

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 Aguigui 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:
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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

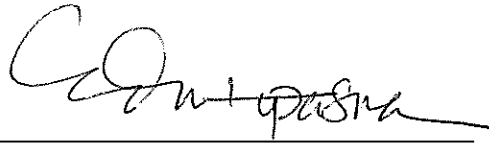


EDNA M. TOPASNA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JULY 28, 2021**
P.O. Box 138 Hagatna, Guam 96932

Guam U.S.A.)
City of Piti) ss:
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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 Hagatna, Guam 96932