging oil into Apra Harbor and for maintaining false and incomplete records relating to the discharges of oil bilge water from Kota Harum vessel. Port Stevedores reported the oil discharge to U.S. Coast Guard and proper authorities. Out of the \$3 million environmental fine assessed to the company, the federal judge allocated a portion of \$2 million to the Port to fund projects in Apra Harbor and surrounding areas for direct remedial action against future pollution by seafarers. The Port employees' involvement in reporting such discharge ensured that polluters who threaten the Island's natural resources are held fully accountable under the law.

(2) Securing our Borders: The Port continues to work hard to ensure our borders are protected at all entries that fall within the jurisdiction of the island's only commercial port. The work has been non-stop in all areas to include installation of new security systems, enhanced regulations for those wanting to conduct commercial cargo operations at the marinas, meeting with Port users and bringing together local and federal law enforcement to address the issues surrounding the safety of our borders. Through management's efforts to secure our borders from any potential drug and human trafficking and to provide for the safety of everyone who uses

the Port marinas, the Port acquired and installed surveillance cameras at the Gregorio D. Perez (GDP) marina. Additionally, we installed a temporary container office for Port Police and other law enforcement use at GDP marina. Port Police officers can now monitor the activity at the marina through the Port Command Center located at Cabras Island.

(3) Guam Customs & Quarantine Agency: Management through the Governor and Lt. Governor and the Board's unwavering commitment to doing whatever is necessary to advance the interdiction of illicit drugs, invasive species, and counter-terrorism at our islands entry ports. Port management and staff worked diligently in improving the working relationship with Guam Customs through the following:

- a. entered into a memorandum of understanding with Customs regarding the new office space at the Port. Customs will occupy 2,700 square feet of office space located at the former Horizon building and will be vacating their current office in the Port Administration Building.
- b. granted Customs Officers an all access pass within the Port terminal facilities to carry out its mandates.
- c. included in its 2020 master plan update a Guam Customs Inspection Feasibility Study, which has recently been completed and will be used to assist the Agency in obtaining funding for such construction of the building.
- d. our OAE consultants worked with Customs to validate their requirements and confirm the planned facilities will integrate with the current traffic flows.
- e. ensured Customs is directly involved in discussions relating to its initiative for Systems Integration that will provide an improved information sharing/reporting between stakeholders involved in the cargo supply chain.
- f. dedicated a gated secured area in CFS warehouse for Customs inspection.
- g. dedicated area at Seaplane Ramp for marine interdiction task order office and boathouse.
- h. allowed shared use of the Port's equipment wash down station; and
- i. provided an office space at the GDP Marina to be co-shared with Port Police and access to Port's surveillance cameras at the marinas and terminal yard.

(4) Commercial Cargo Vessel Operators at Marina: In May 2021, we became aware of commercial cargo activity being conducted at the Gregorio D. Perez (GDP) Marina. To ensure standard operating instructions for the import and export of commercial cargo and clearly identify those areas to support such activity at the GDP Marina, we developed written procedures for vessel owners. The Port staff (Commercial and Harbor Master) worked in collaboration with law enforcement entities to establish these procedures. As a result of these procedures, the Port is now receiving revenues on the import and export of cargoes at the GDP Marina.

(5) Department of Public Works Federal Highway Administration Funds: Under our guidance as management, the Operations Manager and Commercial staff worked diligently with the Department of Public Works to execute the memorandum of agreement for the use of the remaining Federal Highway Administration seawall project funds. The funds will be used to expand the automobile lot expansion and paving of the shared entrance for Customs and Quarantine lot and the Port chassis staging lot.

(6) Removal of Abandoned Derelict Vessels: Through the successful coordination with Guam Environmental Protection Agency, Harbor Master, the Governor, Guam Power Authority, and Commercial staff, the Port was able to remove and stage remnants of approximately 13 abandoned derelict vessels which were located inside the Apra Harbor. The removal has allowed safe travel for vessels in the inner part of the harbor.

(7) Historic Visit of Navy Ship Juan Sebastian De Elcano: The Spanish navy training ship Juan Sebastian De Elcano stopped in Guam in late February 2021 on its journey to retrace the first circumnavigation of the globe 500 years ago. This expedition took the training ship across the Atlantic to Argentina, through the Straits of Magellan, and across the Pacific Ocean, passing Guam and the Philippines on their way back to the Spanish Port of Cadiz. Because of the COVID-19 pandemic, the sailors were not able to interact with locals or experience the island's beauty and hospitality. However, before setting off the Philippines, the ship made a quick visit to our Port and berthed at F3 for a commemorative ceremony in honor of the 500th anniversary of Magellan-Juan Sebastian De Elcano circumnavigation. Numerous island dignitaries were in attendance, including our Governor and Lt. Governor, and the sailors were entertained with Chamorro music and dancers. This symbolic visit at the Port and remembrance of the historical ties of the Chamorro and Spanish people could not have been done without the coordination of you, your staff, with the Governor's Office.

(8) GCC Summer Program Tour: NTSI program is a federally funded program sponsored by U.S. Department of Transportation Federal Highway Administration. The purpose of the program is to expose participants to different transportation sectors in hopes of generating interest and developing a career path for these individuals in this field. After a short hiatus due to funding issues and the pandemic, the program was back for the 7th year. You and Operation's division heads allowed 28 students and two teachers to get a dock-side view of the Port's gantry cranes, wharves where vessel operations take place, and different sections within the terminal facilities.

(9) U.S. Army Reserve 797 Engineer Company (Vertical): We met with representatives of the U.S. Army Reserve 797 Engineer Company (Vertical) regarding assistance they can provide to the Port on the removal and disposal of the partition wall at Warehouse 1, Port Beach demolition work and miscellaneous work at Family Beach. A memorandum of agreement was entered into outlining the scope of work to be performed by the military without any cost to the Port.

5. COVID-19 Response:

a. Vaccination Clinics: During this performance period, we saw the COVID-19 pandemic crisis continue to bring unprecedented challenges for our employees and ensure that the Port remains 100 percent operational, so the flow of goods and supplies into our community are not interrupted. As the number of positive cases rose amongst our employees, the Port sprang into action to take every step possible to protect the employees, tenants, and people of Guam. Besides the Port Clinic, we established our own Port Contact Tracing Team with employees volunteering to take on additional duties and become nationally certified. These efforts helped ease some of the

burdens placed on the Department of Public Health and Social Services by conducting our own contact tracing, making arrangements for testing, and keeping employees updated and informed through the consistent circulation of Port E-advisories. Care packages were issued to employees who became sick with the virus.

We coordinated with the Department of Public Health and National Guard to set up several vaccination clinics during this performance period to allow our employees, their families, and tenants to receive the COVID-19 vaccinations. Guam National Guard was pleased with the set-up for the clinics and informed us that we had set the bar high for any government agency or business on how they can run a successful vaccination clinic at their job site.

b. **Dock-side Vaccination Clinic:** On Father's Day, one of the shipping agents requested assistance from the Port about the possibility of setting up a dock-side clinic to administer vaccinations to their crew members. Port management was able to set up a vaccine clinic within 1 hour with the assistance of the Department of Public Health, FHP Clinic and U.S. Immigration and Guam Customs so the crew members could receive their dose of the vaccination on the Port's docks.

6. **Repair of CMU Walls at Warehouse 1:** We were able to avert a potential disaster with a structural failure in a wall inside Warehouse 1. In July, the tenant brought to our attention that one of the CMU walls was leaning. Together with the Port's Engineering Manager, we coordinated with the Department of Public Works to conduct an on-site inspection of the wall. DPW's determination letter found that the wall and its associated support columns showed signs of structural failure and recommended immediate removal. Engineering, Procurement staff, and our in-house counsel immediately initiated an emergency procurement solicitation to address and resolve the imminent threat to public safety quickly and efficiently. Such solicitation was awarded by the Board, and the wall portions were demolished within a month. You also coordinated with the Engineer Manager and the U.S. Army Reserve to remove the debris from the warehouse at no cost to the Port.

7. **Removal of Port Inoperable Assets:** Through the collaboration of Engineering, Procurement, Operations, and Commercial divisions, we were able to award the demolition and removal of Port inoperable assets and acquire Guam Public Utilities Commission's approval on the award. The demolition project is scheduled to begin in the latter part of January 2022. This is a huge milestone for the Port. Based on historical records, the Port attempted to dispose of this inoperable equipment for over a decade. As a result of this procurement award, the Port will now be able to expand the use of its container yard, access the container yard, and free up wharf and waterfront area, increasing our Wharfage and dockage revenues.

8. **Performance Management Contract for Gantry Cranes:** Public Law 31-145 enacted in 2011 required the Port to contact the services of a Performance Contractor to manage the performance, operation, and maintenance of the Port's gantry cranes, as well as other cranes utilized in Port's operations. When we came on board in 2019, the 2012 contract had expired. In 2021, the Operations and Maintenance division heads under your purview, and following my directives, worked collaboratively with Legal Counsel, Finance, and Procurement staff in the

successful negotiation of a contract, which will be a task order-based contract. Guam Public Utilities Commission approved this procurement award.

9. **Acquisition of Gantry Cranes:** A recent assessment by the Port's OAE found there is a dire need to replace the POLA cranes. The POLA cranes were originally built in 1983/1984. Although these cranes were refurbished in 2009, they were all reaching the end of their expected service life. And, would need to be replaced by 2024. Because of the importance of the Port as the lifeline to sustain economically and Department of Defense military build-up construction activities on Guam, Governor Lou Leon Guerrero made the acquisition of new STS gantry cranes to replace the Port's aging fleet one of her top priorities. Through management's guidance, Port planning staff submitted a grant application to EDA for the acquisition of two gantry cranes under the Cares Act Funded Recovery Assistance Program, and developed a loan application to U.S. Department of Agriculture for one gantry crane as a back-up to its EDA application. At the same time, Operations and Maintenance division heads worked closely with our OAE consultants in developing the specifications for the gantry cranes. The Board understood the dire need to replace the gantry cranes and the procurement timeline to acquire such cranes and as such, approved a resolution authorizing the General Manager to proceed with the procurement acquisition of at least two gantry cranes. This will ensure that all businesses, residents, and neighboring islands will not lose access to essential goods and always have what they need to operate and survive.

10. **Hotel Wharf Rehabilitation and Reconstruction Project:** The Port awarded the construction management services for the rehabilitation of the hotel wharf and Route 11 roadway reconstruction projects in March 2021. The construction manager works hand-in-hand with the Port's Planning, Procurement, and Engineering divisions and our Owner's Agent Engineer in the procurement solicitation for this rehabilitation project. This project is being funded through a \$10 million federal grant and local Port funds. The upgrades to this facility will bring into compliance with U.S. Coast Guard criteria to regain certification as a designated waterfront facility. It will also expand the Port's wharf capacity to alleviate congestion at the main cargo terminal due to Guam being a major transshipment for the Micronesian region. It will also expand the Port's wharf capacity to alleviate congestion at the main cargo terminal due to Guam being a major transshipment for the Micronesian region. We also worked closely with Guam Shipyard, whose equipment is currently berthed at Hotel Wharf, on the potential relocation of their assets once the procurement solicitation has been awarded.

11. **Port Wharves Assessment and Upgrades:** We all continue to work closely with our OAE consultant on the assessment of the Port's wharves; Tristar's subcontractor on F1 dolphins and pier; and Mobil's subcontractor on the bathymetric surveys for the fuel piers. The reports will provide the Port and its fuel pier manager a realistic picture of the condition of the piers and dolphins and the depth of the pier to safely berth vessels for mooring and berthing.

12. **Monitoring of Union Contract Provisions:** We continue to work closely with the Operations and Maintenance union stewards to monitor the contract. Based on feedback from the union, we have been complying with the provisions that have been agreed upon.

13. **Port Master Plan Update:** In July 2020, the Port engaged with its Owner Agent Engineer (OAE) in updating its 2013 Master Plan. The purpose of the update is to assist the Port in defining its near-term and long-term approach to modernization, maintain fiscally sustainable operations and promote increased awareness and consensus on its approach among all affected stakeholders and ratepayers of Guam. OAE briefed management, Governor, Lt. Governor, the Board and several members of the Guam Legislature, on the master plan status, project planning and analysis, demand forecast, port modernization, as well as build back better initiatives, current and new OAE contract, transshipment task force during the evaluation period, and diversification of commercial activities and revenues. The first draft of the report is expected to be submitted to the Port during the first quarter of 2022, and if all goes well, the Port should anticipate completing the administrative adjudication process by the summer of 2022.

14. **Premium Pay for Operations & Maintenance Employees:** As soon as we discovered that the certification for the hazardous premium pay had expired, we worked closely with the Department of Labor in submitting the re-certifications for their review and approval. Additionally, we discovered that “dirty premium pay” was not provided to Terminal and Fleet Maintenance employees when exposed to a dirty environment. After reviewing the environmental exposure, we determined that these employees were entitled to dirty pay when exposed to such environmental conditions.

15. **Staffing and Manpower Requirements:** You are working closely with the Operations Maintenance and Control/Compliance division heads on required staffing levels to ensure the divisions’ primary functional responsibilities are met.

16. **Facility Upgrades:** During this period, facility upgrades were made to:

a. Harbor Master: Infrastructure upgrade to the Harbor Master’s walls, windows, and frames. The upgrade of this office was crucial to avoid huge electrical safety hazard and prevent flooding in the office as a result of heavy inclement weather and replace the deteriorated corroded doors and windows. A FEMA grant funded this project.

b. Port Police: To consolidate the Port Police operations in a centralized area, Port Police Dispatcher, Supervisors and Officers lounge offices were relocated from the Port Police Building to the former Horizon Building.

c. Operations: The Operations administrative staff, superintendents, managers, and Transportation dispatchers relocated to the former Port Police Building. The Terminal Gatehouse was initially slated to be demolished, and operations were to be consolidated elsewhere in the terminal facility. As such, no upgrades were made during the modernization program. However, current management felt that there is a need to keep the gatehouse at its current location to provide a smooth check and balance process with the truckers and Terminal personnel. Operations and Engineering staff worked with Procurement on the solicitation to renovate and expand the facility. Such procurement was completed during the evaluation period.

d. **Engineering & Safety:** The offices of Engineering and Safety were again infested with mold. After assessing the offices, it was deemed that it should be demolished and rebuilt when Warehouse 1 is renovated. To ensure that the daily activities of Engineering and Safety are not disrupted, their offices were temporarily relocated to annex A adjacent to the Port's fuel tank farm.

e. **Maintenance Control:** To ensure that work orders for Equipment and Facility Maintenance are processed promptly, the Planners for the department were consolidated in one office.

f. **Seawall:** To protect the integrity of the seawall, trees and shrubs were removed. The clearing of seawall allowed residents who walk the pavement or ride their bikes to view the ocean and its surrounding.

g. **Pedestrian gate:** A turnstile was installed at the pedestrian gate to control who is able to enter and exit the Port terminal facility.

Additionally, another significant accomplishment during your evaluation period was the **Climate Survey Participation**. The year 2020 was a tough year for everyone. To gauge the relationship between the Port organization and its employees and determine the Port's organizational culture, our Human Resources staff conducted a climate survey. Port employees were invited to anonymously speak their truths. Three hundred seventeen employees out of 356 turned in their responses, which is an 89 percent response rate. Their responses were overwhelmingly positive and revealed the morale is at an all-time high; employees were proud to work for the Port; management is accessible, approachable, fair, transparent, and accountable for their actions.

Regarding the COVID-19 situation, they felt positive that management made their work environment safe; kept them well-informed, cared about their safety and wellbeing and provided them with the resources to do their jobs safely. On the topic of career development, the majority felt their superiors share their knowledge and skills on how to handle situations and felt training opportunities were provided, as well as promotional opportunities were available to everyone. Teamwork also garnered high remarks and employees felt positive that they make an effort to be part of the team and support the vision of the administration.

When reviewing the above accomplishments, it is amazing how you, along with your team, showed the dedication and commitment in making sure the Port succeed in their endeavors. We were challenged with pressing issues and obviously distractions that would have an impact on the Port's operations, yet we were able to provide solutions that are beneficial not only for the Port but also Guam and the Micronesian Islands.

As a result, the overall evaluation for the year is Exceptional Performance.

As required in Policy Memorandum No. 09-04, the following areas of responsibilities, objectives and measures for the upcoming rating period is being provided:

1. **Revenue Bond Projects, Hotel Wharf, and Other CIP Projects:** Continue to work with Engineering and Planning staff on the progress of projects awarded. Follow-up with Procurement and Port Staff Attorney on the required review of procurement packages to be issued.
2. **Removal of Port's Inoperable Assets:** Continue to coordinate with the contractor and division heads on safely removing these assets from the Port terminal facility.
3. **Standard Operating Procedures:** Continue to work with division heads under their purview in updating their standard operating procedures for review and approval by management or the Board whichever is applicable.
4. **Staffing and Manpower Requirements:** Continue to update the Port's human resources assessment for all divisions. Coordinate with the Deputy General Manager of Administration and Finance, to issue the procurement for temporary staffing to supplement human resources needs when the military build-up ramps up.
5. **Union Contract Provisions:** Continue to monitor and provide status on the implementation of the agreement's provisions.
6. **Cyber Security System Plan Implementation:** Continue to work with the Deputy General Manager, Administration and Finance, in developing the framework in implementing the program and the financing of the plan through grants.
7. **Federal Grants:** Continue to work with Operations and Maintenance division heads in providing information to Strategic Planning division for federal grant application on the acquisition of equipment and projects related to the modernization program.
8. **Update of Rules and Regulations and Standard Operating Procedures:** Continue to work with the Deputy General Manager of Administration and Finance in updating rules and regulations and standard operating procedures.
9. **5 Year Equipment Plan:** Continue to work with respective division heads under your purview to refine the five-year equipment replacement need, which will serve as a planning tool and long-range perspective of the Port's equipment needs over the next 20 years.
10. **Training, certification, and re-certification of employees:** Continue to work with the respective division heads on the apprenticeship, mentoring, and certification program.

This memorandum will be attached to your performance evaluation to justify the overall evaluation of Exceptional Performance and provide specific performance objectives for the next rating period.

Si Yu'os Ma'ase for a job well done.



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

DEPUTY GENERAL MANAGER PERFORMANCE AND DEVELOPMENT EVALUATION FORM

Name of Deputy General Manager: Luis R. Baza, Deputy General Manager Administration and Finance	Name of Reviewer/Title: Rory J. Respicio, General Manager
Period Covered: From: 12/13/2020 To: 12/12/2021	Date of Review: January 10, 2022

GENERAL INSTRUCTIONS:

1. This form is to be used for initial and bi-annual performance evaluation for the Deputy General Manager. The performance evaluations are to occur six (6) months into the Deputy General Manager's employment with the Port Authority of Guam and every twelve (12) months thereafter.
2. The ratings to be assigned by the Rater for each individual factor are indicated in Part I; for each individual Performance Objective in Part II; and for the Overall Rating in Part III.
3. The Performance Objectives and factors may be weighted at the Rater's discretion.
4. The Reviewer is the General Manager.

PART I: CORE PERFORMANCE FACTORS

1. The General Manager evaluates the Deputy General Manager's proficiency in the following performance factors using a single rating on the following scale:

A = Exceptional Performance
B = Superior Performance
C = Average Performance
D = Acceptable Performance
E = Needs Improvement

Performance Factors	Rater's Rating
<p>1. Leadership Displays courage, passion and caring in work. Sets a professional example. Motivates other to work toward common goals. Uses authority responsibly. Addresses problems proactively. Gains support and seeks buy-in-through participation of others. Demonstrates interest in professional growth of others. Shows good judgment and accepts ownership for decisions in areas of responsibility.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>2. Commitment to the Port's Mission, Vision and Values Articulates or shows appreciation for the importance of shared vision. Demonstrates civility in relations with others. Requires supervised employees to show civility in their relations toward others. Participates regularly in activities beyond immediate areas of responsibility which support the mission of the Port. Demonstrates consideration of the Port's values when making decisions. *(Diversity and civility are examples of University values to be considered.)</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>
<p>3. Management Practices Demonstrates commitment to good customer services. Demonstrates competency in labor-management relations activities necessary to effectively manage the areas of responsibility. Questions existing practices for continued relevancy. Effectively initiates and promotes necessary change in the areas of responsibility. Sets and enforces performance standards effectively. Recognizes and rewards good performance. Plans effectively and shows good project management skills. Shows awareness of "good practices" for areas of responsibility. Encourages employees to improve performance and grow by actively supporting and encouraging employees to participate in training and development activities.</p> <p>Supportive Information: See attached.</p>	<p style="text-align: center;">A</p>

Performance Factors	Rater's Rating
<p>4. Relational Skills Works effectively with others. Works collaboratively and negotiates effectively. Maintains confidentiality. Accepts constructive criticism without offense. Demonstrates sensitivity to the rights and opinions of others, even in disagreement. Presents a positive image of the Port to external publics. Respects cultural differences and embraces activities which support a diverse community.</p> <p>Supportive Information: See attached.</p>	A
<p>5. Commitment to Diversity Respects cultural differences and embraces activities which support a diverse community. Utilizes recruitment strategies designed to attract diverse applicant pools. Actively engages in diversity initiatives, such as, mentoring, training and employee networks. Displays a commitment to diversity.</p> <p>Supportive Information: See attached.</p>	A
<p>6. Resource Management Recruits, selects and retains capable, productive employees. Effectively deploys staff, equipment and technology to accomplish work. Shows good stewardship of financial resources. Demonstrates knowledge of budget and use of financial reporting systems. Displays creativity/innovative in managing resources.</p> <p>Supportive information: See attached.</p>	A
<p>7. Communication Skills Shares appropriate information with internal and external audiences in a timely and responsible manner. Manages meetings effectively. Possesses effective listening skills. Articulates clearly and writes effectively. Displays effective presentation skills.</p> <p>Supportive information: See attached.</p>	A

Performance Factors	Rater's Rating
<p>8. Accountability</p> <p>Takes responsibility for fulfilling job duties. Meets attendance and punctuality guidelines. Demonstrates accuracy and thoroughness. Completes work on time. Follows instructions and directions.</p> <p>Supportive Information: See attached.</p>	A
<p>9. Responsiveness/Customer Service</p> <p>Consistently demonstrates respect, responsiveness and professionalism. Provides each customer with the same high quality services. Fosters and models a commitment to customer service. Builds customer and confidence and increases customer satisfaction. Makes customers and their needs a primary focus. Developing and sustaining productive customer relationship.</p> <p>Supportive Information: See attached.</p>	A
<p>10. Decision Making/Problem Solving</p> <p>Identifies and understands issues, problems and opportunities. Make timely and rational decisions based on analysis of relevant information/data Accepts responsibility for decisions and takes proper action when necessary. Uses effectively approaches for choosing a course of action or developing appropriate actions. Takes action that is consistent with available facts, constraints, and probable consequences.</p> <p>Supportive information: See attached.</p>	A
<p>11. Work Environment/Safety</p> <p>Promotes and supports a respectful workplace; comply with laws, policies and procedures. Models ethical behavior and decision making and ensures compliance.</p> <p>Supportive information: See attached.</p>	A

PART II: JOB SPECIFIC PERFORMANCE OBJECTIVES

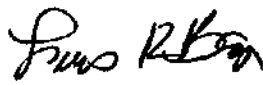
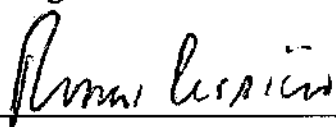
Instructions: Part II creates the performance deliverable which will be measured. The Deputy General Manager and General Manager should identify below between 5 and 8 significant deliverable in the form of major initiatives or projects. They may include annual program objectives or project-related work. The intent is that there should be some collaboration between the Deputy General Manager and General Manager when assigning the deliverables and they should be prioritized if at all possible, with the most important in block 1, next most important in block 2, etc. If more than 8 deliverables require listing, those in excess of 8 may be listed in the back of the last page. (NOTE: It is typical for some priorities to change over the course of the year, and it also foreseeable that some objectives set at the beginning of the cycle may prove unachievable for reasons outside the Deputy General Manager's control.)

Job Specific Performance Objectives	Rater's Rating
1. Objective: <i>Refer to attached memorandum for performance objectives and expected results.</i>	
Expected Results:	
Actual Results:	
2. Objective:	
Expected Results:	
Actual Results:	
3. Objective:	
Expected Results:	
Actual Results:	

Job Specific Performance Objectives	Rater's Rating
4. Objective:	
Expected Results:	
Actual Results:	
5. Objective:	
Expected Results:	
Actual Results:	
6. Objective:	
Expected Results:	
Actual Results:	
7. Objective:	
Expected Results:	
Actual Results:	

Job Specific Performance Objectives	Rater's Rating
8. Objective:	
Expected Results:	
Actual Results:	

The Deputy General Manager and the General Manager have met, discussed and agreed to the above initiatives as measurable deliverables for the performance cycle.

Employee' Signature: 	Date: 1/10/22
General Manager's Signature: 	Date: 1/10/2022

PART III: SUMMARY OF OVERALL PERFORMANCE:

The space below is provided for a narrative summary of the Deputy General Manager's performance over the immediate cycle to be completed by the General Manager (Rater).

Refer to attached memorandum.

PART IV: OVERALL PERFORMANCE EVALUATION RATING: (Please checkmark ✓)

Exceptional Performance

Superior Performance

Average Performance

Acceptable Performance

Needs Improvement

PART V: PERFORMANCE DEVELOPMENT PLAN:

In the blocks below, the General Manager should make specific recommendations designed to identify strategies to enhance the Deputy General Manager's current competencies (first block) or correct performance issues (second block).

Professional Growth Strategies:



Refer to attached memorandum.

Remedial Strategies:

Refer to attached memorandum.

PART VI: SIGNATURES:

The Deputy General Manager and General Manager are required to sign the instrument after completing it and concluding the performance interview. The Deputy General Manager is only attesting to having been afforded the opportunity to review the evaluation and discuss the evaluations with the General Manager. The Deputy General Manager's signatures does not necessary indicate that he/she agrees with the General Manager's measurement of his/her performance. Employee's comments are optional.

General Manager's Signature: 	Date: 1/10/22
Employee' Signature: 	Date: 1/10/22

Employee comments:	Date:
I would like to discuss with the General Manager: <input type="checkbox"/> Yes <input type="checkbox"/> No	
General Manager's Signature:	



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 10, 2022

MEMORANDUM

TO: Luis R. Baza, Deputy General Manager for Administration & Finance

FROM: Rory J. Respicio, General Manager *Rory Respicio*

SUBJECT: Performance Evaluation – December 13, 2020 to December 12, 2021

Hafa Adai! Title 12, Guam Code Annotated, Chapter 10, Section 10111(c), authorizes the Board of Directors to employ and compensate under the terms and conditions fixed by the board for the Deputy General Manager position. Title 5, Guam Code Annotated, Government Operations, Chapter 43, Boards and Commissions, Article 2, Performance Evaluation of Agency Heads required that the Board issue performance reviews of the General Manager six (6) months after employment and every twelve (12) months thereafter.

Policy Memorandum 09-04, Subject: Policy on Performance Evaluation for Deputy General Manager, states it is the intent of the Board and general policy to extend the application of the law to the Deputy General Manager. The policy stipulates performance goals for the Deputy General Manager will be established and agreed upon at the beginning of the employment.

On January 28, 2021, the Board of Directors concurred to the performance evaluation for your first year as Deputy General Manager for Administration & Finance. The following goals and objectives for your second year of employment were outlined in your evaluation as follows:

- Revenue bond projects
- Integration of financial management system and terminal operating system
- Finance revenues and payables
- Update of the Personnel Rules and Regulations
- Update of standard operating procedures
- Real estate issues
- Port finances, staffing, and manpower requirements
- Cybersecurity
- Port finances, staffing, and manpower requirements
- Information technology
- Human resources issues

Reviewing your performance goals and objectives, Board minutes, and correspondence, you and the divisions under your purview were able to achieve the following during your second year of employment:

1. **Legal Counsel relative to procurement matters:** The Port's Procurement and Supply Division issued procurement solicitations for the acquisition of surveillance cameras for the Agat marina and terminal facilities; demolition of Port assets; Hotel Wharf/Route 11 construction management and construction; F3 and F5 fendering system; Owner's agent engineer consulting services; Management and Operation of F1 Fuel Pier facility; and the performance management contract for Gantry cranes 4, 5 and 6. As a result of your regular case management meetings with Port in-house counsel, together with our procurement and commercial divisions, we successfully negotiated on option leases with SPPC, Hansen, and Mobil. These leases have been operating on a month-to-month basis for the last ten years. We standardized such agreements for the marina, open, dry dock, antenna, and office spaces. And, also together with Port in-house counsel and the Board's approval, developed a process for the notice of the availability of properties process and procedure and the authority of contract term approval for the General Manager and Board of Directors.

2. **Human Resources Litigation:** You worked closely with Legal Counsel on four (4) employee appeals before Civil Service Commission (CSC). With your guidance and expertise in the adverse action appeal procedures with the CSC, together with legal guidance from our Port's in-house counsel, the Port recently prevailed in two cases. Most recently, however, one case was remanded back to CSC by Supreme Court and is currently in settlement discussions. Another case is on status quo pending outcome of judicial court decision. Unfortunately, present management and our board still have to clean up long-standing personnel matters; however, since you have been hired at the Port, we are well on our way to doing things per the Rules of Progressive Disciplining.

3. **Procurement:** Through our close working relationship with the Chief Procurement Officer (CPO), the CPO again granted a full delegation of procurement authority to the Port for Fiscal Year 2022. Through our leadership guidance provided to the Procurement and Supply staff and technical guidance from Port Legal Counsel as the Special Assistant Attorney General designation, the Agency was able to:

- a. processed 511 purchase orders;
- b. minimized the overstocking of parts and supplies which lessened the cost overruns and waste;
- c. issued the following procurement solicitations:
 - i. Eleven (11) Construction Invitation for Bids;
 - ii. Four (4) Professional Services Request for Proposals; and
 - iii. Seven (7) Goods and Services Materials.

These are the most solicitations the Port has issued over the last five years in a fiscal year. One of the huge accomplishments under this Division was issuing and awarding the demolition and removal of Port's inoperable assets. Based on historical records, the Port attempted to dispose of these inoperable equipments for over a decade. As a result of this procurement award, the Port will now be able to expand the use of its container yard, access the container yard, and free up wharf and waterfront area, increasing our Wharfage and dockage revenues.

4. **Hotel Wharf Rehabilitation and Reconstruction Project:** The Port awarded the construction management services for the rehabilitation of the hotel wharf and Route 11 roadway reconstruction projects in March 2021. The construction manager works hand-in-hand with the Port's Planning, Procurement, and Engineering divisions and our Owner's Agent Engineer in the procurement solicitation for this rehabilitation project. This project is being funded through a \$10 million federal grant and local Port funds. The upgrades to this facility will bring into compliance with U.S. Coast Guard criteria to regain certification as a designated waterfront facility. It will also expand the Port's wharf capacity to alleviate congestion at the main cargo terminal due to Guam being a major transshipment for the Micronesian region.

5. **Revenue Bond and Budget Funded Projects:** Through collaboration with the division heads of Procurement, Engineering, Finance, and Port's in-house counsel, we ensured the Port meets the expectations of our bond investors by issuing the following procurement solicitations:

- a. Hotel Wharf Rehabilitation and Access Roadway Repair
- b. Golf Pier Repair and Upgrade
- c. Warehouse 1 Building Repair
- d. Waterline Repair
- e. EQMR Building Repair
- f. JDE EnterpriseOne (E1) Financial Management System

When we issued procurement on the architectural and engineering (A&E) designs for the revenue bond projects and based on the engineering estimates provided in the designs, the construction cost associated with the repairs exceeded the allocations outlined in Public Laws 34-70 and 35-44. The engineering cost estimates outlined in the revenue bond mandates were obtained in 2014, and the reality is that the costs of construction pegged in 2014 for these projects were all severely underfunded. Because the laws specifically identified the revenue bond project costs to be funded by the revenue bond proceeds, it did not allow the Port to reallocate the proceeds to address the anticipated shortfalls of the construction costs. Upon knowledge of this, we actively submitted federal grant applications to fund some of these revenue bond projects, such as the fuel connectivity line, which U.S. Economic Development Administration (EDA) awarded \$2.4 million for this project and allowed us to free up a portion of the proceeds. In July 2021, through a resolution, the Board authorized the General Manager to use Port revenues, unrestricted Port funds and/or other revenues, and federal grants to supplement the shortfall funding for the revenue bond projects.

You also worked closely with the division heads and ensured the following procurement packages were either awarded or issued:

- a. Owner's Agent Engineer Consultants
- b. CCTV for Port Terminal and Agat Marina facility
- c. Demolition and Disposal of Port assets (gantry cranes, RTGs, mobile harbor crane and barge)
- d. Performance Management Contract for gantry cranes.
- e. Fendering system repair for F3 to F6 wharves

- f. Real Estate Appraisal & Consulting Services
- g. Renovation and repair of Harbor of Refuge Phases 2 through 5
- h. Oracle consultant
- i. Terminal Operating System (TOS) hardware maintenance & support

6. **Protection of the Merit System:** On January 28, 2021, a complaint filed by a senator requested that Civil Service Commission conduct a post-audit into the hiring practices utilized by the Port and to confirm whether these practices are in accordance with the laws of Guam and the rules and regulations of the Government of Guam. Through their review, you ensured the documents needed by the Commission's staff were provided in a timely manner. On June 15, 2021, the Civil Service Commission, by a vote of 5-0 affirmed that there was no Port employee hired in violation of any statutory prohibition.

7. **Training:**

a. **Internal:** After several years of non-compliance and through your guidance to Human Resources staff, the Port was able to reinstate the certification training for crane operators, hazardous waste operation, incident response to terrorist training, and prevention and response to suicide incidents. Through your leadership, on-the-job training for crane operators were re-implemented. Because of the number of crane operators eligible for retirement, which if all separated with the Agency could have caused a decrease in productivity against vessel operations. Together with the HR staff, we worked with the Operations division heads to identify those employees within the Stevedoring and Terminal divisions who were willing to undergo cross-training on the operation of the cranes to enable them the opportunity for upward mobility, which resulted in promotions for two employees. Additionally, you conducted in-house training for basic supervisory, procurement process, and progressive disciplinary action was held. The feedback provided by the employees who participated was positive.

b. **External:** We, together with the DGM for Operations and Maintenance, and Commercial staff, coordinated the use of Port facilities along Route 18 for the students of the Guam National Guard's ongoing Advanced Leaders Course for training exercises. The training included the use of blank ammunition and "flash-bang" simulators and was critical to the success of our Guam and the security of our island.

8. **Workers' Compensation Program and Light Duty Accommodations:** When we first came on board, we inherited over 20 employees who were on the extended absence or light duty status accommodation, supposedly due to work-related injuries. Based on your extensive review of each case with Human Resources and Port Police staff, such cases decreased to five existing workers' compensation cases. The Port also inherited several employees who were placed on light duty status over the many years because of a non-work-related injury. As each case was reviewed, and wherever applicable, the employee was placed in positions for which they qualify and can physically perform such duties and responsibilities. These actions have resulted in a demotion, separation through retirement, long-term disability with the Retirement Fund, or medically cleared to return to their official positions. The Port is now ensuring that light-duty accommodation is only limited to job-related injuries.

9. **Employment Practical Test Reinstated**: Individuals applying for Port positions were evaluated and hired based solely on the information provided on the employment applications submitted, a practice that was done more than ten years ago. The skill assessment tests used by the Port in the hiring process to narrow down their list of candidates and make well-informed, data-backed decisions was discontinued by past management. Through management's guidance, Human Resources Division reinstated the skills assessment test to help management evaluate the practical competence of the job candidates.

10. **Application of U.S. Department of Labor Rules in Defining Exempt and Non-Exempt Positions**: On August 23, 2004, Governor's Executive Order 2005-28 took effect and listed all bona fide exempt positions in the executive, administrative, professional, and other categories within the Executive Branch. With the guidance of the U.S. Department of Labor Wage & Hour, tests were conducted. It was determined that certain supervisory, administrative, and professional positions were found to be non-exempt. In 2012, new federal regulations were issued on the exempt status, and U.S. Department of Labor Wage & Hour advised the Port to conduct tests to determine if the non-exempt positions previously identified continue to be non-exempt status. However, before Human Resources staff could finalize their review, the former General Accounting Supervisor for Expense in 2012 or early 2013 converted those non-exempt positions to exempt. Since then, Port employees occupying these positions were paid straight time status for actual hours worked over 40 hours instead of time and half. When HR staff completed their review in 2013 and presented their findings to the former General Manager, unfortunately, no action was taken to provide for fairness, parity, and proper implementation of the Governor's Executive Order. On June 2, 2021, HR staff presented their findings to management and provided an updated listing of exempt and non-exempt positions for approval. We immediately approved the listing and informed all division heads of this change noting such implementation will be prospectively.

11. **Real Estate Issues**: During this performance period, you worked closely with the Commercial staff and Legal Counsel on the following real estate issues:

a. **Standardized Terms for Lease Agreements**: For the last 12 years, the leases for office, marina, open, and antenna space have been on a month-to-month basis. As a result of Legal Counsel's opinion in clarifying the lease terms, Legal Counsel standardized the lease agreements, and Commercial staff amended the lease application form to reflect the desire of the prospective tenant if they wish to pursue below or over 5-year term. In line with Legal Counsel's guidance, the Commercial staff issued renewal leases to the tenants reflecting the new term of January 1 to December 31.

b. **Renewed Expired Lease Options**: After 11 years of operating under expired lease options, the Port has renewed the lease agreement options with Mobil, SPPC, and Hansen. The option executions have resulted in an increase of \$3 million for the next 10 years. This milestone addressed the deficiencies cited by our auditors from 2015 to 2019.

c. **Fuel Pier Management & Operation Agreement**: You and the Commercial staff worked diligently with Procurement on the issuance of the management and operation of F1 Fuel Pier and was able to successfully negotiate with Tristar a new management and operation agreement.

d. Customs & Quarantine Agency Relationship: Management through the Governor and Lt. Governor and the Board's unwavering commitment to doing whatever is necessary to advance the interdiction of illicit drugs, invasive species, and counter-terrorism at our islands entry ports, you and Commercial staff worked in improving the working relationship with Customs. A memorandum of understanding was entered into with Customs to relocate their offices to a much larger work area at the former Horizon Building. Through this improved relationship, and since day one of the Leon Guerrero Administration, Customs officers have an all-access pass to go anywhere and everywhere within the Port facilities to inspect cargo coming into the Port and shared use of the Port's office washdown station.

e. Commercial Cargo Activity Written Procedures: To ensure standard operating instructions for the import and export of commercial cargo and clearly identify those areas to support such activity at the Gregorio D. Perez (GDP) Marina, we developed written procedures for vessel owners. The Port staff (Commercial and Harbor Master) worked in collaboration with law enforcement entities to establish these procedures. As a result of these procedures, the Port is now receiving revenues on the import and export of cargoes at the GDP Marina.

f. Memorandum of Agreement with the Department of Public Works on Remaining Federal Highway Funds: Commercial staff under management's guidance worked diligently with the Department of Public Works on the execution of the memorandum of agreement for the use of the remaining Federal Highway Administration seawall project funds. The funds will be used to expand the automobile lot expansion and paving of the shared entrance for Customs and Quarantine lot and the Port chassis staging lot.

g. Removal of Abandoned Derelict Vessels: Through the successful coordination with Guam Environmental Protection Agency, Harbor Master, the Governor, Guam Power Authority, and Commercial staff, the Port was able to remove and stage remnants of approximately 13 abandoned derelict vessels which were located inside the Apra Harbor. The removal has allowed safe travel for vessels in the inner part of the harbor.

h. Motorized Water Recreational Course (MWRC) and Recreational Water Use Management Plan Permit (RWUMPP): Department of Parks and Recreation advised the Port of our need to submit a Motorized Water Recreational Course and ensure our tenants are notified of acquiring permits for commercial and private recreational jet ski operators to operate within the Apra Harbor. Commercial and Harbor Master staff worked closely with Parks and Recreation in the proposed course and hours of operation, approved the same day we submitted the plan.

12. Historic Visit of Navy Ship Juan Sebastian De Elcano: The Spanish navy training ship Juan Sebastian De Elcano stopped in Guam in late February 2021 on its journey to retrace the first circumnavigation of the globe 500 years ago. This expedition took the training ship across the Atlantic to Argentina, through the Straits of Magellan, and across the Pacific Ocean, passing Guam and the Philippines on their way back to the Spanish Port of Cadiz. Because of the COVID-19 pandemic, the sailors were not able to interact with locals or experience the island's beauty and hospitality. However, before setting off to the Philippines, the ship made a quick visit to our Port and berthed at F3 for a commemorative ceremony in honor of the 500th anniversary of Magellan-

Juan Sebastian De Elcano circumnavigation. Numerous island dignitaries were in attendance, including our Governor and Lt. Governor, and the sailors were entertained with Chamorro music and dancers. This symbolic visit at the Port and remembrance of the historical ties of the Chamorro and Spanish people could not have been done without the coordination of you, your staff, with the Governor's Office.

13. **Records Management Files:** During this period, the Port was unfortunately affected by the fire, which destroyed the vendor's warehouse and all of our files stored in that facility. It was revealed that the files destroyed were not electronically copied and/or digitally filed when transferred to the vendor for storage. The destruction of the files caused irreparable loss to the Port because the documents provided historical perspective to the Port's policy initiatives. Moving forward, the Board passed a resolution detailing how the Port will secure its documents. The Board affirmed that all key Port documents as defined by law shall be electronically copied, digitally filed and all original and physical records which have been electronically scanned shall remain physically filed and stored at the Port and shall not leave or be released from Port property without the written approval by the General Manager.

14. **Federal Environmental Court Case:** In January 2021, the U.S. Attorney General and U.S. Coast Guard thanked Port Stevedores for their assistance in a federal environmental case that occurred in October 2019. Specifically, a vessel operating company was sentenced in January in the federal court for illegally discharging oil into Apra Harbor and for maintaining false and incomplete records relating to the discharges of oil bilge water from Kota Harum vessel. Port Stevedores reported the oil discharge to U.S. Coast Guard and proper authorities. Out of the \$3 million environmental fine assessed to the company, the federal judge allocated a portion of \$2 million to the Port to fund projects in Apra Harbor and surrounding areas for direct remedial action against future pollution by seafarers. The Port employees' involvement in reporting such discharge ensured that polluters who threaten the Island's natural resources are held fully accountable under the law.

15. **Summer Interns Program:** As COVID restrictions slowly lifted and some normalcy was restored in the community, the Port participated in the Department of Education Youth Employment Internship Program 2021. Sixteen (16) summer interns were assigned to different Division, which ranged from finance to law enforcement. They were exposed to different career pathways, taught various practical skills and learned financial literacy and management. The feedback received from the interns were positive and hopeful the program will continue next summer.

16. **Marketing/Public Relations:** When we first came on board, we understood that a marketing and public relations components of an organization go hand-in-hand. One strengthens the other, making them both more effective and beneficial to management and the employees, and plays a vital role in promoting the business and mission of the agency. Since the return of the Marketing personnel, they were able to:

- a. revive the Port's monthly newsletter, which has not been produced or published in years;
- b. issued 90 new releases more than the previous ten years combined;

- c. established Port social media pages on Facebook, Twitter, and Instagram, publishing hundreds of posts with combined more than 2,000 followers;
- d. launched the first annual Port Photo contest for our employees;
- e. published hundreds of updates on the Port's website; and
- f. helped create together with Finance Division the award-winning Citizen-Centric Report.

This Division's most challenging accomplishment was successfully planning and coordinating two (2) virtual Port week celebrations, including in-house production of videos and tributes focusing on the Port.

17. COVID-19 Response:

a. Vaccination Clinics: During this performance period, we saw the COVID-19 pandemic crisis continue to bring unprecedented challenges for our employees and ensure that the Port remains 100 percent operational, so the flow of goods and supplies into our community are not interrupted. As the number of positive cases rose amongst our employees, the Port sprang into action to take every step possible to protect the employees, tenants, and people of Guam. Besides the Port Clinic, we established our own Port Contact Tracing Team with employees volunteering to take on additional duties and become nationally certified. These efforts helped ease some of the burdens placed on the Department of Public Health and Social Services by conducting our own contact tracing, making arrangements for testing, and keeping employees updated and informed through the consistent circulation of Port E-advisories. Care packages were issued to employees who became sick with the virus.

We coordinated with the Department of Public Health and National Guard to set up several vaccination clinics during this performance period to allow our employees, their families, and tenants to receive the COVID-19 vaccinations. Guam National Guard was pleased with the set-up for the clinics and informed us that we had set the bar high for any government agency or business on how they can run a successful vaccination clinic at their job site.

b. Dockside Vaccination Clinic: On Father's Day, one of the shipping agents requested assistance from the Port about the possibility of setting up a dockside clinic to administer vaccinations to their crew members. Port management was able to set up a vaccine clinic within 1 hour with the assistance of the Department of Public Health, FHP Clinic and U.S. Immigration and Guam Customs so the crew members could receive their dose of the vaccination on the Port's docks.

18. OPA Audit Reports: We worked closely with the Financial Affairs Controller and respective division heads on the financial audits conducted by the Office of Public Accountability (OPA). The results of the Fiscal Year 2020 audit were:

a. Designation as Low-Risk Auditee: The Port achieved 2nd consecutive year as a Low-Risk Auditee during the annual financial audit, which revealed a clean audit with no deficiencies. The auditors rendered a clean opinion on the Port's Fiscal Year 2020 financial

statements and compliance over major federal programs. The auditors identified no material weaknesses and significant deficiencies in internal controls.

b. Financial Audit: Port recognized operating revenues of \$54.6 million. The number of containers handled was 85,143 containers, an increase of .02% compared to Fiscal Year 2019's container count of 84,954. In comparison to FY 2019, we experienced a decrease in revenues by 1% (\$608K) from \$55.2M in FY 2019 to \$54.5M in FY 2020. The drop in proceeds was from the Port's primary source of revenue, cargo thru-put charges, as well as from the crane surcharge, wharfage charges, special services and other operating income. However, the Port experienced an increase in equipment and space rental revenues compared to the prior fiscal year.

We experienced an increase in our operating expense by 15% (\$7.3M) from \$48.4M in FY 2019 to \$55.7M in FY 2020. The increase in operating expenses includes management and administration expenses, equipment maintenance, transportation services, stevedoring services, retiree healthcare, and other benefits, terminal services, insurance, and facility maintenance. A decrease was recognized compared to the previous fiscal year for expenses in depreciation (\$405K), general expenses (\$182K), and utilities (\$208K).

The result of the net operating expenses minus operating expenses in Fiscal Year 2020 was \$5.9 million income from operations before depreciation. After adding depreciation expenses, non-operating expenses, and federal grant revenues, the Port's net position decreased by \$919K primarily due to the recognition of Other Post-Employment Benefits and pension expenses as required by the Government Accounting Standards Board (GASB) regulations.

c. Resolution of Past Audit Findings: The audit recognized that the Port resolved some issues with several commercial leases that had been flagged as an audit finding since 2015. This could not have been done without the due diligence in the negotiations on the expired option term leases from you and the Commercial staff.

19. Removal from Credit Watch: More good financial news for the Port during this performance period was received. Moody's Investor Service issued a credit report that removed the Port from credit watch based on strong finances with financial stability expected to grow over the next year. The report indicated that despite the COVID-19 pandemic, the Port continued to have the same rating since 2018. The credit watch was issued last year due to COVID-19 pandemic's potential impact on the Port's finances. We, together with our team, worked tirelessly to provide responsible and transparent financial management and demonstrated good cost control in the year 2020 and year-to-date fiscal year 2021.

20. S&P Global Rating: Upgraded its outlook for the Port to stable from negative and affirmed its "A" long term rating on the Agency's outstanding series 2018 Port Revenue Bonds. This outlook revision reflects the Port's view that despite the economic disruption caused by the global COVID-19 pandemic, volume levels at the Port have remained relatively stable and resilient from 2019 to 2020 and continue into 2021. We, together with our team, continued to work tirelessly to make these successes a reality for the Port and the people of Guam.

21. **Oracle Enterprise 1 Migration Phase**: In 2019, we initiated a project to upgrade the Port's JDE World Management Financial Management System to a more robust and technological system. To steer this huge undertaking, we created a Port Team comprised of Finance and IT personnel. We worked closely with the Port team and Oracle Project team. After successfully getting through the proof of concept and procurement stages, Enterprise 1 was launched in August 2020. Upon full implementation, the system aims to improve reporting capabilities and will have the ability to streamline a process that reduces non-value activity. Examples include paper filing, spreadsheet reconciliations, manual calculation of interests and collection of late payments, manual inventory processes, and manual financial document delivery. This system will have the ability to fully implement a job costing and work order system that integrates to the Port's general ledger and other financial modules, which was not possible with the previous system. The new system will also have the ability to integrate the Port's old system, such as special service request invoicing, operations time entry, check printing, W2 processing, requisition and purchase order processing for local GSA transactions, tax table update, and financial required reports into the new system.

Additionally, another significant accomplishment during your evaluation period was the **Climate Survey Participation**: Year 2020 was a tough year for everyone. To gauge the relationship between the Port organization and its employees and determine the Port's organizational culture, our Human Resources staff conducted a climate survey. Port employees were invited to anonymously speak their truths. Three hundred seventeen employees out of 356 turned in their responses, which is an 89 percent response rate. Their responses were overwhelmingly positive and revealed the morale is at an all-time high; employees were proud to work for the Port; management is accessible, approachable, fair, transparent, and accountable for their actions.

Regarding the COVID-19 situation, they felt positive that management made their work environment safe, kept them well-informed, cared about their safety and wellbeing, and provided them with the resources to do their jobs safely. On the topic of career development, the majority felt their superiors share their knowledge and skills on handling situations and felt training opportunities were provided, as well as promotional opportunities were available to everyone. Teamwork also garnered high remarks, and employees felt positive that they made an effort to be part of the team and support the vision of the administration.

In addition to the above accomplishments, you were able to continue to address day-to-day work activities in such an excellent manner to ensure divisions under your purview are not disrupted.

As a result, the overall evaluation for your second year is **Exceptional Performance**.

As required in Policy Memorandum 09-04, the following areas of responsibilities, objectives, and measures for the upcoming rating period is being provided:

1. **Revenue Bond Projects**: Continue to work with Procurement staff in preparing, issuing, and awarding procurement packages for other revenue bond projects and monitor the progress for those projects.

2. **Integration of Financial Management System and Terminal Operating System:** Work with the consultants, Financial Affairs Controller, and Systems Manager on integrating the systems.
3. **Finance Receivables and Payables:** Review with the Financial Affairs Controller and Commercial Manager what options are available to reduce the 120 days of aging accounts receivables.
 - a. Review the current process on accounts payable to determine if the posting of invoices for materials, supplies, and services are done daily or only if payment is to be batched and provide solutions to reflect the true financial payables.
 - b. Review aging accounts payables and provide solutions to address these debts.
4. **Update of the Personnel Rules and Regulations:** Work with the Personnel Services Administrator in updating the 2009 Personnel Rules and Regulations. Since the passage of the current Personnel Rules and Regulations, laws have amended or repealed specific provisions of the rules.
5. **Standard Operating Procedures:** Work with division heads under your purview in preparing and updating their standard operating procedures.
6. **Real Estate Issues:** Work with Commercial Manager on the following:
 - a. **Bi-annual Review:** Review current rates and determine if Port would need to conduct an appraisal on marina, office, open, and antenna rates according to local mandates, which requires the Port to conduct a bi-annual review.
 - b. **Area A Tank Farm:** Provide feedback on the potential interest in the leasing of Area A Tank Farm.
 - c. **Recycling Enterprise Zone:** Identify the number of acres available for the recycling facility as required by Public Law 28-92 and survey such property to possibly issue a solicitation of interest to entice eligible companies who would like to establish such facility.
 - d. **Aqua World Lease:** Recommend if the Port wishes to continue its lease arrangement with Aqua World or pursue terminating the leasehold. Should the determination be made to maintain the relationship with Aqua World, both parties need to begin discussing to identify what properties they wish to keep under their leasehold and amend the agreement to reflect the acres they want to occupy accurately.

- e. **Lease Negotiations:** Continue to work with Legal Counsel and Commercial staff in finalizing the lease negotiations for the Agat Small Boat Restaurant and Marianas Yacht Club.

7. **Port Finances, Staffing, and Manpower Requirements:** Have division heads under your purview provide you with their proposed human resources assessment. Follow up on the Board's approval to issue a Request for Proposal to provide for temporary staffing as a means of meeting the increased demands when the military build-up ramps up.

8. **Information Technology:** Continue to work with the Systems Manager in updating the website and conduct reviews to determine if IT security processes are enforced. Work with Port Police Chief and Systems Manager on the cybersecurity that federal regulation mandates the Port to implement.

9. **Human Resources Issues:** Continue to review the issues outlined in the human resources brief and provide solutions to me in order that we bring these matters before the Board for their disposition.

This memorandum will be attached to your performance evaluation to justify your Exceptional Performance's overall evaluation and provide specific performance objectives for the next rating period.

Si Yu'os Ma'ase for a job well done.



PORT OF GUAM
ATURIDATI PUETTON GUAHAN
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

January 19, 2022

MEMORANDUM

To: Board Member – Mrs. Dorothy P. Harris

From: Acting Personnel Services Administrator

Subject: Migration into Port Compensation Plan for General Manager & Deputy
General Managers

Hafa Adai! On January 12, 2022, you contacted me regarding your prior employment, specifically anniversary dates, with the Port Authority of Guam as the Port's Chief Planner. During our conversation, you asked the following questions:

1. *What was the methodology used to migrate the past General Managers and Deputy General Managers into the Port Classification & Compensation Plan?*

Human Resources staff conducts an analysis to determine the step in the allocated pay grade the General Manager or Deputy General Manager will be slotted to. The analysis consists of the following methodology:

- Work Experience: A maximum of 3 points
- Past Performance Evaluations (at least three (3) performance evaluations): A maximum of 9 points.
- Education: Possession of High school, Bachelor and/or Masters degree. A maximum of 4 points

The total number of points will be used to slot the General Manager and Deputy General Manager in the allocated pay grade and step.

2. *What would their initial salaries be if the methodology was used?*

Based on the total points indicated below, the salaries of the General Manager and Deputy General Managers would be as follows:

Subject: Migration into Port Compensation Plan for General Manager & Deputy
General Managers

Page 2

Name	Position Title	Current Pay Grade/Step & Salary	Total Points	Allocated Pay Grade/Step & Salary
Rory J. Respicio	General Manager	R-7C \$164,970	15	R-10B \$184,051.00
Dominic G. Muna	Deputy General Manager	Q-4C \$134,314	12	Q-9C \$163,888.00
Luis R. Baza	Deputy General Manager	Q-4C \$134,314	14	Q-10A \$167,183.00

3. *What would their salaries be today if salary increments were provided to the General Manager and Deputy General Managers?*

Name	Position Title	Evaluation Period & Points	Allocated Pay Grade/Step & Salary
Rory J. Respicio	General Manager	2019-2020 2020-2021 2021-2022 16 Points	R-14A \$215,815.00
Dominic G. Muna	Deputy General Manager,	2019-2020 2020-2021 2021-2022 15 Points	Q-13B \$190,269.00
Luis R. Baza	Deputy General Manager,	2019-2020 2020-2021 10 Points	Q-12C \$184,674.00

I hope the above provides you with insight as to how the migration of the General Manager and Deputy General Managers into the Port's Classification & Compensation Plan would be, including pay adjustments as a result of the performance evaluations.

Should you need additional information, please feel free to contact me. *Si Yu'os Ma'ase*,


SHAWN B. CEPEDA

FY 2022 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of January 13, 2021

Grant Program	Total Award Amount	Total Draw Down	Total Remaining Balance	PROCUREMENT IIB/REP/PO Number	Status
Modernization DTM991G:1600007 - Rehabilitation of "H" Wharf	\$37,716,402.00 \$10,000,000.00	\$4,039,178.68 \$0.00	\$33,677,223.32 \$10,000,000.00	PO No. 17043-01 for \$1,249,946.54 awarded to GHD Inc. Change Order No. 1 PO No. 17159-01 for \$198,140.16 Approval of Change Order No. 2 on 10/07/2021, PO No. 17416-05 for \$16,670.13 Approval of Change Order No. 3 on 10/21/2021, PO No. 17545-05 for \$15,414.88 Approval of Change Orders No. 4, No. 5, and No. 6 on 12/07/2021, PO No. 17585-05 for \$63,110.20	Rebid of the Construction Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction issued on 10/27/2021, via Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for OAC was due on 12/13/2021, 01/13/2022, TO NOW READ, 01/18/2022 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval. 18-Month Cost Monitoring Report completed on 11/10/2021 by CSA. Quarterly report due 01/20/2022.
GR882-18-01 - Owner's Agent Engineer Support Services	\$800,000.00	\$899,993.63	\$66.37		Close out report submitted to the Community Defense Liaison Office on December 30, 2021.
GR882-19-04 - 2020 Master Plan Update	\$1,600,000.00	\$947,724.50	\$652,275.50		WSP conducted site visits/meetings on Guam from August 2-5, 2021. The 2020 Master Plan update continues to progress through the collaboration between Management, Port Division Heads and the Port's OAE on the following initiatives: 1) Completion of the draft Customs Inspection Facility Feasibility Study, 2) RSM Study - goal is information integration between and amongst carriers, the PUGG, Customs, and the PAG, 3) Tariff Simplification - streamlining and refining PAG rates and services, 4) STS Crane Procurement Support, 5) PAG/GPA collaboration on proposed Liquefied Natural Gas (LNG) capability at the Port, 6) Crane Demolition - removing of Ganties 2 and 3, Mobile Harbor Crane and Rubber Tyred Gantry (RTG) cranes, and 7) Solar Power Feasibility Study - PAG effort to utilize solar energy to reduce PAG dependence on GPPA Island power.

**FY 2022 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of January 13, 2021**

Grant Program	Total Award Amount	Total Draw Down	Total Remaining Balance	PROCUREMENT IFB/RFP/PO Number	Status			
GR882-21-08 - PAG Construction Technical Oversight Services	\$1,500,000.00	\$0.00	\$1,500,000.00	P.O. No. 17424-OS for \$1,500,000.00	PUC approval obtained on September 30, 2021 meeting. Randy Umesaki, WSP USA, Inc. signed contract agreement on October 20, 2021. Purchase Order signed on November 10, 2021. Task Order #11 services have commenced with WSP's review and completion of responses to RFIs on the H Wharf Rehabilitation Project.			
Port Enterprise Fund - Port of Guam Construction Deficiencies and Equipment Purchases	\$2,844,530.00	\$2,171,520.55	\$673,009.45	Project 1 - PO No. 1557-OF for \$139,449.00 awarded to American Builder LLC Project 2 - PO No. 1558-OF for \$82,940.00 awarded to Highway Safety Services LLC Project 3 - PO No. 15445-OF for \$10,311 awarded to AB Mer Construction Project 4 - PO No. 15215-OS for \$1,639,978 awarded to Morrico Equipment LLC Project 5 - PO No. 16685-OF for \$195,844.55 awarded to Pacific Builder Corp. Change Order No. 1 PO No. 17084-OF for \$25,000.00 Change Order No. 2 PO No. 17157-OF for \$78,000.00 Total Project 5 - \$286,844.55 Project 6 & 7 - The Purchase Orders were separated by funding source. The POs are as follows: PO No. 1750903 for \$703,994.19 - MARAD - \$673,009.45 & PAG Share - \$36,924.74 PO No. 1751005 for \$209,739.81 - P5GP - \$50,146.08 & PAG Share - \$59,593.73 PO No. 1751105 for \$507,744.00 - PAG Share Total - \$1,221,418.00	\$673,009.45	\$673,009.45	Project 5 - Acquisition of Additional Digital Cameras - CalPac to begin work on placing new CCTV equipment the week of January 17, 2021. A manufacturer representative of CCTV software will arrive on February 4, 2021 and will advise CalPac on the optimal next steps for the replacement of existing cameras and the installation of new ones. Project 7 - Upgrade Port's KARTECH Access Control and Web-Ready Security Management System - See Project 6.	Project 5 - Acquisition of Additional Digital Cameras - CalPac to begin work on placing new CCTV equipment the week of January 17, 2021. A manufacturer representative of CCTV software will arrive on February 4, 2021 and will advise CalPac on the optimal next steps for the replacement of existing cameras and the installation of new ones. Project 7 - Upgrade Port's KARTECH Access Control and Web-Ready Security Management System - See Project 6.
07-79-07614 - FI Pier to Golf Pier Fuel Connectivity Project	\$2,413,091.00	\$0.00	\$2,413,091.00		SHPO's guidance on the project indicates the need for a HAB5/HABER level 1 document prior to construction. Strategic Planning Division is coordinating this process with SHPO. GDA held a virtual meeting with PAG staff on January 7, 2021 to introduce new Project Officer. PAG transmitted A/E Design scope of work and other documents to new Project Officer for informal review and comments. The PAG is still awaiting an ATP from the OIA. Once this is received, then the process for beginning a HAB5 review can begin. See above line item.			
020A000136 - Phase 1: Port Authority of Guam - Welding Shop	\$240,325.00	\$0.00	\$240,325.00					
D21AP10142 - Phase 2: Port Authority of Guam - Welding Shop	\$151,850.00	\$0.00	\$151,850.00					
98727101 - Diesel Emissions Reduction Act (DERA) - Tractor Replacement	\$126,609.00	\$0.00	\$126,609.00		PAG signed MOA on October 15, 2021 and routed to GEPA. On October 25, 2021, PAG provided additional vehicle information requested by US EPA. PAG signed Intra - Government of Guam Work Request on October 26, 2021. GEPA picked up document on October 27, 2021. GEPA staff indicated on January 10, 2022 that they would verify if the documents have been routed and signed. Follow up email was sent on January 13, 2022.			
MARAD RAISE - Wharves Service Life Extension Hardening of Wharves #1-#6	\$17,941,997.00	\$0.00	\$17,941,997.00		The PAG was awarded \$17,941,997.00 toward the total project cost of \$22,427,496.00 as part of the MARAD RAISE grant program. This project seeks to make structural repairs to enhance the capacity of the existing berths from F1 - F6. The PAG was notified on November 21, 2021 of the award and awaits further guidance from MARAD on the next steps for this project. A kickoff meeting will be scheduled in the coming week.			
Totals	\$17,209,248.00	\$48,902.40	\$17,160,345.60					

FY 2022 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of January 13, 2021

Grant Program	Total Award Available	Total Draw Down	Total Remaining Balance	Procurement / IFB/BFP/PO Number	Status
F18A000151 - Harbor of Refuge Repairs - L Repair Plan of Mooring System and Anchor Block - 2. Wastewater Ejector Pump Station and Storage Facility	\$56,464.00	\$14,785.40	\$41,678.20		IFB No. PAG-CP-022-001 issued 12/03/2021. Prebid conference was scheduled on 12/10/2021, at 10:00 A.M., site visit to project limited later followed. Deadline for Questions & Concerns (Q&C) was on 12/17/2021, at 4:00 P.M. Bid submittal AMENDED from Tuesday, 01/04/2022, TO NOW READ Thursday, 02/03/2022.
F18A000261 - Harbor of Refuge Moorage Repairs	\$200,000.00	\$11,895.00	\$188,105.00		See above line item.
F17A000485 - Harbor of Refuge Moorage Repairs	\$200,000.00	\$13,194.00	\$186,806.00		See above line item.
F18A000334 - Harbor of Refuge Moorage Repairs	\$200,000.00	\$10,048.00	\$289,952.00		See above line item.
F19A001189 - Guam Fisheries Development: Construction of Agat Marina's Dock B	\$512,759.00	\$0.00	\$512,759.00		The MDU was concurred by the Honorable Governor of Guam on September 6, 2021. Conditional Notice to Proceed approved by U.S. FWS and DDAG on September 16, 2021. Next Steps: 1) Procurement Planning Meeting with stakeholders, pending. 2) AG and SAGE review/comments period. 3) Issuance of IFB. Tentative timeline - Q2 FY2022. Status Quo.
F18A001210 - Repair of Agat Marina's Boat Ramp Bumpers	\$40,000.00	\$0.00	\$40,000.00		See above line item.
Port Security Grant Program	\$1,864,484.00	\$594,831.29	\$1,269,652.71		Project ongoing. Second year option exercised.
ENW-2007-FU-00177-501 - Maintenance and Sustainment Contract for Prime Power Generator's	\$2,790,510.00	\$110,833.13	\$688,616.87	Year 1 - PO No. 16208-OS for \$75,207.00 Pacific Unlimited Inc. Year 2 - PO No. 16988-OS for \$75,207.00 Pacific Unlimited Inc.	
ENW-2017-FU-00177-501 - Refurbishment and Handing of Load Center Buildings Housing Prime Power Generators	\$384,459.00	\$295,060.94	\$129,408.06	PO No. 16150-OF for \$314,450.00 to Murphy Enterprises Inc.	Project completed on January 31, 2021. PAG submitted a budget modification request to FEMA for use of remaining grant funds toward the overall sustainment of the Port's generators and acquisition of critical parts for repair/replacement of generator components. Pending approval.
ENW-2017-FU-00177-501 - US Coast Guard Multi Agency National Association of State Boating Law Administrators (NASBLA) Training for Port Police	\$66,250.00	\$42,675.00	\$23,575.00		Project completed on August 2018. PAG submitted a budget modification request to FEMA for use of remaining grant funds toward the overall sustainment of the Port's generators and acquisition of critical parts for repair/replacement of generator components. Pending approval.
ENW-2018-FU-00441-501 - IDEX Technology Redundant Interoperable Communications System Monthly Service	\$94,944.00	\$68,781.76	\$26,162.24		Contract sold all its assets to IDEX. IDEX is now the service provider and support entity for the Port's IDEX Technology push to talk radios. Services ongoing.
ENW-2018-FU-00441-501 - Maintenance and Sustainment Contract for FEMA-acquired ASBE ZBV Backscatter X-Ray Van	\$195,889.00	\$98,459.54	\$97,409.46	PO No. 17676-OS - American Science & Engineering 70,724,0M.	Year 3 services has been executed and Purchase Order issued to ASBE.
ENW-2018-FU-00441-501 - Replacement CCTV System Existing Analog Cameras with Digital IP Cameras	\$160,967.00	\$10,720.92	\$150,246.08	IFB-PAG-003-21	See Port Enterprise Fund - Project 6.
ENW-2016-FU-00295-501 - Acquisition & Installation of Prime Power Generator & Components for Load Center 3	\$226,484.00	\$0.00	\$226,484.00	PO No. 17097-OS - Caterpillar, Inc. \$208,607.00 PO No. 1749203 - Bagley Enterprises, Inc. - \$21,813.99 PO No. 1749803 - Triple B Powertrains - \$1,570.00	Generator arrived on Oct. 7, 2021. Pending delivery of Automatic Transfer Switch (ATS). Above-ground Storage Tank anticipated delivery is January 22, 2022. Scope of Work for installation of all components has been finalized. Site visit for potential vendors to be scheduled.
ENW-2021-FU-00230-501 - Acquisition of Vessel Tracking/Intruder Intrusion System	\$201,250.00	\$0.00	\$201,250.00		An Environmental and Historical Preservation (EHP) Review for the project has been completed by FEMA. The Port received a copy of the clearance on Dec. 15, 2021. PAG account established. PAG account established. Scope of Work currently being developed.
ENW-2021-FU-00230-501 - Acquisition of Transportation Worker Identification Credentialing (TWIC) System	\$165,001.00	\$0.00	\$165,001.00		An Environmental and Historical Preservation (EHP) Review for the project has been completed by FEMA. The Port received a copy of the clearance on Dec. 15, 2021. PAG account established. PAG account established. Scope of Work currently being developed.
Public Assistance	\$530,517.90	\$47,713.14	\$442,804.76		Project is ongoing. Current POP and date is April 2022. Request for 1-year extension has been submitted to the GHS/OCD.
435BDR - Typhoon Manghut #66352	\$530,517.90	\$47,713.14	\$442,804.76		
Hazard Mitigation Grant Program	\$963,104.00	\$0.00	\$963,104.00		

**FY 2022 Port Modernization Plan
Grant/Bond Strategy - Monthly Update
As of January 13, 2021**

Grant Program	Total Award Amount		Total Draw Down		Total Remaining Balance		Procurement IRB/RFI/PO Number	Status
Fenderizing System Handing Project	\$603,689.00	\$603,689.00	\$0.00	\$0.00	\$603,689.00			Notification of Award received by the PAG on Dec. 28, 2021. Pending subgrantee award acceptance documents from Guam Homeland Security and establishment of account with the Dept. of Administration.
Warehouse 1 Handing Project	\$359,415.00	\$359,415.00	\$0.00	\$0.00	\$359,415.00			Notification of Award received by the PAG on Dec. 30, 2021. Pending subgrantee award acceptance documents from Guam Homeland Security and establishment of account with Dept. of Administration.
Port Police	\$20,000.00	\$20,000.00	\$0.00	\$0.00	\$20,000.00			The PAG received a copy of the signed Project Agreement. The PAG now awaits an ATP from the OHS.
PT22-03-03PFD - Operation A'ida He'Na	\$45,328,800.00	\$4,426,207.24	\$4,426,207.24	\$40,902,592.76				These draft layout options for the Admin Building has been completed by the PAG's CAE and is being reviewed by Management. No decision on which option has been selected as of this report. Status Quo.
Bond Financed Projects	\$10,445,000.00	\$10,445,000.00	\$0.00	\$0.00	\$10,445,000.00			Bid opening completed on 12/7/2021. Pending certification of additional funding.
New Administration Building	\$6,000,000.00	\$309,668.56	\$5,691,331.44	RP No. 2019-03 - A&E Design awarded to NC Macario				Bid opening held on 01/03/2022 at 2:00 P.M. Two (2) vendors submitted proposals. Lowest bid is currently pending review by the PAG.
Waterline Replacement and Relocation	\$3,624,800.00	\$489,258.10	\$3,135,541.90	RP No. 2019-03 - A&E Design awarded to NC Macario				Bid opening held on 11/19/2021 at 2:00 P.M. Four (4) vendors submitted proposals. Lowest bid is currently under legal review by the PAG.
EQMR Building Repairs and Upgrades	\$2,000,000.00	\$489,258.10	\$1,510,741.90	RP No. 2019-03 - A&E Design awarded to NC Macario				Bid submission deadline extended to January 14, 2022.
Warehouses 1 Repairs and Upgrades	\$2,000,000.00	\$489,258.10	\$1,510,741.90	RP No. 2019-02 - A&E design for \$484,000 awarded to NC Macario				Rebid of the Construction Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction issued on 10/27/2021. A Guam PDN and PAG website. A pre-bid meeting was held on 11/09/2021 at 2:00 P.M. Deadline for CBC was due on 11/19/2021 at 4:00 P.M. Bid submittal AMENDED from 12/13/2021, 01/13/2022, TO NOW READ, 01/19/2022 at 2:00 P.M. A request for No-Cost Schedule Modification was submitted to MARAD for their consideration and approval. 18-Month Corral Monitoring Report completed on 11/10/2021 by CSR. Quarterly report due 01/20/2022.
Golf Pier Repairs and Improvements	\$2,000,000.00	\$952,876.58	\$1,047,123.42	RP No. 2019-02 - A&E design for \$484,000 awarded to NC Macario				1. The PAG was awarded funding for the repair of multiple deficiencies, including including sheet pile and concrete cap spalling, at P1 through P5. The total project costs is \$2,427,496.00 with a total of \$17,941,897.00 in federal funding. A kickoff meeting will be scheduled for this grant in the coming week.
Rehabilitation of "H" Wharf (Port Share)	\$13,774,255.00	\$1,009,849.58	\$12,764,405.42	PO No. 17043-OF for \$2,249,945.54 awarded to GHD Inc. Change Order No. 1 PO No. 17159-OF for \$198,140.18 Approval of Change Order No. 2 on 10/07/2021, PO No. 17416-OS for \$18,670.13 Approval of Change Order No. 3 on 10/21/2021, PO No. 17545-OS for \$15,454.88 Approval of Change Order No. 4, No. 5, and No. 6 on 12/07/2021, PO No. 17585-OS for \$63,110.20			2. TOS upgrade work anticipated to begin later this fiscal year. Work is ongoing to determine the appropriate maintenance and support solution. Status Quo.	
Other Priority Projects	\$4,980,745.00	\$0.00	\$4,980,745.00					Job costing for CIP, Work Orders, and ACH payments expected to go live late January to early February.
Other Priority Projects - EnterpriseOne Financial Management System	\$2,500,000.00	\$1,871,194.37	\$628,805.63					
Grand Total	\$87,434,551.50	\$8,169,632.75	\$79,264,918.75					

PORT AUTHORITY OF GUAM
CONTRACT SUMMARY UPDATE

No.	Consultant/Vendor	Type of Services	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments / Notes)
PROFESSIONAL SERVICES									
1	A1 - Guam WEBZ	Web Development, Hosting, Support and Maintenance Svcs	IFB-002-20	IT	3 years w/2 1 yr options	04/01/2020 to 03/31/2023 w/ 2 1yr options	03/31/25	03/31/23	Fees based on rates
2	AM Insurance	Insurance Coverages	GSA/PAG-020-17	Finance	5 years	10/01/2017 to 09/30/2022	09/30/22	09/30/21	Premium based
3	AM Insurance	Workers Compensation Coverages	IFB-PAG-008-19	Finance/Safety	3-years	3/20/20 to 3/19/23	03/19/23	03/19/23	
4	Matson	PMC for Gantry Cranes	RFP-020-005	EQMR	5 years with options to 20 years	11/05/21 to 11/05/26		11/05/26	\$200K per annum
5	Bank of Guam	Banking Services	RFP 020-004	Finance	5 years	5/14/21 to 5/13/26	05/14/26	05/14/26	
6		Management and Operations of Golf Pier	RFP-PAG-021-002	Commercial	5 years				Currently under cost negotiations
7	OMEGA Safety	OSHA Training & Certification Services for Maritime Terminal Operations	RFP-017-003	Human Resources	3yr w/ 2-1yr options NTE 5 years	8/13/2018 to 8/13/2021	08/13/23	08/13/22	
8	Pacific Human Resources, Inc.	Drug Free Workplace Program	RFP-020-003	Human Resources	Initial 3yr term with 2 add'l one year options, not to exceed 5 yrs	06/15/20 to 6/14/2023	06/15/25	06/15/23	
9	Milo Appraisals	Real Estate Appraisal Services	RFP-021--004	Commercial	3yrs w/ 2 option	10/06/21 to 10/05/24	10/05/26	10/05/24	Task Order based
10	TakeCare dba: FHP	Medical Examination Services	RFP-017-002	Human Resources	3 yr. w/ 2 options NTE 5 years	9/21/17 to 9/20/20	09/20/22	09/20/22	
11	Trident Cross LLC.	Underwater Assessment & Inspection Services	IFB/PAG-006-20	Harbor/Mstr	1 Year	08/20/20 to 08/19/21	08/19/21	IDIQ - Indefinite Quantity Bid	\$24,894,00
12	Tristar Terminal Guam	M & O of F-1 Fuel Pier Facility	RFP-019-004	Commercial	5 years	04/01/21 to 03/31/26	04/01/21	03/31/26	
13	Deloitte & Touche	Annual Independent Audit Services	RFP-018-003	Fiscal	FY18, FY19, FY20, w/ 1yr Option	FY18, FY19, FY20, w/ 1yr Option	12/31/2022	12/31/2021	Final Contract year
14	WSP USA Inc.	QAE - Owner Agent Engineer	RFP-021-003	Planning	2 yr w/ 3 options NTE 5 yrs	10/22/21 to 10/21/23	10/22/26	10/21/23	\$1.5M
15	N.C. Macario & Associates	A/E Design and Consulting Services Golf Pier	RFP 019-002	Engineering	3 years w/2. 1 yr options	11/20/19 to 11/19/22	11/19/2024	11/20/2022	\$484K

PORT AUTHORITY OF GUAM
CONTRACT SUMMARY UPDATE

No	Consultant/Vendor	Type of Service	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments / Notes)
16	N.C. Macario & Associates	A/E Design and Consulting Services EQMR, Warehouse No.1, Waterline Relocation	RFP 019-003	Engineering	3 years w/2 1 yr options	02/05/20 to 02/04/23	2/5/2025	2/5/2023	\$1,406,427.48
17	GHD	Construction Management Services	RFP 020-002	Engineering	Initial 2 years with 3 add'l One year options not to exceed 5 Yrs	3/15/21 to 3/14/23	3/15/2025	3/15/2023	Contract signed 3/15/2021
CONSTRUCTION CONTRACTS									
No	Consultant/Vendor	Type of Service	Solicitation Method Reference No.	Division	Contract Term	Initial Term	Expiration After Options	Next Renewal Due Date	Annual Amount (Comments / Notes)
1	Propacific Builders	Repairs Crack and Spalling at CFS Building	IFB -21-004	CIP	180 days from NTP	currently ongoing 80 days extension			
2	Guam Shipyard	Design Demolition of 5 Inoperable Port Cranes and One Barge at F-6	MS IFB 021-002	CIP/EQMR	100% Performance, Labor and material Bonding received, PO and NTP issued 9/10/21	410 calendar days			\$2,573,155.00
3	Guam Shipyard	Supply and Install of Fendering system at F-3	IFB 021-001	CIP	243 calendar days from NTP				\$297K NTP was issued
4	Cal Pac	Installation of CCTV Surveillance sys and ACS control replacement	IFB 003-21	Planning/CIP	Formulating Contract Agreement	210 days from NTP			\$1.2 million
5	Pro Pacific Builders Corp.	Replacement of 125 each Reefer Receptacles	IFB -21-007	CIP	Under Legal Review				\$600,000.00
6	Pacific Federal Management Inc.	Design Build and Replacement Of 3 Metal Gatebooths	IFB-0021-1.1	CIP	Pending PFM signature on Contract and PO.	275 days from NTP			\$157,557.00
7	ProPacific Builders Inc.	Warehouse No.1 Upgrades	IFB -021-009	CIP	Bid submittal under review				\$4.8M
8	BME and Sons	Waterline Replacement Project	IFB -021-005	CIP	Bid submittal under review				\$4.8M
9	SPPC	Ultra Low Sulfur Diesel Fuel Bid	IFB-022-002	Trans/Ops	3 years with 2 option	For PAG BOD approval then PUC			\$470K approx.

**Port Authority of Guam
Active Project Status
Engineering Division**

As of January 12, 2022

Fact Sheet No. 111

Project:	A/E Services for Golf Pier Repair
Project No.:	RFP-PAG-019-002
Project Amount:	\$484,017.13
Amount Paid to date	\$354,876.53 remaining balance of \$129,140.00 is to be paid as post design services.
Funding Source:	PAG Bonded Project
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed to Designer	January 6, 2020
Design Completion:	Performed within 6 months (July 5, 2020)
Work Status:	Related documents such as Drawings, Specifications, Scope, Bid Schedule, Requisition Process, Determination of Need Letter were completed and were submitted to the Procurement as IFB Documentation.

Project	Golf Pier Repair and Improvements (Construction Phase)
Project No.:	IFB –PAG-CIP-021-006
Project Amount:	TBD
Amount Paid to date:	None
Funding Source:	PAG Bonded Project
Contractor:	TBD.
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TDB.
Work Status:	Scheduled Bid opening on December 21, 2021 has been rescheduled to January 14, 2022 at 2:00 P.M. CHST. due to contractors non-participation.

Project:	A/E Services EQMR, WH I, Bldgs. & Relocation of PAG Water Line (Design Phase)
Project No.:	RFP-PAG-019-003
Project Design Fees:	\$1,406,427.48
Amount Paid to date:	\$1,187,186.76, Remaining Balance of \$219,240.72 is to be paid as post design services for all three design projects.
Funding Source:	PAG Bonded Projects
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed to Designer:	February 17, 2020
Project Completion:	8 months (October 16, 2020 was the initial deadline. However, due to COVID, POP was extended to December 4, 2020) Project design was completed by December 4, 2020.
Work Status:	when the bid documents including drawings, specifications, summary scope of work, determination of need, bid schedule, and the cost estimate were submitted to the Procurement Division.

Project	Warehouse I Building Upgrades (Construction Phase)
Project No.:	IFB (TBD)
Project Amount:	IFB-PAG-CIP-021-009
Amount Paid to date:	None
Funding Source:	PAG Bonded Project
Contractor:	TBD.
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TBD.
Work Status:	On November 19, 2021 at 2:00 P.M. four bidders submitted their bids with the lowest bidder at \$4,800,000 and the highest bidder at \$7,932,000. Procurement Division is currently evaluating the submitted bids for further processing. On December 7, 2021, PROPACIFIC Builders Corporation submitted a withdrawal of bid to procurement division, Procurement division forwarded the letter to PAG Legal for clarification. As of January 12, 2022, PAG Procurement awaits the Legal opinion regarding withdrawal of bid made by the contractor.

Project	EQMR Building Upgrades (Construction Phase)
Project No.:	IFB-PAG-CIP-021-010
Project Amount:	TBD
Amount Paid to date:	None
Funding Source:	PAG Bonded Project
Contractor:	TBD.
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	Bid Opening was conducted by Procurement Division on January 3, 2022 at 2:00 P.M. Two Contractors submitted their bid proposal, the lowest bidder came with the amount of \$3,980,000.00 and the second bidder came with the amount of \$3,999,000.00. Procurement division is currently evaluating bid proposal for further processing.

Project	PAG Waterline Replacements (Construction Phase)
Project No.:	IFB-PAG-CIP-021-005
Project Amount:	TBD
Amount Paid to date:	None
Funding Source:	PAG Bonded Project
Contractor:	TBD.
Designer:	N.C. Macario and Associates
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	On December 7, 2021 at 2:00 P.M. Procurement conducted the bid opening and five bidders submitted their bids with the lowest bidder at \$4,856,568.91 and the highest bidder at \$6,986,000.00 Procurement Division is currently evaluating the submitted bids for further processing.

Project:	New Administration Building
Project No.:	TBD
Project Amount:	TBD
Amount Paid to date:	None

Funding Source:	PAG Bonded Project-Pending
Contractor:	TBD
Construction Manager:	TBD
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	Pending funding source

Project:	Supply and Installation of New 24 Ea. Cylindrical Fendering System at F-3 and 10 Ea. New Rubber Leg Arch Fender at Wharf F-4 thru F-6
Project No.:	IFB. -PAG-CIP – 021-001
Project Amount:	\$298,259.00
Amount Paid to date:	None
Funding Source:	FEMA and PAG
Contractor:	Guam Ship Yard (Guam Industrial Services Inc.)
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	June 10, 2021
Project Completion:	February 10, 2022
Work Status:	As of January 12, 2022, and according to the contractor, the required fendering materials have not yet arrived on the island. Timely completion of this project using originally earmarked funds is becoming more challenging as the FEMA Grant portion will expire on April 30, 2022 according to the Planning Division.

Projects:	Harbor of Refuge Pump Station and Installation of Wastewater Ejector Pump and Harbor of Refuge Installation of Mooring Blocks
Project No.:	IFB-PAG-CIP-022-001
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	Dept. of Agriculture Fish and Wildlife Boating Infrastructure Grant
Contractor:	TBD
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	On December 20, 2021, PAG Procurement, Planning and CIP Engineering Division conducted the pre bid conference and followed by a project site visit. Two (2) prospective contractors attended the pre bid and site visit. Bid submittal and opening is now scheduled for February 3, 2022. RFI by a contractor is currently processed by the Commercial Division.

Project:	Rehabilitation of H-Wharf and Access Road (Construction Phase IFB)
Project No.:	Rebid IFB-PAG-022-002
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	Tiger Grant and PAG Revenue Bond
Contractor:	TBD
Construction Manager (CM):	GHD Engineering
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	The September 8, 2021 scheduled bid opening produced no bidders. New Bid opening is scheduled on January 13, 2022.

Project:	Repair of Concrete Spalling in CFS Building
Project No.:	IFB-PAG-CIP-021-004
Project Amount:	\$197,700
Amount Paid to date:	\$64,189.44
Funding Source:	PAG 2021 Budget
Contractor:	ProPacific Builders Corporation (PPBC)
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	July 14, 2021
Project Completion:	New Period of Performance – March 31, 2022.
Work Status:	On January 3, 2022 Pro Pacific Builder Corporation submitted a request for time extension of the project period of performance. On January 5, 2022, PAG Management approved the request of time extension to March 31, 2022. On January 4 & 5, 2022, PAG CIP/Engineering and Pro Pacific conducted an overall inspection in order to identify most current concrete cracks and spall quantities. The inspection resulted in finding of recently developed cracks and spalls (new cracks and spalls). These are cracks and spalls that were not present during the initial site scoping and therefore will revise the original bid quantities. In general, the CFS Building during procurement and actual repair phases have developed additional cracks and spalling. It is expected that the change in the work volume will be resolved via an additive change order.

Project:	Supply and Install Automatic Turnstile Gate Entrance at the Port Police
Project No.:	RFQ-PAG-021-008
Project Amount:	\$79,989.00
Amount Paid to date:	N/A
Funding Source:	PAG Internally Funded Projects 2021 Budget
Contractor:	Top Builders, LLC
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	May 10, 2021
Project Completion:	December 10, 2021 to include a one- month extension of the POP (210 Days)
Work Status:	On January 9, 2022 Top Builders construction performed welding of the stainless steel outbound bar covered under the warranty.

Project:	Installation of Dock "B" Agat Marina
Project No.:	TBD
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	Dept. of Interior, Dept. of Agri. Fish and Wildlife, DOA/WR and PAG 2021 Budget Share
Contractor:	TBD
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	PAG Procurement Division with assistance from the Planning Division while using the packet produced by the CIP/Engineering should enter into an IFB advertisement shortly.

Project:	Installation of Canopy Fronting Building Maintenance Bay
Project No.:	IFB No. PAG-CIP-021-008
Project Amount:	\$92,000.00
Amount Paid to date:	N/A
Funding Source:	PAG Budget 2021
Contractor:	Pro Pacific Builders
Construction Manager:	PAG Engineering,

Notice to Proceed:	August 31, 2021
Project Completion:	March 2, 2022
Work Status:	On January 10, 2022. PAG Engineering received the 24"X36" 100 % design submittal for signature, On January 12, 2022 PAG Engineering returned the 100% design drawing to Propacific for additional revisions.

Project:	Replacement of 125 Each Reefer Outlets Receptacles
Project No.:	IFB No. PAG-CIP-021-007
Project Amount:	\$350,000 as per the original approved FY 2021 Budget.
Amount Paid to date:	N/A
Funding Source:	PAG Budget 2021
Contractor:	PRO PACIFIC Builders
Construction Manager:	PAG Engineering
Notice to Proceed:	TBD
Project Completion:	TBD
Work Status:	PAG Procurement, CIP/Engineering, Facility Maintenance Division and PAG Management entered into negotiation with the Pro Pacific Builders Corp. (PPBC). The project bid amount of \$643,065.00 was reduced to \$600,000.00. Project is in route to the Attorney General and PAG Board of Directors approval. In addition, Project has received its supplemental budgetary approval.

Project:	Remove/Replace 3 Each Metal Gate Booths with Reinforced Concrete Structures
Project No.:	IFB-PAG-CIP-021-011
Project Amount:	\$159,557.00
Amount Paid to date:	N/A
Funding Source:	PAG CIP Internally Funded Projects
Contractor:	Pacific Federal Management
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	December 6, 2021
Project Completion:	243 calendar days is the POP from the NTP date.
Work Status:	On December 3, 2021 a pre-construction meeting was held with the contractor (Pacific Federal Management) and the Port stake holders regarding the project. An official Notice to Proceed was issued on December 6, 2021. The contractor is currently designing the reinforced concrete booths.

Project:	Installation of the 569 KVA Generator, ATS and Fuel Storage Tank at LC-3
Project No.:	TBD
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	2019 FEMA Port Security Grant Program
Contractor:	TBD
Construction Manager:	PAG Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	April 30, 2022
Work Status:	As of January 12, 2022, Engineering/Planning/Facility awaits arrival of the ATS and the Fuel Storage Tank and according to the Procurement Division, the ETA for the above equipment is in late January 2022. Procurement Division is currently soliciting request for quotations (RFQ) for installation.

Project:	Design-Build Repair the Northside Catwalk by the Agat Marina Boat Ramp
Project No.:	TBD
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	PAG Budget 2022
Contractor:	TBD
Construction Manager:	Port Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	180 Calendar Days
Work Status:	CIP/Engineering Division has Submitted to Planning on October 27, 2021 the completed IFB package for entry into the E1 JDE requisition.

Project:	Design, Demolition, Removal & Proper Disposal of 5 Inoperable Cranes and Optional Removal/Disposal of one Barge YFN 816
Project No.:	IFB. -PAG-CIP – 021-002
Project Amount:	\$2,573,155
Funding Source:	PAG
Contractor:	Guam Ship Yard "GSY" (Guam Industrial Services Inc.)
Construction Manager:	PAG
Notice to Proceed:	September 13, 2021
Project Completion:	October 18, 2022
Work Status:	Preliminary Demolition and Disposal Plan unsealed and unsigned was submitted to PAG on October 19, 2021. PAG Engineering conducted its review of the 90% plans and issued its comments to GSY on December 10, 2021 regarding the remaining deliverables to be submitted by the GSY scheduled for the December 28, 2021. It is expected that the plans be certified by a Structural Engineer in Late January 2022 before the job can proceed.

Project:	Devanning Concrete Ramp Repair (Adjacent to the Old Weighing Scale)
Project No.:	IFB
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	PAG Budget 2022
Contractor:	TBD
Construction Manager:	Port Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	60 Calendar Days
Work Status:	The IFB package has been completed by the Engineering Division and entered in the E1 requisition entry on December 29, 2021 and approved by the General Manager on January 6, 2022. Procurement Division to prepare Invitation for Bid packet for advertisement.

Project:	Harbor Master Roof and Miscellaneous Repair
Project No.:	RFQ
Project Amount:	TBD
Amount Paid to date:	N/A
Funding Source:	PAG Budget 2022
Contractor:	TBD
Construction Manager:	Port Engineering/CIP Division
Notice to Proceed:	TBD
Project Completion:	122 Calendar Days

Work Status: The RFQ package has been completed by the Engineering Division and entered in the E1 requisition entry on December 29, 2021 and approved by the General Manager on January 6, 2022. Procurement to solicit Request for Quotations.

Project: Hagatna Marina Installation of Two (2) Gates in Dock A, B and Dry Dock Concrete Repair

Project No.: RFQ

Project Amount: TBD

Amount Paid to date: N/A

Funding Source: PAG Budget 2022

Contractor: TBD

Construction Manager: Port CIP/Engineering Division

Notice to Proceed: TBD

Project Completion: 60 Calendar Days

Work Status: The RFQ package has been completed by the Engineering Division and entered in the E1 requisition entry on December 29, 2021 and approved by the General Manager on January 6, 2022. Procurement to solicit Request for Quotations.

Project: Painting of Exterior, Interior and Roof Coating of CFS Building

Project No.: RFQ

Project Amount: TBD

Amount Paid to date: N/A

Funding Source: PAG Budget FY 2022

Contractor: TBD

Construction Manager: Port CIP/Engineering Division

Notice to Proceed: TBD

Project Completion: 180 Calendar Days

Work Status: The RFQ package was completed by the CIP/Engineering Division, On December 15, 2021, Engineering received the returned request Memo for the project account number with a handwritten note by the Finance Division that the complete painting of the subject project will be performed by the Port In-House Facility Maintenance Section due to cash flow constrains. Considering this matter, prompt and complete coating of the CFS Building following the ongoing major spall and crack repair work will now be in the hands of the In-House Personnel. Any delays in performing the coating job shall result in premature development of additional cracks and spalls for this and similar unpainted warehouse buildings at the PAG.

Port Authority of Guam
Operations Division Report
December 2021

I. **OVERVIEW**

Vessel Calls	23
Cans Handled	8,016
Special Service(s)	86

a. **Productivity**

Vessel Op	Avg NMPH	TOP GANG	M/Hr
Matson			
Domestics	24.6	5	26.4
Feeder			
MSA			
Barges	19.1	5	23.8
Kyowa, Candor	17.4	1	21.1
Ambyth			
Mariana/Triton	15.8	3	25.0
MELL			
Kotas	22.0	1	23.7
APL			
Herodote/Saipan	19.1	3	20.4

b. **Equipment Status**

As of: 12/31/2021	ON			
	HAND	UP	RM	Repair
GANTRYs	3	3		
TOP LIFTERS	9	4		5
20T FORKLIFT	2	2		
10T FORKLIFT	4	2		2
5T FORKLIFT	8	6		2
TRACTORS	23	18		5

II. **YEAR TO DATE**

a. **Vessels_YTD** 59

b. **Can_Cnt YTD**

December	FY21		FY22		Variance	
	I	E	I	E	I	E
Local	8621	8444	9395	8885	9%	5%
TS	1661	1798	1628	1669	-2%	-7%
TSMT	557	672	874	861	57%	28%
TTL	10839	10914	11897	11415	10%	5%

FY-22 WORK INJURY REPORT
 (01/01/22 to 12/31/22)

<u>Divisions</u>	<u>*Lost-time</u>	<u>**Recordable</u>	<u>*** Refused Treatment</u>
Stevedoring	0	0	0
Transportation	0	0	0
Terminal	0	0	0
EQMR	0	0	0
Port Police	0	0	0
Admin	0	0	0
Total:	0	0	0

Work Injury Summary for this reporting period: 1/13/2022

Total Injuries for FY-22 to date: -0-Injury

0-- Lost-time

0- Recordable

0- Refused Medical Attention

Last disabling work injury was on: 12/21/21

Number of days since last disabling work injury: 23-days

Note: PAG best record was 222 days or 7 months w/o a disabling work injury

***Lost-time = If an employee was injured on the job and medical doctor sent him/her home, his/her injury is considered a lost-time.**

****Recordable = If an employee was injured on the job and medical doctor treated him/her and released him/her back to work on the same day (Recordable because of medical charges).**

*****Refused Medical Attention: Filed WC Forms 201 & 202 for record purposes only.**