

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
Informational Briefing/Hearing/ Oversight Hearing / Roundtable Hearing

STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Education, Self-Determination and Historic Preservation, Infrastructure, Border Safety, Federal and Foreign Affairs, and Maritime Transportation	Informational Hearing	Port Authority of Guam	1/25/21 3:00 p.m.	2/24/21 10:51 a.m.	



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I Mina'trentai Sais na Liheslaturan Guåhan | 36th GUAM LEGISLATURE

COMMITTEE ON

EDUCATION AND
INFRASTRUCTURAL
ADVANCEMENT

BORDER
PROTECTION AND
MARITIME
TRANSPORTATION

GUÅHAN
PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

February 18, 2021

The Honorable Tina Rose Muña Barnes

Chairperson

Committee on Rules

I Mina'trentai Sais na Liheslaturan Guåhan

163 Chalan Santo Papa

Hagåtña, Guam 96910

RE: Committee Report on Virtual Informational Hearing on Port Authority of Guam

Håfa Adai Chairperson Muña Barnes:

Transmitted herewith is the Committee Report on the Port Authority of Guam Virtual Informational Hearing to discuss Drug-Free-Workplace-Program Policy: drug test protocols, disciplinary action, and Employee Assistance Program; COVID-19: safety guidelines, protocols, and testing; Port Finances: revenues and cargo throughput; and Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

Sincerely,

Senator Telena Cruz Nelson

Chairperson

Committee on Education, Self-Determination and Historic Preservation, Infrastructure, Border Safety, Federal and Foreign Affairs, and Maritime Transportation

COMMITTEE ON RULES

RECEIVED:

February 18, 2021

8:44 A.M.

Revisions Rec'd:

February 23, 2021 @ 4:36 P.M.



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

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FOREIGN RELATIONS

COMMITTEE REPORT

VIRTUAL INFORMATIONAL HEARING On

- **Port Authority of Guam to discuss Drug-Free-Workplace-Program Policy: drug test protocols, disciplinary action, and Employee Assistance Program; COVID-19: safety guidelines, protocols, and testing; and Port Finances: revenues and cargo throughput;**
- **Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present**

by Senator Telena Cruz Nelson



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

FIRST NOTICE of Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M to 5:00P.M.

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Fri, Jan 15, 2021 at 2:45 PM

To: phnotice@guamlegislature.org

Cc: Tom Unsiog <sgtarms@guamlegislature.org>, mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>

Bcc: Rory Respicio <rjrespicio@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>, Luis Baza <lrbaa@portofguam.com>, marge <mduenas@portofguam.com>

January 15, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media

From: Senator Telena Cruz Nelson

Subject: **FIRST NOTICE of Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M to 5:00 P.M.**

Buenas yan Håfa Adai! Please be advised that the Committee on Education and Infrastructural Advancement, Border Protection and Maritime Transportation, *Guåhan* Preservation and Self-Determination, and Federal and Foreign Relations will convene a Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M. to 5:00 P.M., via Zoom Conference platform. The agenda includes the following:

Monday, January 25, 2021 at 3:00-5:00 P.M.

Informational Hearing Agenda: Port Authority of Guam

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;
- COVID-19: safety guidelines, protocols, and testing;
- Port Finances: revenues and cargo throughput.

Written testimonies may be delivered to the Office of Senator Telena Cruz Nelson at 173 Aspinall Avenue, Suite 202A, Ada Plaza Center, Hagåtña, Guam 96910 or via email to senatortcnelson@guamlegislature.org. The Committee requests that testimonies be submitted at least forty-eight (48) hours prior to the scheduled hearing. In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance or accommodations should contact the Office of Senator Telena Cruz Nelson via phone call at 671-989-7696 or via email at senatortcnelson@guamlegislature.org.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4, and stream online via I Liheslaturan Guåhan's live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation! *Si Yu'os Ma'åse'!*



The Office of Senator Telen Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



01-25-2021 PAOG Virtual Informational Hearing FIRST NOTICE.pdf

430K



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

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FEDERAL AND
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January 15, 2021

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From: Senator Telena Cruz Nelson 
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Informational Hearing Agenda: Port Authority of Guam

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;
- COVID-19: safety guidelines, protocols, and testing;
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Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

SECOND NOTICE of Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M to 5:00P.M.

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Wed, Jan 20, 2021 at 8:00 AM

To: phnotice@guamlegislature.org

Cc: Tom Unsiog <sgtarms@guamlegislature.org>, mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>

Bcc: Rory Respicio <rjrespicio@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>, Luis Baza <lrbaa@portofguam.com>, marge <mduenas@portofguam.com>

January 20, 2021

To: All Honorable Senators, Stakeholders and Media

From: Senator Telena Cruz Nelson

Subject: **SECOND NOTICE of Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M to 5:00 P.M.**

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Monday, January 25, 2021 at 3:00-5:00 P.M.

Informational Hearing Agenda: Port Authority of Guam

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;
- COVID-19: safety guidelines, protocols, and testing;
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The Office of Senator Telen Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org

2 attachments



01-25-2021 PAOG Virtual Informational Hearing SECOND NOTICE.pdf

426K



01-25-2021 PAOG Agenda.pdf

307K



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON


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TRANSPORTATION

GUÅHAN
PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

January 20, 2021

To: All Honorable Senators, Stakeholders and Media
From: Senator Telena Cruz Nelson 
Subject: **SECOND NOTICE of Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 P.M to 5:00 P.M.**

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Monday, January 25, 2021 at 3:00-5:00 P.M.

Informational Hearing Agenda: Port Authority of Guam

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;
- COVID-19: safety guidelines, protocols, and testing;
- Port Finances: revenues and cargo throughput.

Written testimonies may be delivered to the Office of Senator Telena Cruz Nelson at 173 Aspinall Avenue, Suite 202A, Ada Plaza Center, Hagåtña, Guam 96910 or via email to senatortcnelson@guamlegislature.org. The Committee requests that testimonies be submitted at least forty-eight (48) hours prior to the scheduled hearing. In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance or accommodations should contact the Office of Senator Telena Cruz Nelson via phone call at 671-989-7696 or via email at senatortcnelson@guamlegislature.org. *Si Yu'os Ma'åse'*



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

ZOOM LINK: Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 p.m.

1 message

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org> Fri, Jan 22, 2021 at 8:00 AM
To: "Hon. Therese M. Terlaje" <senatorterlajeguam@gmail.com>, Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>, "Hon. Amanda L. Shelton" <officeofsenatorshelton@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Hon. Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, "Senator Clynton E. Ridgell" <clyntridgell@guamlegislature.org>, Senator Sabina Perez <office@senatorperez.org>, Senator Jose Pedro Terlaje <senatorpedro@senatorjpterlaje.com>, "Senator Telo T. Taitague" <senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>, vanthonyada@gmail.com, office@senatorfrankblas.com, senatorchrisduenas@gmail.com, j.msbrown@yahoo.com
Cc: mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>
Bcc: Rory Respicio <rrespicio@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>, Luis Baza <lrba@portofguam.com>, marge <mduenas@portofguam.com>

Håfa adai Senators and Stakeholders,

Please find below the link to participate in the Virtual Informational Hearing via the Zoom Conference platform, scheduled for Monday, January 25, 2021 at 3:00 p.m.

Please do not share the following hearing link with persons who have not confirmed participation with the Office of Senator Telena Cruz Nelson and direct them to register via email at senatortcnelson@guamlegislature.org or call 989-7696. All others may watch the broadcast live on GTA Channel 21, Docomo Channel 117/60 and live-streamed via the Guam Legislature YouTube Channel.

Guam Legislature is inviting you to a scheduled Zoom meeting.

Topic: Virtual Public Hearing - Telena C. Nelson
Time: Jan 25, 2021 03:00 PM Guam, Port Moresby

Join Zoom Meeting



Meeting ID: [REDACTED]
Passcode: [REDACTED]

We ask for your cooperation and assistance in order to ensure a smooth and productive hearing by following the virtual guidelines:

1. Please LOG IN **no later than 2:45 p.m.** We will go live at 3:00 p.m.;
2. Please ensure that your VIDEO remains ON and you are visible throughout the hearing;
3. Participants must be visible at all times and as much as possible, not engaged in other activity during the hearing;
4. As much as possible, log in from an area with good lighting and little to no background noise and good internet connectivity;
5. Please MUTE your AUDIO unless called upon to present, respond or to ask questions;
6. Further hearing protocol and decorum requirements will be announced at the beginning of the hearing;
7. If you are having technical difficulties, kindly log off and return using the same link, we will work toward reconnecting you.
8. You may contact the Guam Legislature MIS Division at mis@guamlegislature.org if you are having technical issues.
9. Further hearing protocol and decorum requirements will be announced at the beginning of the hearing.

Please let me know if you have any questions.

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| The Office of Senator Telena Cruz Nelson



*Committee on Education & Infrastructural Advancement, Border
Protection & Maritime Transportation, Guåhan Preservation
& Self-Determination, & Federal & Foreign Relations*

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Google Drive Link: Virtual Informational Hearing on Monday, January 25, 2021 at 3:00 p.m to 5:00 p.m.

1 message

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org> Mon, Jan 25, 2021 at 8:00 AM
To: "Hon. Therese M. Terlaje" <senatorterlajeguam@gmail.com>, Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>, "Hon. Amanda L. Shelton" <officeofsenatorshelton@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Hon. Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, "Senator Clynton E. Ridgell" <clyntridgell@guamlegislature.org>, Senator Sabina Perez <office@senatorperez.org>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, "Senator Telo T. Taitague" <senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>, vanthonyada@gmail.com, office@senatorfrankblas.com, senatorchrisduenas@gmail.com, j.msbrown@yahoo.com
Bcc: Rory Respicio <rrespicio@portofguam.com>, Luis Baza <lrbaa@portofguam.com>, marge <mduenas@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>

Buenas yan Hafa Adai,

Documents for the Virtual Informational Hearing scheduled for Monday, January 25, 2021 at 3:00 p.m. to 5:00 p.m. can be accessed at the following link:

<https://drive.google.com/drive/u/1/folders/1nhlzWVYFOFj8tSmtvANzlsxoknvnEZt>

Guam Legislature is inviting you to a scheduled Zoom meeting.

Topic: Virtual Public Hearing - Telena C. Nelson
Time: Jan 25, 2021 03:00 PM Guam, Port Moresby

Join Zoom Meeting

Meeting ID:

Passcode:



The Office of Senator Telena Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



The Office of Senator Telena Cruz Nelson

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Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

FIRST NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 10:00 a.m.

1 message

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Mon, Jan 25, 2021 at 12:56 PM

To: phnotice@guamlegislature.org

Cc: Tom Unsiog <sgtarms@guamlegislature.org>, mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>

Bcc: Rory Respicio <rjrespicio@portofguam.com>, marge <mduenas@portofguam.com>, Dominic Muna <dgmunas@portofguam.com>, Luis Baza <lbaza@portofguam.com>

January 25, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media

From: Senator Telena Cruz Nelson

Subject: **FIRST NOTICE of Virtual Oversight Hearing on Tuesday, 2021 at 10:00 a.m.**

February 2,

Buenas yan Håfa Adai! Please be advised that the Committee on Education and Infrastructural Advancement, Border Protection and Maritime Transportation, *Guåhan* Preservation and Self-Determination, and Federal and Foreign Relations will convene a Virtual Oversight Hearing on Tuesday, February 2, 2021 at 10:00 a.m., via Zoom Conference platform. The agenda includes the following:

Tuesday, February 2, 2021 at 10:00 a.m.

Overisight Hearing Agenda: Port Authority of Guam

- Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

Written testimonies may be delivered to the Office of Senator Telena Cruz Nelson at 173 Aspinall Avenue, Suite 202A, Ada Plaza Center, Hagåtña, Guam 96910 or via email to senatortcnelson@guamlegislature.org. The Committee requests that testimonies be submitted at least forty-eight (48) hours prior to the scheduled hearing. In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance or accommodations should contact the Office of Senator Telena Cruz Nelson via phone call at 671-989-7696 or via email at senatortcnelson@guamlegislature.org.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4, and stream online via I Liheslaturan Guåhan's live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation! *Si Yu'os Ma'åse'!*

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The Office of Senator Telen Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



02-02-2021 FIRST NOTICE.pdf

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THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

EDUCATION AND
INFRASTRUCTURAL
ADVANCEMENT

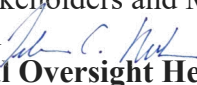
BORDER
PROTECTION AND
MARITIME
TRANSPORTATION

GUÅHAN
PRESERVATION AND
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FEDERAL AND
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January 25, 2021

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To: All Honorable Senators, Stakeholders and Media
From: Senator Telena Cruz Nelson 
Subject: **FIRST NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 10:00 a.m.**

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Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

RESCIND AND REPLACE - FIRST NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Mon, Jan 25, 2021 at 5:47 PM

To: phnotice@guamlegislature.org

Cc: Ed Pocaigue <sgtarms@guamlegislature.org>, mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>

Bcc: Rory Respicio <rjrespicio@portofguam.com>, marge <mduenas@portofguam.com>, Luis Baza <lrbaa@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>

January 25, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media

From: Senator Telena Cruz Nelson

Subject: **RESCIND AND REPLACE - FIRST NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.**

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Tuesday, February 2, 2021 at ~~10~~ 9:00 a.m.

9:00 A.M. - Reconvened Virtual Informational Hearing: Port Authority of Guam

- Drug-Free-Workplace-Program Policy: drug test protocols, disciplinary action, and Employee Assistance Program.

10:00 A.M. - Oversight Hearing Agenda: Port Authority of Guam

- Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

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The Office of Senator Telena Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

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Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



02-02-2021 RESCIND AND REPLACE FIRST NOTICE.pdf
429K



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

EDUCATION AND
INFRASTRUCTURAL
ADVANCEMENT

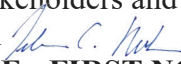
BORDER
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TRANSPORTATION

GUÅHAN
PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

January 25, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media
From: Senator Telena Cruz Nelson 
Subject: **RESCIND AND REPLACE - FIRST NOTICE of Virtual Oversight
Hearing on Tuesday, February 2, 2021 at 10 9:00 a.m.**

Buenas yan Håfa Adai! Please be advised that the Committee on Education and Infrastructural Advancement, Border Protection and Maritime Transportation, *Guåhan* Preservation and Self-Determination, and Federal and Foreign Relations will convene a Virtual Oversight Hearing on Tuesday, February 2, 2021 at **10 9:00 a.m.**, via Zoom Conference platform. The agenda includes the following:

Tuesday, February 2, 2021 at 10 9:00 a.m.

9:00 A.M. - Reconvened Virtual Informational Hearing: Port Authority of Guam

- Drug-Free-Workplace-Program Policy: drug test protocols, disciplinary action, and Employee Assistance Program.

10:00 A.M. - Oversight Hearing Agenda: Port Authority of Guam

- Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

Written testimonies may be delivered to the Office of Senator Telena Cruz Nelson at 173 Aspinall Avenue, Suite 202A, Ada Plaza Center, Hagåtña, Guam 96910 or via email to senatortcnelson@guamlegislature.org. The Committee requests that testimonies be submitted at least forty-eight (48) hours prior to the scheduled hearing. In compliance with the Americans with Disabilities Act (ADA), individuals requiring assistance or accommodations should contact the Office of Senator Telena Cruz Nelson via phone call at 671-989-7696 or via email at senatortcnelson@guamlegislature.org.

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4, and stream online via I Liheslaturan Guåhan's live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation! *Si Yu'os Ma'åse'!*



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

SECOND NOTICE of Virtual OversightHearing on Tuesday, February 2, 2021 at 9:00 a.m.

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Thu, Jan 28, 2021 at 8:00 AM

To: phnotice@guamlegislature.org

Cc: Ed Pocaigue <sgtarms@guamlegislature.org>, mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>

Bcc: Rory Respicio <rjrespicio@portofguam.com>, marge <mduenas@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>, Luis Baza <lrbaza@portofguam.com>

January 28, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media

From: Senator Telena Cruz Nelson

Subject: **SECOND NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.**

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The Office of Senator Telen Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



02-02-2021 SECOND NOTICE.pdf

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THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

EDUCATION AND
INFRASTRUCTURAL
ADVANCEMENT

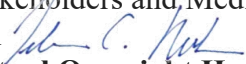
BORDER
PROTECTION AND
MARITIME
TRANSPORTATION

GUÅHAN
PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

January 28, 2021

MEMORANDUM

To: All Honorable Senators, Stakeholders and Media
From: Senator Telena Cruz Nelson 
Subject: **SECOND NOTICE of Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.**

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Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

ZOOM LINK: Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.

1 message

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org> Mon, Feb 1, 2021 at 8:00 AM
To: "Hon. Therese M. Terlaje" <senatorterlajeguam@gmail.com>, Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>, "Hon. Amanda L. Shelton" <officeofsenatorshelton@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Hon. Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, "Senator Clynton E. Ridgell" <clyntridgell@guamlegislature.org>, Senator Sabina Perez <office@senatorperez.org>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, "Senator Telo T. Taitague" <senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>, vanthonyada@gmail.com, office@senatorfrankblas.com, senatorchrisduenas@gmail.com, j.msbrown@yahoo.com
Cc: mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>
Bcc: ike.peredo@cqa.guam.gov, Vince Perez-Customs <vincent.perez@cqa.guam.gov>, philip.taijeron@cqa.guam.gov, darlene.merfalen@cqa.guam.gov, k9@cqa.guam.gov

Håfa adai Senators and Stakeholders,

Please find below the link to participate in the Virtual Oversight Hearing via the Zoom Conference platform, scheduled for Tuesday, February 2, 2021 at 9:00 a.m.

Please do not share the following hearing link with persons who have not confirmed participation with the Office of Senator Telena Cruz Nelson and direct them to register via email at senatortcnelson@guamlegislature.org or call 989-7696. All others may watch the broadcast live on GTA Channel 21, Docomo Channel 117/60 and live-streamed via the Guam Legislature YouTube Channel.

Guam Legislature is inviting you to a scheduled Zoom meeting.

Topic: Virtual Oversight Hearing - Senator Telena C. Nelson
Time: Feb 2, 2021 09:00 AM Guam, Port Moresby

Join Zoom Meeting

[Redacted Zoom Link]

Meeting ID:

Passcode:

[Redacted Meeting ID and Passcode]

We ask for your cooperation and assistance in order to ensure a smooth and productive hearing by following the virtual guidelines:

1. Please LOG IN **no later than 8:45 a.m.** We will go live at 9:00 a.m.;
2. Please ensure that your VIDEO remains ON and you are visible throughout the hearing;
3. Participants must be visible at all times and as much as possible, not engaged in other activity during the hearing;
4. As much as possible, log in from an area with good lighting and little to no background noise and good internet connectivity;
5. Please MUTE your AUDIO unless called upon to present, respond or to ask questions;
6. Further hearing protocol and decorum requirements will be announced at the beginning of the hearing;
7. If you are having technical difficulties, kindly log off and return using the same link, we will work toward reconnecting you.
8. You may contact the Guam Legislature MIS Division at mis@guamlegislature.org if you are having technical issues.
9. Further hearing protocol and decorum requirements will be announced at the beginning of the hearing.

Please let me know if you have any questions.

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The Office of Senator Telena Cruz Nelson

Committee on Education & Infrastructural Advancement, Border

Protection & Maritime Transportation, Guåhan Preservation

& Self-Determination, & Federal & Foreign Relations

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

Phone: (671) 989-7696/4678

Email: senatortcnelson@guamlegislature.org



Telena Cruz Nelson <senatortcnelson@guamlegislature.org>

Google Drive Link: Virtual Oversight Hearing on Tuesday, February 2, 2021 at 9:00 a.m.

1 message

Office of Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org> Tue, Feb 2, 2021 at 8:00 AM
To: "Hon. Therese M. Terlaje" <senatorterlajeguam@gmail.com>, Vice Speaker Tina Rose Muña Barnes <senatormunabarnes@guamlegislature.org>, "Hon. Amanda L. Shelton" <officeofsenatorshelton@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Hon. Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, "Senator Clynton E. Ridgell" <clyntridgell@guamlegislature.org>, Senator Sabina Perez <office@senatorperez.org>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, "Senator Telo T. Taitague" <senatortelot@gmail.com>, Office of Senator Moylan Guam Legislature <officeofsenatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>, vanthonyada@gmail.com, office@senatorfrankblas.com, senatorchrisduenas@gmail.com, j.msbrown@yahoo.com
Cc: mis <mis@guamlegislature.org>, Audio / Video <av@guamlegislature.org>
Bcc: Rory Respicio <rjrespicio@portofguam.com>, Dominic Muna <dgmuna@portofguam.com>, Luis Baza <lrbaza@portofguam.com>, marge <mduenas@portofguam.com>, "Betty W. Perez" <bwperez@portofguam.com>, franksantos1914@hotmail.com, ntaimanglo@docomopacific.com, ikoki88@gmail.com, dmspharris@yahoo.com

Buenas yan Hafa Adai,

Documents for the Virtual Oversight Hearing scheduled for Tuesday, February 2, 2021 at 9:00 a.m. can be accessed at the following link:

<https://drive.google.com/drive/u/1/folders/1JTUuAUPTELw60UTiUla4bmUAHGoPz1kG>

Guam Legislature is inviting you to a scheduled Zoom meeting.

Topic: Virtual Oversight Hearing - Senator Telena C. Nelson

Time: Feb 2, 2021 09:00 AM Guam, Port Moresby

Join Zoom Meeting



Meeting ID: [REDACTED]

Passcode: [REDACTED]

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The Office of Senator Telena Cruz Nelson

Committee on Education & Infrastructural Advancement, Border



*Protection & Maritime Transportation, Guåhan Preservation
& Self-Determination, & Federal & Foreign Relations*

I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

173 Aspinall Avenue, Suite 202A Ada Plaza Center, Hagåtña, Guam 96910

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THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

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SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

Informational Briefing

via Virtual Platform

Monday, January 25, 2021

3:00 P.M.

Agenda

- I. Call to Order at 3:00 P.M.
- II. Opening Remarks by Senator Telenia C. Nelson, Chairperson
- III. Items for discussion

Informational Briefing: Port Authority of Guam

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;
- COVID-19: safety guidelines, protocols, and testing;
- Port Finances: revenues and cargo throughput.

IV. Closing Remarks

V. Adjournment

The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4, and stream online via I Liheslaturan Guåhan's live feed on YouTube. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. We look forward to your participation!

Si Yu'os Ma'åse'



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

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FOREIGN RELATIONS

Oversight Briefing

via Virtual Platform

Tuesday, February 2, 2021

9:00 a.m.

Agenda

- I. Call to Order at 9:00 A.M.
- II. Opening Remarks by Senator Telena C. Nelson, Chairperson
- III. Items for discussion – Port Authority of Guam

9:00 a.m. – Reconvened Virtual Informational Hearing Agenda

- Drug-Free-Workplace-Program-Policy: drug test protocols, disciplinary action, and Employee Assistance Program;

10: 00 a.m. – Virtual Oversight Hearing Agenda

- Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

- IV. Closing Remarks
- V. Adjournment

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FEDERAL AND
FOREIGN RELATIONS

Virtual Informational Hearing Sign-In Sheet Monday, January 25, 2021 – 3:00 P.M. Port Authority of Guam

NAME	AGENCY OR ORGANIZATION (IF ANY)	SUPPORT? OPPOSE?	WRITTEN TESTIMONY	ORAL TESTIMONY	CONTACT NUMBER	EMAIL ADDRESS
Rory Respicio	General Manager Port Authority of Guam	Support	X	X		rjrespicio@portofguam.com
Dominic Muna	Deputy General Manager, Port Authority of Guam	Support				dgmuna@portofguam.com
Luis Muna	Deputy General Manager, Port Authority of Guam	Support				lrbaa@portofguam.com
Francisco Santos	Chairperson, Board of Directors, Port Authority of Guam	Support				

Page 1 of 1



THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

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PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

Virtual Oversight Hearing Sign-In Sheet Tuesday, February 2, 2021 – 9:00 A.M. Port Authority of Guam

NAME	AGENCY OR ORGANIZATION (IF ANY)	SUPPORT? OPPOSE?	WRITTEN TESTIMONY	ORAL TESTIMONY	CONTACT NUMBER	EMAIL ADDRESS
Rory Respicio	General Manager- Port					
Francisco Santos	Board Chairperson					
Dominic Muna	DGM – Port Op.					
Luis Baza	DGM – Port Admin					
Sean Cepeda	Port HR					
Carmen Nededog	Port HR					

Page 1 of 1

CHAPTER 10
PORT AUTHORITY OF GUAM

- Article 1. Port Authority of Guam.
- Article 2. Jose D. Leon Guerrero Commercial Port Revenue Bonds and Other Indebtedness.
- Article 3. Prohibition on the Privatization, Lease, or Sale of the Jose D. Leon Guerrero Commercial Port.
- Article 4. Public-Private Partnership through a Performance Management Contract.

ARTICLE 1
PORT AUTHORITY OF GUAM

- § 10101. Definitions.
- § 10102. Authority.
- § 10103. Board.
- § 10104. Same: Duties.
- § 10105. Same: Powers.
- § 10106. Manager.
- § 10107. Same: Duties.
- § 10108. Claims.
- § 10109. Fiscal Authority.
- § 10110. Contracts and Purchases. [Repealed]
- § 10111. Employment.
- § 10111.1. Port Authority Police.
- § 10111.2. Training of Officers.
- § 10111.3. Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions.
- § 10112. Violation of Regulation: Penalty.
- § 10113. Territorial Transportation and Communications Coordinating Council.
- § 10113.1. Duties.
- § 10114. Adoption of the Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port.

§ 10101. Definitions.

As used herein, unless otherwise indicated:

- (a) Authority means the Port Authority of Guam.

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

(b) Board means the Board of Directors of the Authority.

(c) Port facilities means channels, waterways, basins, seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities necessary for the development or operation of the Port of Guam and recreational boating facilities of Guam.

(d) Port means the Civil Port, small boat marinas, and all related facilities of the territory of Guam located on Cabras Island, Apra Harbor, Agana Boat Basin, and all other Government of Guam small boat marinas.

(e) Manager means the General Manager of the Authority.

(f) Director means the Director of the Board.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14000 GC. Codified as 12 GCA § 10101. Subsection (c) amended by P.L. 17-071:1 (Oct. 2, 1984); Subsection (d) amended by P.L. 17-071:2 (Oct. 2, 1984).

§ 10102. Authority.

There is hereby established the Port Authority of Guam as a public corporation and autonomous instrumentality of the government of Guam, which shall provide for the needs of ocean commerce, shipping, recreational and commercial boating, and navigation of the territory of Guam. The Authority shall have perpetual succession unless sooner terminated by law and shall adopt a seal and sue or be sued in its own Corporate name.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14001. Codified as 12 GCA § 10102. Amended by P.L. 17-071:3 (Oct. 2, 1984).

2014 NOTE: Subsection designation deleted to adhere to the Compiler's general codification scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10103. Board.

(a) The Authority shall be directed by the Board which shall consist of five (5) directors appointed by the Governor with the advice and consent of the Legislature.

(1) Directors shall be appointed and their names transmitted to the Legislature within thirty (30) days of the effective date of this Chapter.

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

(2) The five (5) directors first appointed shall classify themselves by lot so that their terms shall expire respectively as follows:

(A) One (1) on December 31, 1976, Two (2) on June 30, 1977 and Two (2) on June 30, 1978.

(B) Their successors shall be appointed each for a term of three (3) years to commence on the date of their confirmation by the Legislature.

(3) Any director vacancy shall be filled by the Governor, with the advice and consent of the Legislature, for the unexpired term.

(b) Any director may be removed upon charges, and after hearing, by the Governor.

(c) Three (3) directors shall constitute a quorum of the Board and three (3) affirmative votes are required for the transaction of all business.

(1) The Board shall meet in regular session at least once each month and in special session as often as it may deem necessary.

(2) (A) The Board shall keep a minute book wherein all its actions and proceedings shall be recorded.

(B) Minutes shall be signed by the Board Secretary and a copy thereof shall be forwarded to the Governor within forty-eight (48) hours following adjournment of each meeting.

(d) Directors shall be paid Fifty Dollars (\$50.00) per meeting but not to exceed One Hundred Dollars (\$100.00) a month and shall be reimbursed for actual travel, subsistence and out-of-pocket expenses incurred in the discharge of their responsibilities.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14002 GC. Codified as 12 GCA § 10103.

2017 NOTE: Subitem designations added pursuant to authority granted by 1 GCA § 1606.

§ 10104. Same: Duties.

The Board shall:

(a) Conduct their first meeting within thirty (30) days of their confirmation.

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

(b) Elect a Chairman, Vice-Chairman and Secretary from among its members.

(c) Appoint a Manager and fix his compensation within forty-five (45) days of their first meeting.

(d) Maintain constant review and evaluation of the planning, promotion, development, construction, alteration, maintenance and operation of the port facilities, any of which activities the Board may delegate to the Manager.

(e) Establish its internal organization and management and adopt regulations for the administration of its operations and the conduct of its affairs.

(f) In accordance with law, control, manage and have jurisdiction over all government of Guam lands within the boundaries of Cabras Island and Drydock Island and seaward therefrom to the limits of the Glass Breakwater and all areas designated as small boat basins or recreational boating facilities, including submerged lands except for the following:

(1) those facilities under the control and jurisdiction of departments or agencies of the United States government; and

(2) all seashore properties and facilities which fall under the Territorial Parks System and boat launching ramps under the jurisdiction of the Department of Parks and Recreation.

(g) Employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. Copies of any such report shall be furnished to the Governor and to the Legislature.

(h) Report to the Governor concerning its administration of the Authority by annual report within one hundred twenty (120) days after the end of each fiscal year and, if requested by the Governor, shall present special reports within thirty (30) days after the end of each intervening quarter. The financial information presented in such reports shall be in accordance with the Uniform System of Accounts adopted by the Board.

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

(i) Require operators of water terminal properties and facilities to keep same in proper condition and repair and shall have the right to inspect such terminal facilities at reasonable times.

(j) Establish and modify from time to time, subject only to the regulatory oversight supervision and approval of the Public Utilities Commission, all rates, dockage, rentals, tolls, pilotage, wharfage and charges for the use and occupation of the public facilities or appliances of the Port, and for services rendered by the Port and to provide for the collection thereof.

(k) Review the Manager's annual estimates and schedules and promptly adjust rates and charges prepared to recover the cost of each facility and service, including interests, loan repayments, amortization of depreciable assets and a reasonable return on value of assets. Additional adjustments in rates may be made from time to time upon approval by the Public Utilities Commission and its determination that such adjustments are "just" and "reasonable".

(l) Exercise its powers and perform its duties by resolution adopted by majority vote of the Board in public meeting for which notice of an agenda was published in a Guam newspaper of general circulation three (3) times within five (5) days of the meeting. Resolutions shall be signed by the Board Chairman and attested by its Secretary. The Board shall index all of its resolutions which shall be public record, provided, that the Board shall not, except as expressly provided herein, delegate its responsibility for the general operation of the Port.

(m) Adopt, amend and repeal pilotage rules and regulations in accordance with the Administrative Adjudication Law and § 56403 of Title 18 of the Guam Code Annotated, which rules and regulations shall provide for safe and efficient navigation of all vessels entering, leaving and operating within Guam waters that are required by § 56403.13 to have a licensed pilot on board; and to ensure an adequate supply of qualified pilots in aid of commerce and navigation.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14003 GC. Codified as 12 GCA § 10104. Subsection (f) amended by P.L. 17-071:4 (Oct. 2, 1984). Subsection (m) added by P.L. 25-009:28 (May 12, 1999). Subsections (j) and (k) amended by P.L. 30-052:2 (July 14, 2009).

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

NOTE: P.L. 25:009:29 states: Savings Clause. Pending the promulgation or amendment of rules and regulations governing mandatory pilot licensing by the Port Authority of Guam pursuant to the Administrative Adjudication Law, the Port Authority's existing harbor rules and regulations shall be construed as requiring the use of a harbor pilot by all vessels within pilotage waters, *unless* exempt pursuant to § 56403.15, and for the supervision and investigation of complaints against all pilots by the Manager of the Port Authority of Guam.

§ 10105. Same: Powers.

The Board may:

(a) Enter into and perform such contracts, leases, cooperative agreements and other transactions with any agency or instrumentality of the United States, or with any state, territory or possession, or any political subdivision thereof, or with any person, firm, association or corporation, as may be deemed necessary for the execution of its responsibilities.

(b) In accordance with 5 GCA Chapter 5 (Procurement Law) and other laws, any property real, personal or mixed, tangible or intangible and hold, maintain, use, operate, encumber or dispose of same whenever deemed necessary in the execution of its responsibilities.

(c) Make any investigation deemed necessary to enable it to carry out its responsibilities, and for this purpose take and hear proofs and testimony and compel by subpoena the attendance of witnesses and the production of books, papers, records and documents, including public records.

(d) Enter into contracts for loans or grants with the government of Guam or with the United States.

(e) At any time or from time to time, incur indebtedness.

(f) Employ, retain or contract for the services of qualified managers, specialists or experts as individuals or as organizations, for advice and assistance.

(g) Adopt, enforce, amend or repeal harbor and port regulations for the use and navigation of Apra Harbor and the facilities of the Port Authority of Guam, and to adopt, enforce, amend or repeal such other orders, regulations and practices that are necessary for the administration and discharge of its duties and powers.

(h) Rules and regulations previously promulgated under the authority of the Department of Parks and Recreation concerning small boat basins and recreational boating facilities are to remain in effect unless or until the Board promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section. All references and rules and regulations pertaining to persons in or duties of the Department of Parks and Recreation in regard to small boat basins and recreational boating facilities shall be considered as pertaining to the General Manager or his designee and the duties of the Port Authority of Guam until or unless the Board amends or promulgates additional or different rules and regulations pursuant to Subsection (g) of this Section.

(i) Notwithstanding any other provision of law, make, negotiate and enter into a commercial lease, or issue a permit or license for the use of its real property and other related facilities for a term not to exceed five years.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14004 GC. Subsection (b) as amended by P.L. 16-124:18 (Dec. 29, 1982). Codified as 12 GCA § 10105. Subsection (g) amended by P.L. 17-058:1 (June 22, 1984). Subsection (h) added by P.L. 17-071:5 (Oct. 2, 1984). Subsection (i) added by P.L. 26-028:2 (July 19, 2001).

§ 10106. Manager.

The Manager shall be the Authority's chief executive officer and who shall serve at the Board's pleasure. He shall be responsible for the maintenance, operation and development of the Port administration and for the Authority's business affairs.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14005 GC. Codified as 12 GCA § 10106.

2013 NOTE: Subsection designation deleted to adhere to the Compiler's general codification scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10107. Same: Duties.

The Manager shall:

- (a) Insure that the Board's rules and regulations are enforced;
- (b) Attend all board meetings;
- (c) Keep the Board advised as to the needs of the Authority;

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(d) Approve demands for the payment of obligations of the Authority within the purposes and amounts authorized by the Board;

(e) Prepare or cause to be prepared all plans and specifications for the construction of the works of the Authority;

(f) Select and appoint the employees of the Authority, except as otherwise provided by this Chapter, and plan, organize, coordinate and control the services of such employees;

(g) Publish a financial report in a manner provided by the Board within one hundred twenty (120) days from the end of each fiscal year showing the result of operations for the preceding fiscal year and the financial status of the Authority on the last day thereof;

(h) Render a monthly accounting statement to the Board in such form as the Board directs;

(i) Shall annually submit to the Board and the Governor programs and financial plans in accordance with the provisions of 5 GCA Chapter 4;

(j) Chair the Territorial Transportation and Communications Coordinating Council;

(k) Perform such other and additional duties as the Board may direct.

(l) Grant licenses to pilots pursuant to 18 GCA § 56403;

(m) Develop appropriate standards and procedures for licensure of harbor pilots, including such examinations and investigations to determine whether persons applying for a pilot's license are qualified as the Manager deems necessary or appropriate;

(n) Enforce the provisions of 18 GCA § 56403 and rules adopted pursuant thereto;

(o) Suspend, revoke or deny the issuance of any pilot's license for any cause prescribed by 18 GCA § 56403, or for any violation of the Port Authority of Guam's pilotage rules and regulations;

(p) Appoint members of the Pilot License Advisory Committee;

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(q) Investigate complaints and any violation of the provisions of § 56403 of Title 18 of the Guam Code Annotated or the Port of Authority of Guam's rules and regulations; and

(r) Do all things reasonable, necessary, and expedient to ensure safe navigation and proper pilotage, and to facilitate the efficient administration of 18 GCA § 56403.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14006 GC. Codified as 12 GCA § 10107. Subsection (j) added by P.L. 21-095:4 (Mar. 30, 1992); subsection (k) relettered by same law. Subsections (l) - (r) added by P.L. 25-009:21-27 (May 12, 1999).

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code in subsection (i) was altered to reflect the codification of the chapter and title in the GCA.

§ 10108. Claims.

(a) Cargo shortage and property damage claims shall be presented to the Manager within six (6) months of accrual for payment under this Act. Claims shall be in such form as the Manager shall direct.

(b) The Manager shall personally entertain cargo shortage or property damage claims in excess of Five Hundred Dollars (\$500.00). He may, however, delegate the review, settlement and payment of claims for cargo shortages or property damage up to One Hundred Dollars (\$100.00).

(c) Payments of claims for cargo shortage or property damage shall be charged to an account title "Shortage and Damage Claims," said account to be shown in the monthly accounting statement to the Board. A listing of each payment in excess of One Hundred Dollars (\$100.00) shall accompany the statement.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14007 GC. Codified as 12 GCA § 10108.

§ 10109. Fiscal Authority.

(a) There is hereby established a fund to be known as the Port Authority Fund which shall be maintained by the Board separate and apart from other funds of the government of Guam. Independent records and accounts shall be maintained in connection therewith.

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(b) All moneys received by the Authority from whatever source derived shall be deposited in the Port Authority Fund in eligible banks as defined in 5 GCA § 21112.

(c) All expenditures including payments into sinking funds or other special accounts shall be made from the Port Authority Fund.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14008 GC. Codified as 12 GCA § 10109.

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Government Code section in subsection (b) was altered to reflect the codification of this section in the GCA.

§ 10110. Contracts and Purchases.

[Repealed.]

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as §14009. Repealed by P.L. 16-124:19 (Dec. 29, 1982). Codified as 12 GCA § 10109.

§ 10111. Employment.

(a) Pursuant to the provisions of 4 GCA §§ 4104 and 4105, the Board shall establish, and may amend, rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Authority. Such rules and regulations shall be effective upon approval by the Civil Service Commission before implementation. Such rules and regulations shall be filed with the Legislative Secretary.

(b) Employees of the Authority, excluding the directors, shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA § 8105 except that for the purposes of Subsection (a) of said Section, the employees of the Authority shall not be considered employees of a public corporation whereby their membership in the Fund is optional and membership therein must be specifically requested. The Authority shall contribute to the Government of Guam Retirement Fund on the basis of monthly billings as determined by the Board of Trustees of the Government of Guam Retirement Fund, for the benefit payments made from such Fund on account of the Authority's employees.

(c) Notwithstanding any other provision of law, the manager, assistant managers, the manager's secretary, the comptroller and assistant comptroller shall be within the unclassified service of the government of

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Guam and shall be hired, compensated and employed under the terms and conditions fixed by and at the pleasure of the Board.

(d) The Board shall establish, and may amend from time to time, the compensation rates and classification plan of the employees. Such rates and plan shall be effective upon approval by the Governor.

(e) The Authority shall contribute to the Worker's Compensation Fund, on the basis of annual billings or as determined by the Worker's Compensation Commission, for the benefit payments made from such Fund on account of the Authority's employees for injuries prior to July 1, 1985. The Authority shall obtain Worker's Compensation insurance coverage no later than July 1, 1985.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14010 GC; Subsection (a) amended by P.L. 16-023:11 (Aug. 11, 1981). Codified as 12 GCA § 10110. Subsection (a) amended by 17-058:2 (June 22, 1984). Subsection (b) amended by P.L. 17-058:3 (June 22, 1984). Subsection (c) amended by P.L. 17-005:14 (Apr. 21, 1983), P.L. 17-011:2 (June 22, 1983), and P.L. 17-012:4 (June 22, 1983). Subsections (d) and (e) added by P.L. 17-058:4 and 5 (June 22, 1984).

§ 10111.1. Port Authority Police.

(a) (1) There is hereby established, under the direction of the Authority, a Port Authority Police which shall be responsible for the protection of persons and property at the Port Authority of Guam and all related facilities, and which shall coordinate its activities with the Guam Police Department, which shall have concurrent jurisdiction therewith.

(2) The Board, pursuant to the Administrative Adjudication Law, shall adopt reasonable rules and regulations regarding its personnel, which rules and regulations shall be consistent with the provisions of Title 4 of this Code.

(b) Members of the Port Authority Police, while on Port grounds and acting within their official capacity, shall have the powers of peace officers, including, but not limited to, the authority to arrest and enforce the Port Rules and Regulations, applicable federal security programs, and the Vehicle Code of Guam.

(c) Employees currently occupying positions in the Port Authority of Guam Security Force upon enactment of this section shall be reassigned to the new positions within the new Port Authority Police.

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SOURCE: Added by P.L. 20-130:1 (Jan. 24, 1990). Amended by P.L. 23-028:2 (June 27, 1995).

CROSS-REFERENCES: See 8 GCA § 5.55 relating to “peace officers”.

§ 10111.2. Training of Officers.

All Port Security Force officers shall be required to complete training, with a minimum of one hundred twenty (120) hours, on the laws of arrest, searches and seizures, the Vehicle Code of Guam, the Criminal and Correctional Code, the use and handling of firearms, and such other training as required to effectively carry out their duties and responsibilities as peace officers.

(a) In addition, refresher training in the areas of search and seizure, arrest and the use of firearms shall be given to each officer annually for a minimum of ten (10) hours.

(b) All such training shall be conducted at a local institution applying the standards used in the training of the police officers for the Guam Police Department.

SOURCE: Added by P.L. 20-130:2 (Jan. 24, 1990).

2017 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 10111.3. Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions.

(a) The Board shall adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment of personnel occupying maritime positions unique to Port operations and certified, technical and professional positions, subject to the provisions of the Administrative Adjudication Act.

(b) Such rules and regulations shall provide for the employment and retention of persons on the basis of merit and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants.

(c) Maritime positions unique to Port operations and certified, technical and professional positions are defined as:

(1) positions whose qualification requirements mandates certifications and licensing requirements, e.g., stevedores, cargo checkers, equipment operators, marine traffic controllers, etc.;

(2) positions with multi-skill qualification requirements, e.g., preventive maintenance mechanics, crane mechanics, etc.;

(3) positions with specific maritime knowledge and skills, e.g., tariff technicians, etc.; and

(4) other similar technical and professional positions which are unique and critical to the Port's operations and no other government entity which is not a port of entry, but not limited to those jobs listed herein.

(d) Compensation for all other positions shall remain consistent with compensation plans and pay scales as determined by law.

SOURCE: Added by P.L. 29-024:2 (Oct. 24, 2007).

§ 10112. Violation of Regulation: Penalty.

Every person who violates, causes or permits to be violated, or fails or refuses to comply with any rule or regulation adopted pursuant to this Article, is guilty of a misdemeanor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as § 14011 GC. Amended by P.L. 13-187:119.1. Codified as 12 GCA § 10112.

§ 10113. Territorial Transportation and Communications Coordinating Council.

(a) There is hereby created a Territorial Transportation and Communications Coordinating Council (the Council), which Council shall meet on a regular basis as determined by its membership but not less than once each calendar quarter to exchange views and information on transportation, communications and related matters.

(b) The Manager shall be the chairperson of the Council.

(c) The Authority shall provide staff support for all Council meetings.

(d) The Council shall be composed of eighteen (18) members:

(1) ten (10) members from the government, including

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(A) the Manager of the Jose D. Leon Guerrero Commercial Port of Guam;

(B) the Executive Manager of the A. B. Won Pat International Airport Authority Guam;

(C) the General Managers of

(i) the Guam Visitors Bureau and

(ii) the Guam Mass Transit Authority;

(D) the Directors of

(i) the Department of Public Works,

(ii) the Guam Economic Development and Commerce Authority,

(iii) the Department of Revenue and Taxation,

(iv) the Bureau of Planning;

(E) the President of the Mayors Council;

(F) a representative from the Guam Public Utilities Commission involved with regulating the New Guam Telephone Authority; and

(G) eight (8) appointed by *I Maga'lahi* (the Governor) with the advice and consent of *I Liheslatura* (the Legislature) from among the Guam business community as follows:

(i) one (1) representing the shipping industry;

(ii) one (1) representing the airline/cargo industry;

(iii) one (1) representing the telecommunications industry;

(iv) one (1) representing the trucking industry;

(v) one (1) representing the construction industry;

(vi) one (1) representing the wholesalers/retailers;

(vii) one (1) representing the Chamber of Commerce;

and

(viii) one (1) representing the disabled community.

(e) Appointed members shall serve four (4) year terms, and every effort shall be made to appoint a representative number of women members.

(f) Each member appointed as a representative of the business community must have background or experience within the respective industry.

(g) Nine (9) members shall constitute a quorum.

SOURCE: Added by P.L. 21-095:2 (Mar. 30, 1992). Subsection (c) amended by P.L. 27-110:7 (Nov. 1, 2004).

2017 NOTE: Subsection/subitem designations altered/added pursuant to authority granted by 1 GCA § 1606.

2009 NOTE: Public Law 30-043 (July 2, 2009) added a new subsection (e) regarding the adoption of personnel rules and regulations. This new subsection (e) was renumbered by the Compiler and given its own section number, 10114, to better fit this chapter.

§ 10113.1. Duties.

The Council shall focus its discussions on international, regional and local transportation and communications issues to enhance and assist in the long-range planning efforts for the island, including:

(a) The exchange of views, plans, contacts and information among members and with national and international organizations on transportation, communications and related matters;

(b) The coordination of activities with appropriate local and Federal and international entities including but not limited to the Guam Economic Development Authority, the Guam Environmental Protection Agency, the Aviation Task Force, the Guam Civil Defense, the Guam Educational Telecommunications Corporation, the Territorial Land Use Commission (TLUC), the U.S. Department of Transportation, the Federal Aviation Administration, the Federal Communications Commission, the U.S. Department of Commerce, and the United Nations;

(c) The implementation and monitoring of the progress of transportation and communications recommendations made by the TLUC;

(d) The formation of recommendations concerning the planning and development of transportation and communications

infrastructure for Guam and the monitoring of progress of infrastructure projects to facilitate better coordination of private sector responses for expansion programs. The Council shall have sixty (60) days after preparing the same to submit its recommendations to the appropriate agencies;

(e) The report of its findings and recommendations to the TLUC, the Governor and the Legislature for appropriate action; and

(f) The submission of an annual report to the Governor and the Legislature.

SOURCE: Added by P.L. 21-095:3 (Mar. 30, 1992).

§ 10114. Adoption of the Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port.

(a) (1) The Personnel Rules and Regulations for Jose D. Leon Guerrero Commercial Port (hereafter referred to as the “Proposed Rules”) as received by the Legislative Secretary of *I Mina'Trenta Na Liheslaturan Guåhan* on May 14, 2009, are hereby adopted with the exclusion of: “Appendix A: Listing of Maritime positions Unique to Port Operations and Certified and Technical positions” and “Appendix B: Pay Schedule” found in the Proposed Rules document and shall apply to all classified positions within the Jose D. Leon Guerrero Commercial Port.

(2) The Compensation and Classification Plan shall apply to all positions, classified and unclassified, within the Jose D. Leon Guerrero Commercial Port, inclusive if the positions for Port Police Officers, notwithstanding the DOA’s current study for Law Enforcements and Public Safety positions.

(b) The General Manager shall identify and list by title, the position description and starting pay range no later than sixty (60) days after the effective date of this Act.

(c) The compiled information shall be posted on the PAG website for no less than two (2) weeks to enable affected employees to review and comment on the identified positions and to provide the opportunity to appeal the findings to the General Manager.

(e) The General Manager shall submit said list to the Board of Directors of PAG.

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(1) The Board, shall approve, disapprove, or amend said list at any regularly scheduled Board meeting and shall transmit a copy of the approved list to the Legislature.

(2) The list which the Board acted upon shall not take effect until forty-five (45) days after the date of receipt by the Legislative Secretary.

(f) The implementation of the new Pay Scale levels will not go into effect until the Board of Directors has approved a financial plan to fund the proposed Pay Scale.

(g) The General Manager may petition the Board of Directors to amend, to include, but not limited to, deleting, adding, or modifying such positions, the approved list of the Port's Positions.

(1) The Petition shall include:

(A) The justification for the amendment;

(B) The essential details of the amendment;

(C) An analysis of the similarities or differences between the existing position and the amendment; and

(D) The job title, pay range and position description affected by the amendment.

(2) The General Manager shall post the petition on the Port's website for ten (10) days (Saturday, Sunday and government of Guam holidays excepted).

SOURCE: Added by P.L. 30-043:2 (July 2, 2009) as § 10111.3(e). Renumbered by Compiler to harmoniously fit this chapter.

2017 NOTE: Subitem designations in subsections (a) and (e) added pursuant to authority granted by 1 GCA § 1606.

ARTICLE 2
JOSE D. LEON GUERRERO COMMERCIAL PORT
REVENUE BONDS AND OTHER INDEBTEDNESS

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as Chapter II of Title XV of the Government Code, §§ 14050-14085. Codified as 12 GCA § 10201 *et seq.* Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

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- § 10201. Short Title.
- § 10202. Definitions.
- § 10203. Powers of Board; Incurring Indebtedness.
- § 10204. Amounts of Rates and Charges; Refunds.
- § 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.
- § 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.
- § 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.
- § 10208. Indenture Providing Terms and Conditions of Bonds.
- § 10209. Issues of Bonds.
- § 10210. Covenants and Agreements That May Be Contained in Indenture.
- § 10211. Trustee for Authority and Holders of Bonds.
- § 10212. Duties and Powers of Trustee.
- § 10213. Issuance and Interchange of Coupon and Registered Bonds.
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- § 10215. Places of Payment.
- § 10216. Execution and Authentication of Bonds.
- § 10217. Dates and Maturities of Bonds.
- § 10218. Sale of Bonds.
- § 10219. Payment of Bonds From Sources Other Than Revenues.
- § 10220. Payments Which May be Made Out of Proceeds of Sale of Bonds.
- § 10221. Bonds Shall be Secured by Revenues of System.
- § 10222. Temporary Bonds.
- § 10223. Replacement of Bonds or Coupons.
- § 10224. Tax Exemptions.
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- § 10226. Refunding Bonds.
- § 10227. Use of Other Funds for System.
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- § 10229. Pledge by the Government of Guam.
- § 10230. Limitations as to Competitive Systems.
- § 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.
- § 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.

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- § 10233. Investment of Money in Funds.
- § 10234. Use of Balances of Funds and of Surplus Money in Funds.
- § 10235. Appropriation of Money in Funds.
- § 10236. Payment Agreements.
- § 10237. Credit Enhancement.
- § 10238. No Personal Liability.
- § 10239. Waiver of Immunity.
- § 10240. Construction of Article.

§ 10201. Short Title.

This Article may be cited as the “Jose D. Leon Guerrero Commercial Port Revenue Bond Act.”

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14050. Codified as 12 GCA § 10201. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10202. Definitions.

The following terms wherever used or referred to in this Article or in any indenture entered into pursuant hereto (except to the extent modified therein in accordance with any indenture), *shall* have the following meanings, respectively, unless a different meaning appears from the context:

(a) *Authority* means the Jose D. Leon Guerrero Commercial Port, formerly known as/also known as the Port Authority of Guam.

(b) *Board* has the meaning given in 12 GCA § 10101(b).

(c) *Bonds* means bonds, notes or other evidences of indebtedness, including, but not limited to, direct loans and payment obligations of the Authority under payment agreements and credit provider reimbursement agreements.

(d) *Bondholder* or *holder of bonds* or any similar term means any person who shall be:

(1) the bearer of any outstanding bond or bond registered to bearer or not registered; or

(2) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer;
or

(3) the direct holder of any bond.

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(e) *Credit provider* means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any credit support arrangements for some or all of the bonds.

(f) *Credit provider reimbursement agreement* means any agreement providing for the Authority to repay, from revenues, amounts advanced by a credit provider as credit support for bonds.

(g) *Credit support* means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a credit provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any bonds.

(h) *Jose D. Leon Guerrero Commercial Port Act* means Article 2 of Chapter 10, Title 12, Guam Code Annotated.

(i) *Indenture* means an agreement pursuant to which bonds are issued or incurred by the Authority, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument and including, without limitation, indentures of trust, trust agreements, payment agreements and Credit provider reimbursement agreements.

(j) *Organic Act* means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (48 U.S.C.A. § 1421 *et seq.*)

(k) *Payment agreement* has the meaning given such term in 12 GCA § 10236.

(l) *Person* includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(m) *Revenue* means

(1) all gross income and other amounts received or receivable by the Authority as revenues of any kind from the ownership or operation of any part of the system or the

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supplying and furnishing of services and commodities thereof, including

(2) all rates, rentals, tolls, fees and charges assessable and chargeable by the Authority in respect to dockage, wharfage, demurrage and rates appertaining to the system or derived from the rental of all or part of the system or from the sale or rental of any commodities or goods in connection with the system,

(3) all amounts received by the Authority pursuant to any payment agreement, and

(4) all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the system, and

(5) all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the system,

(6) together with all interest, profits or other income derived from the investment of amounts in the Jose D. Leon Guerrero Commercial Port Revenue Fund.

(n) *System* means all works, property and facilities now owned, operated or leased by the Authority, and used by and useful to the Authority for providing a deep water commercial port known as the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, comprising all harbor works and facilities of the Authority, including all channels, waterways, basins seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities in or upon or pertaining to the lands, improvements and waters of the Authority used or useful for, or necessary for or incidental to, the development and operation of the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, together with all improvements to such works,

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property and facilities or any part thereof hereafter acquired or constructed by the Authority, now or hereafter existing, owned and/or operated by the Authority or its contractors, agents or subcontractors.

(o) *System operation and maintenance costs* means such reasonable and necessary current expenses of the Authority, paid or accrued, for operation, maintenance and repair of the System as may be determined by the Board, and the term may include, at the Board's option, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing, and which shall not include depreciation:

(1) legal and overhead expenses of the Authority directly related and reasonably allocable to the administration of the system;

(2) fidelity bond and insurance premiums appertaining to the system or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the system;

(3) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the system;

(4) the costs incurred in the collection of all or any part of the Revenues; and

(5) any costs of utility services furnished to the system by the Authority or otherwise.

(p) *United States* means the United States of America.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14051. Codified as 12 GCA § 10202. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subitem designations were added to adhere to the Compiler's alpha-numeric scheme, pursuant to the authority granted by 1 GCA § 1606.

§ 10203. Powers of the Board; Incurring Indebtedness.

(a) Pursuant to 12 GCA § 50103(k), the Board, through the Guam Economic Development Authority (GEDA), has the power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act or any other provision of this Chapter or by any law of Guam or of

the United States, but subject to the requirements of 12 GCA § 12116, to exercise any or all of the powers granted to the Board by this Article. The Board, through the agency of GEDA, with the approval of *I Liheslaturan Guåhan* in addition to this Article, may at any time or from time to time authorize the Authority to incur indebtedness:

(1) pursuant to 12 GCA § 10235; or

(2) by the issuance of bonds to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the Authority, for any purpose authorized by law, or for any combination of such purposes for which bonds may be issued or incurred and secured as provided in this Article.

(b) The sale of the bonds *shall* be approved by the Board of Directors of GEDA as provided by Chapter 50 of Title 12, Guam Code Annotated, and the terms and conditions of the issuance of the bonds *shall* be approved by the PUC as provided by Chapter 12 of Title 12, Guam Code Annotated.

(c) It is hereby declared that the system is and *shall* be a public improvement or undertaking as that term is used in Section 11 of the Organic Act of Guam (48 U.S.C.A. § 1423a). All indebtedness issued or entered into by the Authority pursuant to this Section *shall* be repayable only from funds of the Authority available therefor or solely from revenues of the system and, therefore, will not be and *shall not* be deemed to be public indebtedness of Guam as that term is used in Section 11 of the Organic Act of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14052. Codified as 12 GCA § 10203, entitled *Powers of Board; Incurring Indebtedness and Issuing Bonds; Special Obligations; Pledge; Lien; Priority and Trust Fund*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subsection/subitem designations added/altered pursuant to the authority granted by 1 GCA § 1606.

§ 10204. Amounts of Rates and Charges; Refunds.

Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness issued or incurred by the

Authority, the Authority *shall* set rates and charges that *shall* at all times be fixed to yield annual revenues at least equal to:

- (a) the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder;
- (b) the annual system operation and maintenance costs; and
- (c) the annual principal payments and interest charges on all other outstanding indebtedness issued by the Authority. An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and charges that are collected in error and that are refundable by the Authority.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14053. Codified as 12 GCA § 10204, entitled *Rates and Charges*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.

The validity of the authorization and issuance of or incurrence by the Authority of any bonds is not dependent on nor affected in any way by:

- (a) proceedings taken by the Authority for the acquisition, construction or improvement of the system or any part thereof;
- (b) any contracts made by the Authority in connection with the acquisition, construction or improvement of the system or any part thereof; or
- (c) the failure to complete the system or any part thereof for which bonds are authorized to be issued.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14054. Codified as 12 GCA § 10205. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This section was originally enacted as *Bonds: Maximum Amount; Purpose and Term of*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10207, *Board to Declare Purpose and Maximum Amount of Bonds to be Issued*.

§ 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.

(a) The Board shall determine the time, form and manner of issuance of bonds.

(b) No bond issued or sold pursuant to this Article shall be or become a lien, charge or liability against the government of Guam or against the Authority or against any property or funds of the government of Guam or the Authority, except to the extent of the pledge of revenues or part of revenues, as may be provided by the indenture pursuant to which such bonds are issued and every such bond shall contain a recital on its face stating that neither the payment of the principal or any part thereof, nor of any interest thereon, is a debt, liability or obligation of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14055. Codified as 12 GCA § 10206, entitled *Same: Form of; Recitals*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.

Before issuing any bond or bonds, the Board *shall* declare the purpose for which the proceeds of the bonds proposed to be issued *shall* be expended and *shall* specify the maximum amount of bonds to be issued or sold for such purpose. Bonds *shall not* be issued or sold for such purpose in an amount exceeding such specified maximum.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14056. Codified as 12 GCA § 10207. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Indenture Providing Terms and Conditions*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10208, *Indenture Providing Terms and Conditions of Bond*.

§ 10208. Indenture Providing Terms and Conditions of Bonds.

The Authority, subject to the approval of *I Liheslaturan Guåhan* in addition to this Article, may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and exchange of any bonds and coupons issued pursuant to this Article and the terms and conditions on which the same *shall* be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

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SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14057. Codified as 12 GCA § 10208. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally named *Issues, Series and Divisions of Bonds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10209, *Issues of Bonds*.

§ 10209. Issues of Bonds.

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof *shall* in each case be as set forth in such indenture that has been authorized by the Board.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14058. Codified as 12 GCA § 10209, entitled *Same: Interest*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10210. Covenants and Agreements That May Be Contained in Indenture.

An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the Authority as the Board deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

(a) A provision that payments of principal and interest of bonds *shall* be secured by all or by part of revenues and provisions creating one or more funds or accounts to be held by the Authority or bond trustee into which all or any part of revenues shall be deposited:

(1) for payment of the principal of and interest on bonds at or prior to maturity; or

(2) for reserve or sinking funds for the further security of bonds.

All moneys in any such fund or account *shall* be paid out by the Authority or its agent to pay the principal of and interest on

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the bonds when due or when redeemed or purchased prior to maturity, as provided in any indenture.

(b) A provision requiring the Authority or its agent, as trustee as hereinafter provided, to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, or at the place or places and in the manner mentioned in such bonds and/or in the coupons appertaining thereto in accordance with such indenture.

(c) A provision requiring the Authority to operate the system continuously, to the extent practicable under conditions as they may from time to time exist, in any efficient and economical manner.

(d) A provision requiring the Authority to maintain the system and to make all necessary repairs, renewals and replacements to the system and to keep the system at all times in good working order and condition.

(e) A provision requiring the Authority to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights.

(f) A provision requiring the Authority to pay and discharge or cause to be paid and discharged all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon revenues or any part thereof, or which might impair the security of the bonds.

(g) A provision which limits, restricts or prohibits any right, power or privilege of the Authority to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, or to enter into any lease or agreement which impairs or impedes the operation of the system or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the right of the holders of bonds with respect to such revenues.

(h) A provision requiring the Authority to fix, prescribe and collect annually rates or other charges in connection with the system services furnished from the system which, together with other available revenues, will be:

(1) sufficient to pay the principal of and interest on the bonds as they become due and payable, together with such

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additional sums as may be required for any bond reserve fund or account or other fund or account created by the indenture for the security of such bonds;

(2) sufficient to pay the annual system operation and maintenance costs; and

(3) in such additional amount as *shall* be provided in the indenture for the further security or protection of such bonds.

(i) A provision that no service relating the system shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the Authority to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest thereon, or to any fund or account created by any indenture relating to such bonds for the further security or protection of such bonds and to apply such revenues or any part of revenues or cause them to be applied only as provided in the indenture and to invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture.

(k) A provision defining the power of the Authority in applying the proceeds of the sale of any issue of bonds for the acquiring, constructing or completing of the system or any part thereof.

(l) A provision permitting the Authority to issue additional bonds or one or more additional series of bonds, equally secured with bonds theretofore issued under the indenture, for the purpose of acquiring, constructing or completing, improving or extending the system or any part thereof or for the purpose of refunding any prior bonds or any other obligations of the Authority or for any purpose authorized by law; and a provision limiting the power of the Authority to issue any additional bonds so secured or any other additional bonds for such purpose.

(m) A provision requiring, specifying or limiting the kind, amount and character of insurance (or any reserve fund or funds in lieu of insurance) to be maintained by the Authority on the system or any part thereof and the use and disposition of the proceeds of

any such insurance thereafter collected or of the moneys in any such reserve fund.

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds of the Authority then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(o) A provision designating the rights, limitations, powers and duties arising upon breach by the Authority of any of the covenants, conditions or obligations contained in the indenture.

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the Authority and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom. With respect to any provision relating to the modification or amendment of an indenture, the Authority may agree that bonds held by the Authority, Guam, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind of class) *shall not* be counted as outstanding bonds, or be entitled to vote or assent, but *shall*, nevertheless, be subject to any such modification or amendment.

(q) A provision limiting the right of action by individual bondholders in the event of a default by the Authority or proscribing the procedure for the conduct of any such action by an individual bondholder.

(r) A provision permitting the Authority to purchase outstanding bonds of the Authority from any moneys or funds or accounts referred to in the indenture or otherwise legally available for such purpose.

(s) A provision for any working capital fund or account or contingency fund or operating reserve account relating to the system.

(t) A provision for the replacement of lost, destroyed or mutilated bonds or coupons.

(u) A provision or provisions relating to such other acts and matters as may be necessary or convenient or desirable in order better to secure the bonds or to make the bonds more marketable.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14059. Codified as 12 GCA § 10210. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Issuance and Interchange*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10213, *Issuance and Interchange of Coupon and Registered Bonds*.

§ 10211. Trustee for Authority and Holders of Bonds.

(a) The Authority or any agent designated by GEDA on behalf of the Authority *shall* act as trustee for the Authority and the holders of bonds issued hereunder and the Authority may authorize the trustee to act on behalf of the holders of the bonds or any stated percentage thereof and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

(b) The Authority may provide in an indenture:

(1) for the deposit of all or any portion of the revenues with the Authority and for the holding thereof by the Authority in one or more separate funds or accounts in the Jose D. Leon Guerrero Commercial Port Revenue Fund; and

(2) for the transfer to the trustee of all or any portion of the revenues as are provided as security for the bonds and for the holding thereof by the trustee in one or more separate funds or accounts. All money in each such fund or account *shall* be disbursed only as provided herein and in the indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14060. Codified as 12 GCA § 10211. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Redemption Prior to Maturity*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10214, *Redemption of Bonds Prior to Maturity*.

§ 10212. Duties and Powers of Trustee.

The Authority *shall* prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of the bonds provided for in such indenture and with respect to the payment of principal of and interest on such bonds, the redemption thereof, the registration and discharge from registration thereof and the management of any and all funds provided as security therefor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14061. Codified as 12 GCA § 10212. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Places and Manner of Payment*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10215, *Places of Payment*.

§ 10213. Issuance and Interchange of Coupon and Registered Bonds.

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for registered bonds and registered bonds for coupon bonds, and may provide that bonds shall be registered as to principal only or as to both principal and interest or otherwise as the Authority may determine.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14062. Codified as 12 GCA § 10213. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Covenants and Agreements*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10210, *Covenants and Agreements That May Be Contained in Indenture*.

§ 10214. Redemption of Bonds Prior to Maturity.

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14063. Codified as 12 GCA § 10214, entitled *Same: As Negotiable Instruments*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10215. Places of Payment.

An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

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SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14064. Codified as 12 GCA § 10215. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Trustee: Federal Reserve Member Bank*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10211, *Trustee for Authority and Holders of Bonds*.

§ 10216. Execution and Authentication of Bonds.

An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the Authority and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the Authority or of any agent designated by the Authority as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds or coupons ceases to be an officer or agent before the delivery of the bonds or coupons, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as if he had remained such officer or agent until the delivery of the bonds and coupons.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14065. Codified as 12 GCA § 10216. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Places and Manner of Payment*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10212, *Places of Payment*.

§ 10217. Jose D. Leon Guerrero Commercial Port Construction Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited forthwith to the credit of a fund to be designated as the Guam Port Authority Development Fund, which fund is hereby created, and shall be expended for the purposes authorized by this Article and the indenture subject to any limitations provided therein. This fund shall be a separate account within the Port Authority Fund (See § 10108 (b), this Title).

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14066. Codified as 12 GCA § 10217, entitled *Guam Port Authority Development Fund*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10218. Sale of Bonds.

Bonds authorized to be issued under this Article *shall* be sold by the Authority for cash, in accordance with the provisions of a resolution

providing for such sale adopted by the Board. The bonds may be sold at either public or private sale, and upon such terms and conditions as *shall* be authorized by the Board, which may provide that the bonds may be sold at lesser or greater than their par or face value.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14067. Codified as 12 GCA § 10218. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Balances of Fund*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10234, *Use of Balances of Funds and of Surplus Money in Funds*.

§ 10219. Payment of Bonds from Sources Other Than Revenues.

The Authority may use and expend all or any part of any funds other than revenues or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14068. Codified as 12 GCA § 10219, entitled *Preparation of Bonds and Documents*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10220. Payments Which May Be Made Out of Proceeds of Sale of Bonds.

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) for payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the Authority of the cost of any work done by the United States or such public body for or jointly or in conjunction with the Board;

(b) for payment of any engineering, inspection, legal, consultants', bond trustees', escrow agents' or paying agents' fees relating or incidental to:

(1) the acquisition, construction or improvement of the system or any part thereof; or

(2) the authorization, issue or sale of bonds;

(c) for payment of any costs or expenses relating to the authorization, issuance or sale of bonds;

(d) for deposit in any one or more reserve funds or accounts in lieu of insurance or in any working capital fund or account or contingency fund or reserve account relating to the system;

(e) for payment of interest on bonds during the projected period of acquisition, construction or improvement of the system or any part thereof for the acquisition, construction or improvement of which such bonds have been issued and for a period not to exceed three (3) years thereafter;

(f) for deposit in any reserve or sinking fund;

(g) for payment of the principal of and interest on any indebtedness incurred pursuant to 12 GCA § 10235 that is by its terms repayable from the proceeds of sale of bonds;

(h) for payment of any prior bonds or other obligations of the Authority; or

(i) The Authority is prohibited from using bond proceeds for any purpose not provided for in this Section without legislative approval in the form of duly enacted legislation.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14068. Codified as 12 GCA § 10220. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Bonds: Execution and Authentication*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10216, *Payments Which May Be Made Out of Proceeds of Sale of Bonds*.

§ 10221. Bonds Shall Be Secured by Revenues of System.

(a) All bonds authorized by this Article *shall* be secured by a statutory lien on revenues of the system.

(1) This lien *shall* arise automatically without the need for any action or authorization by *I Maga'låhen Guåhan*, the government of Guam, the Authority or any other person or entity.

(2) Such lien *shall* be valid and binding from the time bonds are issued.

(3) The revenues of the system *shall* immediately be subject to such lien, and the lien *shall* automatically attach to the revenues of

the system and be effective, binding, and enforceable against the Authority, its successors, assignees, and creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

(4) Revenues of the system that are not required to make payments on the bonds *shall* automatically, and without the need for any further action, be released from such lien and *shall* be available for appropriation for any other lawful purpose of the government.

(5) The statutory lien described in this Section *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute.

(b) In addition to the statutory lien provided for in this Section, an indenture may provide that payment of the bonds and the interest thereon *shall* be secured by a pledge of and lien upon all or a portion of the revenues of the system.

(1) Any such pledge and lien *shall* be valid and binding from the time the pledge is made without any further act.

(2) The revenues pledged and thereafter received by the Authority or by any trustee, depository or custodian *shall* be deposited in the Jose D. Leon Guerrero Commercial Port Revenue Fund and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority or such trustee, depository or custodian, irrespective of whether the parties have notice thereof.

(3) The pledge *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute.

(4) The indenture by which such pledge is created need not be recorded.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14070. Codified as 12 GCA § 10221. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Sale of*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10218, *Sale of Bonds*.

Subsection/subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 10222. Temporary Bonds.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Authority may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14071. Codified as 12 GCA § 10222. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Payment from Other than Revenues*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA §10219, *Payment of Bonds from Sources Other Than Revenues*.

§ 10223. Replacement of Bonds or Coupons.

The Authority may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14072. Codified as 12 GCA § 10223. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Payments from Sale*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10223 *Replacement of Bonds or Coupons*.

§ 10224. Tax Exemptions.

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act of Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14073. Codified as 12 GCA § 10224. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Temporary*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10222, *Temporary Bonds*.

§ 10225. Bonds as Legal Investments and as Security for Performance of Any Act.

Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of indebtedness of Guam may be so deposited

and may also be used as security for the deposit of public moneys in banks in Guam.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14074. Codified as 12 GCA § 10225. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Replacement of*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10223, *Replacement of Bonds or Coupons*.

§ 10226. Refunding Bonds.

The Authority may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article or any other prior obligations of the Authority. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14075. Codified as 12 GCA § 10226. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Tax Exemptions*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10224, *Tax Exemptions*.

§ 10227. Use of Other Funds for System.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Authority may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Jose D. Leon Guerrero Commercial Port Act.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14076. Codified as 12 GCA § 10227. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Bonds as Legal Investments and Security*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10225, *Bonds as Legal Investments and as Security for Performance of Any Act*.

§ 10228. Insurance.

The Authority may insure against loss of revenues from any cause whatsoever. The Authority may insure against public liability or property

damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14077. Codified as 12 GCA § 10228. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Same: Refund*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10226, *Refunding Bonds*.

§ 10229. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Authority has the ability to implement the capital improvements authorized to be financed by this legislation. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely repayments of their bonds. The government of Guam hereby pledges that while any bonds of the Authority issued under this Article remain outstanding and not fully performed or discharged:

(a) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of any agreements made with bondholders in accordance with this Article;

(b) to maintain the rights and remedies of bondholders provided in this Article and any indenture;

(c) to protect the exclusive right of the Authority to operate or maintain within Guam any system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive system; and

(d) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired

employees of the Authority (or its lawful predecessors) as may be required by the laws of Guam; and with the exception that the Authority *shall* collaborate fully, including, but not limited to, with the Guam Customs and Quarantine Agency and other local law enforcement and regulatory agencies to facilitate the inspection and prevention of illegal entry into Guam of potentially unlawful immigrants or items or invasive species, by or through any works, property, and facilities owned, operated, or leased by the Authority, and to facilitate the protection of coral, wildlife and biodiversity in Apra Harbor.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14078. Codified as 12 GCA § 10229, entitled *Same: Same: Principal Amount*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10230. Limitations as to Competitive Systems.

An indenture may include such limitations as to acquisition, ownership or operation by the government of Guam of enterprises which may compete with the system as may be deemed necessary or desirable for the security of bonds issued pursuant to this Article.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14079. Codified as 12 GCA § 10230, entitled *Title in Authority Subject to Trusts in Favor of Bondholders*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.

The proceeds from the sale of all bonds authorized by this Article shall be deposited to the credit of a fund to be designated as the Jose D. Leon Guerrero Commercial Port Construction Fund, which fund is hereby created. The money in said Construction Fund shall be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 12 GCA § 10220, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14080. Codified as 12 GCA § 10231. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Use of Other Funds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10227, *Use of Other Funds for System*.

§ 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.

All revenues received from the operation of the system shall be deposited to the credit of the Jose D. Leon Guerrero Commercial Port Revenue Fund, which fund is hereby created. Moneys in the Jose D. Leon Guerrero Commercial Port Revenue Fund may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 12 GCA § 10210(j):

- (a) to pay the annual system operation and maintenance costs;
- (b) to pay principal or interest on any bonds;
- (c) to replenish any debt service reserve funds related to bonds;
- (d) to pay any amounts due and owing under any payment agreement or any credit provider reimbursement agreement; and
- (e) for any other purposes of the Authority; all as provided in any indenture or indentures and subject to any restrictions provided by law or any indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14081. Codified as 12 GCA § 10232. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Insurance*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10228, *Insurance*.

§ 10233. Investment of Money in Funds.

Moneys in the Jose D. Leon Guerrero Commercial Port Construction Fund and Revenue Fund may be invested by the Authority and any revenues in any other fund or account held by or on behalf of the Authority or its agent may be invested by the Authority or its agent, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments shall be collected by the Authority or its agent, as the case may be, and shall be deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14082. Codified as 12 GCA § 10233, entitled *Right of Bondholders to Bring Action*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10234. Use of Balances of Funds and of Surplus Money in Funds.

Any balance remaining in any of the funds or accounts created by this Article or any indenture after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system or to the Authority, as the Board may determine, subject to the limitations and restrictions in any indenture. After all bonds *shall* have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture *shall* be transferred to the Authority and *shall* be and remain available for the acquisition, construction, improvement, maintenance or operation of the system or for any other purposes of the Authority herein or hereafter authorized by law.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14083. Codified as 12 GCA § 10234. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally enacted as *Appropriation of Money in Funds*, which was reenacted by P.L. 34-070:2 (Dec. 7, 2017) as 12 GCA § 10235, *Appropriation of Money in Funds*.

§ 10235. Appropriation of Money in Funds.

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purposes herein and therein provided.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14084. Codified as 12 GCA § 10235 entitled *Validity of Bonds, Recital or Issuance Pursuant to Article*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10236. Payment Agreements.

In addition to and in amplification of the powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act, this Article or any other law of Guam or of the United States, the Board has power and is hereby authorized to cause the Authority to enter into any contracts in connection with, or incidental to, the issuance of bonds or other indebtedness, or the carrying of any investment or program of investment or entering into or maintaining any agreement which secures bonds or other indebtedness (each, a “payment agreement”), which the Board determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or such indebtedness, investment, program of investment or agreement and the

contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by the Board in furtherance of the purposes of this Chapter, including, without limitation, contracts commonly known as interest rate swap agreements or contracts providing for payments based on levels of, or changes in, interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, put or call to hedge payment, rate, spread, or similar exposure with the parties, selected by the means, and containing the payment, security, default, remedy, and other terms and conditions, authorized by the Board, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate; provided, that any amounts received by the Authority pursuant to any payment agreement *shall* constitute revenues and that any obligation of the Authority under any payment agreement *shall* be payable solely from, and secured solely by a pledge of, revenues in accordance with 12 GCA § 10237. Any payment agreement may include a provision that any obligation of the Authority under any such payment agreement *shall* be secured by all or by part of revenues; provided that, at the time of execution and delivery of each payment agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to the bonds.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14085. Codified as 12 GCA § 10236, entitled *Publication of Notice of Adoption of Resolution; Statute of Limitations on Action Involving Bonds*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10237. Credit Enhancement.

(a) The Board has the power and is hereby authorized to cause the Authority to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as it determines are necessary or desirable to improve the security and marketability of the bonds or the security of the government's obligations under any contract or agreement entered into under 12 GCA § 10236.

(b) Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or

other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the Authority under any reimbursement agreement *shall* be payable solely from revenues.

(c) Any reimbursement agreement may include a provision that the obligations of the Authority under the agreement *shall* be secured by all or by part of revenues; provided, that at the time of execution and delivery of each such agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to bonds.

SOURCE: Added by P.L. 13-087:1 (Oct. 31, 1975) as GC § 14086. Codified as 12 GCA § 10237 entitled *Short Term Borrowing*. Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: Subsection designations added pursuant to the authority granted by 1 GCA § 1606.

§ 10238. No Personal Liability.

No member of the Board, employee of the Authority, or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

SOURCE: Added by P.L. 32-042:2 (June 28, 2013), entitled *Sovereign Immunity Waived*. Amended by P.L. 32-107:1 (Feb. 4, 2014). Repealed and reenacted by P.L. 34-070:2 (Dec. 7, 2017).

§ 10239. Waiver of Immunity.

Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the Authority *shall not* be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as to the award of attorney's fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds. *I Liheslatura* (the Legislature) does not waive immunity for costs, pre-judgment interest and post-judgment interest.

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

SOURCE: Added pursuant to the reenactment of this Article by P.L. 34-070:2 (Dec. 7, 2017).

2017 NOTE: This provision was originally added as 12 GCA § 10238, by P.L. 32-042:2 (June 28, 2013), entitled *Sovereign Immunity Waived*. Amended by P.L. 32-107:1 (Feb. 4, 2014).

§ 10240. Construction of Article.

This Article *shall* be liberally construed to carry out the objects and purposes and the declared policy of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in the Authority or the Board by virtue of any provisions of the Organic Act or laws of Guam.

SOURCE: Added pursuant to the reenactment of this Article by P.L. 34-070:2 (Dec. 7, 2017).

ARTICLE 3

**PROHIBITION ON THE PRIVATIZATION, LEASE OR SALE
OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT**

§ 10301. [Untitled].

§ 10301. [Untitled].

Unless otherwise explicitly authorized by statute, the Board of Directors of the Jose D. Leon Guerrero Commercial Port is hereby prohibited from expending anything of value, either through cash or in-kind, directly or indirectly, or executing any solicitations through the Request for Proposal or Request for Information, or invitation to bid consistent with Title 5 of the Guam Code Annotated, or to commission the development of a master plan, either through its employees, partners, or agents, exploring the sale or lease of the Port. Let it be known, therefore, to anyone contemplating this notion that the Port is not to be privatized, leased or sold.

SOURCE: Added by P.L. 27-060:1 (Dec. 21, 2003). Repealed and reenacted by P.L. 31-035:2 (Apr. 18, 2011).

12 GCA AUTONOMOUS AGENCIES
CH. 10 PORT AUTHORITY OF GUAM

2014 NOTE: As added by P.L. 27-060:1 (Dec. 21, 2003), this Chapter was entitled “Jose D. Leon Guerrero Commercial Port Public-Private Partnership” and included the following provisions:

- § 10301. Short Title.
- § 10302. Legislative Intent.
- § 10303. Public-Private Partnership Authorization.
- § 10304. Submission of Proposals.
- § 10305. Terminal Operator.
- § 10306. Port Employees.
- § 10307. Port Employment..
- § 10308. Temporary Casual Employment Authorized.
- § 10309. Revenue Sharing.
- § 10310. Capital Improvement Fund.
- § 10311. Tariffs.
- § 10312. Equipment.
- § 10313. Operational Area.
- § 10314. Indemnification.
- § 10315. Cargo Handling Operations.
- § 10316. Insurance.
- § 10317. Port Master Plan.
- § 10318. Legislative Approval.
- § 10319. Specific Disclosure Rules.
- § 10320. Conflicts of Interest.
- § 10321. Transitional Period.
- § 10322. Severability.

ARTICLE 4
PUBLIC-PRIVATE PARTNERSHIP THROUGH A
PERFORMANCE MANAGEMENT CONTRACT

SOURCE: Article added by P.L. 29-023:1 (Oct. 24, 2007).

- § 10401. Public-Private Partnership Authorization through a Performance Management Contract.
- § 10402. Contract Limits.
- § 10403. Conflicts.
- § 10404. Other Public-Private Partnership through Performance Management Contract.
- § 10405. Termination of Contract for Reasons Unrelated to Performance.
- § 10406. Severability.

§ 10401. Public-Private Partnership Authorization through a Performance Management Contract.

(a) The Board of Directors of the Jose D. Leon Guerrero Commercial Port (Port) is authorized to issue a Request for Proposal (RFP), Multi-Step Bid (MSB), Invitation for Bid (IFB), soliciting bids or proposals from qualified parties for the management, operation and maintenance of its cargo handling equipment through a performance management contract, subject to the procurement laws of Guam. The scope of work required through this RFP, MSB or IFB shall include the daily operation and maintenance of its cargo handling equipment; any repairs required, inclusive of all parts and labor; performance monitoring requirements; and preventive maintenance of all equipment and/or facilities directly associated with the equipment, including, but not limited to, the acquisition for replacement of such equipment.

(b) The RFP, MSB and/or IFB shall include performance standards that will provide operating criteria, guidelines and requirements to minimize costly downtime and maximize cargo handling equipment availability and its life span. Parties interested in submitting proposals shall have sixty (60) days to prepare and submit a response to the Port. The General Services Agency Chief Procurement Officer shall be an observer throughout the RFP, MSB or IFB process as specified in this Section, shall receive copies of all documents involved and shall be invited to any meetings regarding the public-private partnership process specified in this Section.

(c) The Port may award a performance management contract subject to the RFP, MSB or IFB detailed in this Section no later than two hundred twenty (220) days from the established deadline for submission or receipt of the RFP, MSB or IFB; provided, that qualified offerors have submitted proposals in compliance with the procurement laws of Guam and the provisions of this Section. The Attorney General shall act as legal advisor during all phases of the solicitation or procurement process and shall have the authority to extend the timelines as outlined in this Section as it deems necessary.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007). Amended by P.L. 30-090:2 (Feb. 8, 2010).

2013 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance to the authority granted by 1 GCA § 1606.

§ 10402. Contract Limits.

The awarded contract, which is subject to the provisions of this Act, may be awarded for periods of not less than five (5) years, with options to renew every five (5) years and not to exceed a total of twenty (20) years. The awarded contract, subject to the provisions of this Act, must contain performance reviews at least annually, and provisions for contract termination and penalty based upon such review.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10403. Conflicts.

No contract awarded subject to the provisions of this Act shall be awarded to any party who has a blood or marital relationship to the third (3rd) degree of consanguinity with the General Manager of the Port, a Board Member of the Port, *I Maga'lahaen Guåhan* or a Member of *I Liheslaturan Guåhan*.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10404. Other Public-Private Partnership through Performance Management Contract.

Notwithstanding any other provisions of law, the Board of Directors is authorized to enter into a public-private partnership through a performance management contract for other aspects of the Port operations it deems necessary, provided that the processes outlined in the above sections are complied with.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10405. Termination of Contract for Reasons Unrelated to Performance.

Should at some point in the future, a determination be made by *I Liheslaturan Guåhan*, that a broad-scale public-private partnership for the Port operations be advisable, subject to legislative approval, and if any agreements entered into pursuant to this Act are viewed as impeding, such provisions may be included in each contract for the purchase of such contract, except that no contract shall be purchased in any circumstance where a Contractor's performance has been deemed to be unacceptable in accordance with the provisions of this Act.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

§ 10406. Severability.

If any provision of this Act or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

SOURCE: Added by P.L. 29-023:1 (Oct. 24, 2007).

PORT AUTHORITY OF GUAM
Jose D. Leon Guerrero Commercial Port

PERSONNEL RULES AND REGULATIONS
for
Maritime-Related Positions Unique to Port Operations
and
Certified, Technical and Professional Employees

Adopted by the Board of Directors on March 26, 2009

Adopted by Public Law 30-43, effective July 2, 2009

Approved Board Resolution No. 09-06 on August 27, 2009

Port Compensation & Classification Plan

Pursuant to Public Law 30-43



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932

TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

02 JUL 2009

2009 JUL -3 AM 9:32

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 142(COR) "AN ACT TO ADOPT THE PERSONNEL RULES AND REGULATIONS FOR JOSE D. LEON GUERRERO COMMERCIAL PORT AND TO AUTHORIZE COMPENSATION AND BENEFIT ADJUSTMENTS " which I signed into law on July 2, 2009 as **Public Law 30-43**.

Sinseru yan Magåhet,

MICHAEL W. CRUZ, M.D.
I Maga'låhen Guåhan, para pa'go
Acting Governor of Guam

Attachment: copy of Bill

30-09-0805
Office of the Speaker
Judith T. Won Pat, Ed. D.

Date _____
Time _____
Received by _____

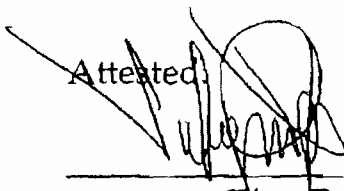
0816

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

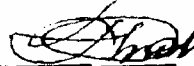
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 142 (COR), "AN ACT TO ADOPT THE PERSONNEL RULES AND REGULATIONS FOR JOSE D. LEON GUERRERO COMMERCIAL PORT AND TO AUTHORIZE COMPENSATION AND BENEFIT ADJUSTMENTS," was on the 2nd day of July 2009, duly and regularly passed.

Attested:

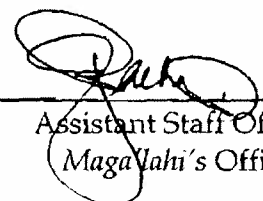


Tina Rose Muña Barnes
Senator and Legislative Secretary




Judith T. Won Pat, Ed. D.
Speaker

.....
This Act was received by I Maga'lahaen Guåhan this 2 day of July, 2009, at
2:43 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 07.02.09

Public Law No. 30-43

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 142 (COR)

As substituted by the Committee on Utilities
Transportation, Public Works and Veterans Affairs
and amended on the Floor.

Introduced by:

T. C. Ada
F. F. Blas, Jr.
Adolpho B. Palacios, Sr.
Ray Tenorio
F. B. Aguon, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
v. c. pangelinan
M. J. Rector
R. J. Respicio
Telo Taitague
Judith T. Won Pat, Ed.D.

**AN ACT TO ADOPT THE PERSONNEL RULES AND
REGULATIONS FOR JOSE D. LEON GUERRERO
COMMERCIAL PORT AND TO AUTHORIZE
COMPENSATION AND BENEFIT ADJUSTMENTS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds
that the Jose D. Leon Guerrero Commercial Port (Port) serves as the entry point for
approximately ninety percent (90%) of goods consumed on Guam, hence, the
services provided are critical to the economic viability of the community. The Port
must retain qualified workers in maritime positions and employ personnel who are

1 certified with necessary technical *or* professional skills and experience. The ability
2 to maintain experienced, trained and skilled employees is a significant factor in the
3 efficiency of the Port and ensures the expeditious movement of cargo. Public Law
4 29-24 authorizes the Port to promulgate personnel rules and regulations and
5 provides limited authority to the Port to establish pay scales for certified, technical
6 and professional positions subject to the provisions of the Administrative
7 Adjudication Act.

8 Pursuant to the Administrative Adjudication Act, the Port held a public
9 hearing on its proposed Rules and Regulations for Maritime-Related Positions
10 Unique to Port Operations and Certified, Technical and Professional Employees on
11 February 9, 2009. The Board of Directors of the Port approved the proposed Rules
12 and Regulations on March 26, 2009, and voted to transmit such rules and
13 regulations, via the Office of the Governor, to *I Mina'Trenta Na Liheslaturan*
14 *Guåhan* for final approval and adoption.

15 *I Mina'Trenta Na Liheslaturan Guåhan* finds that the Port Compensation
16 and Classification Plan Study has analyzed and reviewed one hundred seventy-six
17 (176) positions within the Port. Further, *I Liheslaturan Guåhan* finds that Public
18 Law 29-24 defines Maritime Positions Unique to Port Operations and Certified,
19 Technical and Professional Positions in part as positions with multi-skill
20 qualification requirements and with specific maritime knowledge and skills and
21 technical and professional qualifications which are unique and critical to the Port's
22 operation and which are found in no other government entity which is *not* a port of
23 entry. Further, *I Liheslaturan Guåhan* finds that of the one hundred seventy-six
24 (176) positions analyzed, all are multi-skill and require specific maritime
25 knowledge and skills and technical and professional qualifications which are
26 unique and critical to the Port's operation and, which are found in no other
27 government entity and which is not a port of entry within the meaning of Public

1 Law 29-24. These requirements include, but are *not limited to*, undergoing
2 maritime security training on the Maritime Security Levels and Port Facility
3 Security Plan, as mandated by the Maritime Transportation Security Act of 2002
4 (MTSA), the United States Coast Guard IS 100 and IS 200 training, orientation on
5 Port Security Plan and Maritime Security Act. *I Liheslaturan Guåhan* finds,
6 therefore, that these one hundred seventy-six (176) positions are Maritime
7 Positions Unique to Port Operations and Certified, Technical and Professional
8 Positions which *shall* be included in the compensation and classification plan.

9 **Section 2.** A new subsection (e) is hereby added to §10111.3, Chapter 10
10 of Title 12, Guam Code Annotated is hereby *added* as follows:

11 “(e) **Adoption of the Personnel Rules and Regulations for Jose**
12 **D. Leon Guerrero Commercial Port.**

13 (1) The Personnel Rules and Regulations for Jose D. Leon
14 Guerrero Commercial Port (hereafter referred to as the “Proposed
15 Rules”) as received by the Legislative Secretary of *I Mina’Trenta Na*
16 *Liheslaturan Guåhan* on May 14, 2009, are hereby adopted with the
17 exclusion of: “Appendix A: Listing of Maritime positions Unique to
18 Port Operations and Certified and Technical positions” and
19 “Appendix B: Pay Schedule” found in the Proposed Rules document
20 and *shall* apply to all classified positions within the Jose D. Leon
21 Guerrero Commercial Port.

22 The Compensation and Classification Plan *shall* apply to all
23 positions, classified and unclassified, within the Jose D. Leon
24 Guerrero Commercial Port, inclusive *if* the positions for Port Police
25 Officers, notwithstanding the DOA’s current study for Law
26 Enforcements and Public Safety positions.

1 (2) The General Manager *shall* identify and list by title, the
2 position description and starting pay range *no later than sixty* (60)
3 days after the effective date of this Act.

4 (3) The compiled information shall be posted on the PAG
5 website for *no less than* two (2) weeks to enable affected employees
6 to review and comment on the identified positions and to provide the
7 opportunity to appeal the findings to the General Manager.

8 (4) The General Manager *shall* submit said list to the Board
9 of Directors of PAG. The Board, *shall* approve, disapprove, *or* amend
10 said list at any regularly scheduled Board meeting and *shall* transmit a
11 copy of the approved list to the Legislature. The list which the Board
12 acted upon *shall not* take effect until forty-five (45) days after the date
13 of receipt by the Legislative Secretary.

14 (5) The implementation of the new Pay Scale levels will *not*
15 go into effect until the Board of Directors has approved a financial
16 plan to fund the proposed Pay Scale.

17 (6) The General Manager may petition the Board of
18 Directors to amend, to include, but *not limited to*, deleting, adding, *or*
19 modifying such positions, the approved list of the Port's Positions.

20 (a) The Petition *shall* include:

- 21 (1) The justification for the amendment;
22 (2) The essential details of the amendment;
23 (3) An analysis of the similarities *or* differences
24 between the existing position and the amendment;
25 and
26 (4) The job title, pay range and position
27 description affected by the amendment.

1 (b) The General Manager *shall* post the petition on the
2 Port's website for ten (10) days (Saturday, Sunday and
3 government of Guam holidays excepted).

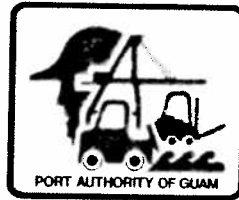
4 **Section 3.** Notwithstanding any other provisions of law, rule, regulation,
5 *or* Executive Order, the Personnel Rules and Regulations submitted by the Port
6 Authority of Guam is hereby approved by *I Mina'Trenta Na Liheslaturan Guåhan*
7 and a new Chapter 8 of Title 10 of the Guam Administrative Rules and
8 Regulations is hereby enacted.

9 **Section 4. Severability.** *If* any provision of this law or its application to
10 any person or circumstance is found to be invalid or contrary to law, such
11 invalidity shall *not* affect other provisions or applications of this law which can be
12 given effect without the invalid provisions or applications, and to this end the
13 provisions of this law are severable.

BOARD OF DIRECTORS

Resolution No. 09-06

Chairman:
Monte Mesa
Vice Chairperson:
Jovyna Lujan
Secretary:
Marilou Lacson
Members:
Joseph Camacho
William Beery



**RELATIVE TO APPROVING AND ADOPTING THE JOSE D. LEON GUERRERO
COMMERCIAL PORT COMPENSATION AND CLASSIFICATION PLAN FOR
MARITIME RELATED POSITIONS UNIQUE TO PORT OPERATIONS AND CERTIFIED,
TECHNICAL AND PROFESSIONAL POSITIONS CONDUCTED BY ALAN SEARLE &
ASSOCIATES AS REQUIRED BY PUBLIC LAW 30-43.**

BE IT RESOLVED BY THE BOARD OF DIRECTORS:

WHEREAS, Public Law 30-43 approved the Personnel Rules and Regulations for maritime related positions unique to Port operations and certified, technical and professional positions; and

WHEREAS, said law mandated (1) the General Manager shall identify and list by title, the position description and starting pay range no later than 60 days after the effective date of the law; (2) the compiled information shall be posted on the Port website for no less than 2 weeks to enable affected employees to review and comment on the identified positions and to provide the opportunity to appeal the findings to the General Manager; and (3) the General Manager shall submit said list to the Board of Directors of the Port; and

WHEREAS, Public Law 30-43 stipulated that the Board shall approve, disapprove or amend said list at any regularly scheduled Board meeting and shall submit a copy of the approved list to the Guam Legislature; and

WHEREAS, the list which the Board acted upon shall not take effect until 45 days after the date of receipt by the Legislative Secretary; and

WHEREAS, the compensation plan will not go into effect until a Financial Plan to fund the proposed pay scale is approved by the Board of Directors; and

WHEREAS, the General Manager in a memorandum dated July 14, 2009 advised the employees that the compensation and benefits review results were available on the website for review and they have an opportunity to seek clarification or appeal their position's job evaluation results with the Port Compensation Consultant; and

WHEREAS, the Port Compensation Consultant reviewed the appeals submitted from July 14, 2009 to August 21, 2009 and provided his results to the Port on August 24, 2009; and

WHEREAS, on August 27, 2009, the Compensation and Classification Plan for Maritime Related Positions Unique to Port Operations and Certified, Technical and Professional Positions, which included the results of the appeals filed by employees was presented to the Board at its regular meeting; and

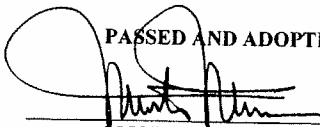
WHEREAS, the Board concurs that the requirements of Public Law 30-43 were complied with by the Port; now therefore be it

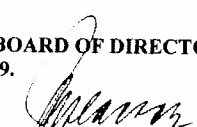
RESOLVED, the Board of Directors approves and adopts the Compensation and Classification Plan conducted by Alan Searle & Associates; and be it further

RESOLVED, the Compensation and Classification Plan shall be transmitted to the Legislative Secretary of the 30th Guam Legislature and the Guam Legislature as mandated by Public Law 30-43; and be it further

RESOLVED, that the Chairman certify to and the Secretary attest the adoption hereof and that a copy of this resolution be transmitted to the Legislative Secretary of the 30th Guam Legislature.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS
THIS 27th DAY OF August, 2009.**


MONTE D. MESA
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM


MARIA LOURDES S. LACSON
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

COMMENTS

The findings and intent of Public Law 30-43 stated the 30th Guam Legislature found that the Port Compensation and Classification Plan Study analyzed and reviewed 176 positions within the Port. Further, the Legislature found that Public Law 29-24 defines Maritime-Related Positions Unique to Port Operations and Certified, Technical and Professional Positions in part as positions with multi-skill qualification requirements and with specific maritime knowledge and skills and technical and professional qualifications which are unique and critical to the Port's operation and which are found in no other government entity which is not a port of entry. The Legislature found that of the 176 positions analyzed, all are multi-skill and require specific maritime knowledge and skills and technical and professional qualifications which are unique and critical to the Port's operation and, which are found in no other government entity and which is not a port of entry within the meaning of Public Law 29-24. These requirements include, but are not limited to, undergoing maritime security training on the Maritime Security Levels and Port Facility Security Plan, as mandated by the Maritime Transportation Security Act of 2002 (MTSA), the United States Coast Guard IS 100 and IS 200 training, orientation on Port Security Plan and Maritime Security Act. The Legislature therefore found that the 176 positions are Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions which shall be included in the Port Compensation and Classification Plan.

As a result, Section 1.201, Exclusion from Coverage, of Chapter 1 of the Personnel Rules and Regulations is no longer applicable to the Port Police series of positions. However, if the Law Enforcement and Public Safety Classification and Compensation Study provide greater benefits and salary adjustments to the Port law enforcement positions, they will be reallocated from the Port Classification and Compensation Study to Law Enforcement and Public Safety Classification and Compensation Study.

The Personnel Rules and Regulations for the Jose D. Leon Guerrero Commercial Port is hereby adopted with the exclusion of: "Appendix A: Listing of Maritime positions Unique to Port Operations and Certified and Technical positions" and "Appendix B: Pay Schedule" found in the rules documents and shall apply to all classified positions within the Jose D. Leon Guerrero Commercial Port.

I. STATUTORY AUTHORITY FOR RULE; COMPLIANCE

A. Administrative Adjudication Act

The attached Personnel Rules and Regulations for Maritime Positions Unique to Port Operations and Certified, Technical, and Professional Employees (the “Rules”) are submitted by the Jose D. Leon Guerrero Commercial Port (the “Authority”) to the Legislative Secretary of *I Liheslaturan Guåhan* pursuant to the Administrative Adjudication Act (“AAA”) which is codified at 5 G.C.A. §§ 9300 *et seq.*

B. Need for Rule

The attached Rules are needed for the Authority to comply with the mandate of Public Law 29-24. Public Law 29-24, which became law on October 24, 2007, recognized the need of the Authority to hire and to retain certified personnel who have the proper technical or professional skills and experience in order to prepare for the impending military build-up on Guam. Under Section 3 of Public Law 29-24 *I Liheslaturan Guåhan* mandated that the Board of Directors of the Authority adopt personnel rules and regulations for personnel occupying maritime positions unique to port operations and certified, technical and professional positions subject to the provisions of the AAA.

C. Compliance with the AAA

5 G.C.A. § 9301 of the AAA, which is entitled, “Adoption, Repeal, Rescission or Amendment of Rules: Procedure” provides the procedure for an agency to adopt rules, including filing with the Legislative Secretary. Prior to the filing of the attached forms, the Authority complied with the other conditions precedent and requirements of 5 G.C.A. § 9301 as follows:

1. On January 29, 2009, the Authority published notice of a public hearing in the Pacific Daily News, a newspaper of general circulation, and therefore the notice of public hearing was published at least ten (10) days prior to the date set for public hearing. Said notice included a statement of the time and place of hearing, a reference to the subject matter of the proposed Rules and referred to the fact that a copy of the proposed Rules was on file at the Authority for examination;¹
2. Five (5) copies of the proposed Rules were on file at the Authority from the date of publication of notice of hearing until the hearing and were also available at the public hearing for examination;

¹ A copy of the notice published is attached to this filing.

3. On February 9, 2009, the Authority conducted a public hearing on the proposed Rules as published; and
4. The Authority prepared an Economic Impact Statement on the Proposed Rules which was made available to the public at the Authority's administrative offices prior to the public hearing and which was also available for examination at the public hearing.
5. A copy of the Minutes of the Public Hearing which was held on February 9, 2009, as well as all documents available for review at the hearing, including an Economic Impact Statement, is attached to this filing. These items constitute the record of the hearing. The remainder of this document supports the filing of the Rules.

II. APPROVED BY BOARD OF DIRECTORS

The Rules submitted and which are attached hereto was approved by the Board of Directors of the Authority at a regular meeting on March 26, 2009.

III. CONCLUSION

The Authority has filed herein, pursuant to the rule making procedures of the AAA, Rules for personnel occupying Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions. We look forward to your favorable approval.

Respectfully submitted,

JOSE D. LEON GUERRERO COMMERCIAL PORT

By: 
GLENN A. LEON GUERRERO, General Manager

Personnel Rules and Regulations for Maritime Positions Unique to Port Operations and
Certified, Technical and Professional Positions

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CHAPTER 1

PURPOSE AND SCOPE OF PERSONNEL RULES AND REGULATIONS

STATEMENT OF POLICY:

It is the policy of the General Manager to set forth the fundamental character of the system of personnel administration governed by these Personnel Rules and Regulations consistent with the merit principles and the principles of Equal Employment Opportunity; provisions of Title 4 of the Guam Code Annotated; and other laws pertaining to employment in the Government of Guam.

AUTHORITY. These Rules and Regulations (“Rules”) are established by the authority of Section 2 of Public Law 29-24 and its amendment to 12 G.C.A. §10111 requiring that the Board of Directors (“the Board”) of the Jose D. Leon Guerrero Commercial Port (“the Authority”) adopt personnel rules and regulations for personnel occupying Maritime Positions Unique to Port Operations and Certified, Technical, and Professional Positions, subject to the provisions of the Administrative Adjudication Act.

1.100 PURPOSE. The purpose of these Rules is the formulation of sound personnel policies designed to promote efficiency and economy, reward meritorious service, provide for the settlement of grievances, develop and maintain morale, and establish non-discriminatory standards for the classification and compensation of Maritime Positions unique to Port Operations and Certified, Technical, and Professional Positions at the Authority. In this regard, it is the intent of the Authority to consider the rules and regulations of similarly sized ports in the United States mainland when promulgating its classification and compensation study for Maritime Positions unique to Port Operations and Certified, Technical, and Professional Positions at the Authority.

1.200 COVERAGE.

- A. These Rules shall apply to all employees occupying classified Maritime Positions Unique to Port Operations and Certified, Technical, and Professional Positions at the Authority.
- B. Unclassified employees occupying Maritime Positions Unique to Port Operations and Certified, Technical, and Professional Positions are not covered by these Rules unless otherwise identified.
- C. These rules and regulations may be supplemented by administrative policies and procedures established by the General Manager.

1.201 EXCLUSION FROM COVERAGE

- A. Law Enforcement Personnel: One recent law which was passed after the enactment of Public Law 29-24 is Public Law 29-105. As a subsequently enacted law, its provisions supersede the provisions of Public Law 29-24 with respect to public safety and law enforcement officials of the government of Guam. Section 3 of Public Law 29-105 mandated that the Director of Administration perform a compensation review of all public safety and law enforcement officers of the government of Guam, including those employed at the Authority. The result of the review by the Director of Administration will be the development of a compensation plan ("The Public Safety and Law Enforcement Compensation Review Report") ("the Plan") which shall treat all aspects of compensation (base salaries, benefits, pay differential and other factors) "with said Plan to be uniformly administered throughout the government." Prior to the issuance of the Plan, the law provides for an increase in compensation for Employees covered by the review conducted by the Director of Administration. That increase in compensation provides for up to a forty percent (40%) increase of base rates as of September 30, 2008, over a period of four (4) years effective October 1, 2008, or the amount determined by the Plan, whichever is greater by 2011. Consequently, any part of these rules, including the compensation plan to be adopted by the Board of the Authority pursuant to Public Law 29-24 and the rules, which are in conflict with the provisions of Public Law 29-105 and Plan developed by the Director of Administration are not applicable to the public safety and law enforcement personnel at the Authority. This is because the provisions of Public Law 29-105 control by applying the "Last in Time" rule of statutory construction, which can be summarized as follows: When two statutes conflict, the one enacted last prevails. Or in other words, subsequent laws repeal those enacted before to the contrary. Consequently, even though the Authority included its public safety and law enforcement officers in its compensation study pursuant to Public Law 29-24, Public Law 29-105, a subsequently enacted law, makes it clear that all aspects of compensation are to be determined by the Public Safety and Law Enforcement Compensation Review Report by the Director of Administration because Public Law 29-105 had applied uniformly to all public safety and law enforcement personnel throughout the government, including those at the Authority. The passage of Public Law 29-105 does not entitle the public safety and law enforcement personnel at the Authority to receive double compensation by applying increments pursuant to both Public Law 29-24 and Public Law 29-105 to them.

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- B. Positions not defined in Chapter 4 of the Personnel Rules and Regulations shall be compensated consistent with those compensation plans and pay scales as determined by law.

1.300 GUIDING PERSONNEL PRINCIPLES

The following are the guiding personnel principles which the Authority shall apply in the implementation of personnel administration:

- A. Recruiting, selecting and advancing employees on the basis of their abilities, knowledge and skills;
- B. Providing a uniform compensation policy for maritime positions unique to Port operations and certified, technical and professional positions;
- C. Training employees to assure high quality performance;
- D. Retaining employees based on performance;
- E. Classifying positions systematically through job evaluation; and
- F. Providing fair, expedient and responsive processes for grievance, adverse action, and conflict resolution.

1.400 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

- A. It is the policy of the Authority that there shall be no discrimination against any person on the basis of race, color, sex, including sexual harassment and orientation, religion, national origin, age, marital status, physical or mental disability or political, affiliation and retaliation, except for bona fide occupational qualifications or legal requirements.
- B. The General Manager will design and develop Equal Employment Opportunity programs pursuant to the guidelines of Department of Administration. Department of Administration is hereinafter referred to as "DOA" in these rules and regulations.
- C. The EEO program calls for positive results-oriented action toward equal opportunity. Affirmative efforts will be made by the General Manager to assure equal opportunity in employment and to assure non-discrimination in government programs and activities.

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- D. In order for this EEO program to become a management objective, all levels of management, which includes first-line supervisors, will continue to be trained in legal requirements of equal employment opportunity.

1.500 PENALTIES

Any penalty imposed on any employee for violation of these rules shall be in accordance with applicable rules, regulations and statutes.

1.600 GENDER

Words used in the masculine gender include the feminine.

1.700 CIVIL SERVICE COMMISSION

Nothing in these rules and regulations is intended to limit or deprive the Civil Service Commission of jurisdiction or authority vested by the Organic Act or the laws of Guam. The Civil Service Commission is hereafter referred to as "Commission" in these rules and regulations.

1.800 STATUTORY CONFLICT

In the event any rule or regulation is in conflict with statute, the statute shall prevail to the extent of inconsistency.

1.900 SEVERABILITY

If any part of the Personnel Rules and Regulations are held inorganic, then the remaining Personnel Rules and Regulations shall continue in force and effect.

CHAPTER 2

ADMINISTRATION

STATEMENT OF POLICY

This policy sets forth the responsibilities of the General Manager in the implementation of Title 4 of the GCA, these Personnel Rules and Regulations, Section 10111 of Title 12 of the GCA and other laws.

2.000 RESPONSIBILITY OF THE GENERAL MANAGER

- A. The provisions of Titles 4 and 12 of the GCA and these rules and regulations, and other applicable statutes shall control the personnel administration in the Port.
- B. The General Manager shall:
 - 1. Be responsible for the enforcement of these Personnel Rules and Regulations and all other applicable statutes.
 - 2. Advise the Board of Directors, hereinafter referred to as “Board”, the Governor, the Commission, and employees on policies and procedures concerning personnel management matters.
 - 3. Maintain an adequate monitoring system to ensure statutes, executive orders, rules, regulations and standards relating to personnel management are properly carried out. Whenever the review with established policies, rules, regulations and standards reveal that there have been infractions, the General Manager shall take such affirmative resolution as may be appropriate to obtain compliance therewith.
 - 4. Exercise and provide leadership in personnel matters.
 - 5. Develop and promulgate policies, rules, regulations and standards to promote the efficiency of the Port services.
 - 6. Maintain complete employment records of all employees.
 - 7. Maintain the position classification and compensation plan.

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8. Carry out such other personnel administration activities as are necessary to assure the promotion of merit based personnel systems.
9. Provide for initial and periodic orientation to all employees concerning the provisions of these rules and regulations, and the training of all supervisors and managers in their specific responsibilities for advising employees on requirements and provisions of these rules and regulations.
10. Assure that each supervisor and manager is provided a copy of these rules and regulations, and any subsequent changes.
11. Assure that each employee is provided a copy of the Personnel Rules and Regulations and subsequent amendments to the rules and regulations.

CHAPTER 3

CODE OF CONDUCT

STATEMENT OF POLICY

All employees are expected to maintain the highest standards of conduct to ensure that the services in the Port are properly administered.

3.000 ETHICAL CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

- A. Public service is a public trust. Employees are expected to be loyal to the U.S. Constitution, the Organic Act of Guam, and to perform their duties and responsibilities ethically and in accordance with laws.
- B. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- C. Employees shall not engage in financial transactions using confidential or non-public government information or allow the improper use of such information to further any private interest.
- D. An employee shall not, except as permitted by statute or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the Port, to include persons whose interests may be substantially affected by the performance or non-performance of the employee's duties, or that of the Port.
- E. Employees shall put forth honest effort in the performance of their duties.
- F. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Port.
- G. Employees shall not use public office for private gain.
- H. Employees shall protect and conserve public property and shall not use it for other than authorized activities.

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- I. Employees shall not engage in unauthorized outside employment or activities, including seeking or negotiating for employment that conflicts with official government duties and responsibilities.
- J. Employees shall, in good faith, disclose waste and abuse and corruption to appropriate authority and in doing so shall be protected from reprisal.
- K. Employees shall respect the rights and privacy of other employees and shall not use their position, authority or other means, to injure another person or employee for personal reasons or malicious purposes.
- L. Employees shall refrain from unlawful use of drugs and alcohol. Drugs shall mean those identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).
- M. Employees shall be courteous and helpful to clients and members of the public.
- N. Employees shall be courteous to other employees and respect supervisory authority.

3.100 OATH OF OFFICE

All persons employed by the Port or accepting employment with the Port shall subscribe and certify to the prescribed loyalty oath. This oath may be administered by the General Manager or the officers, or the employees designated by him at the time of employment processing. Failure to take such oath, or certifying falsely to such oath, shall be cause for disciplinary action, dismissal or rescindment of employment offer.

3.200 NEPOTISM

- A. Spouses and persons within the first degree of relation, such as, brother/sister or parent/child, may not be employed with the Port in a direct supervisor-subordinate relationship in the classified or unclassified service.
- B. The spouse of the General Manager may not be employed with the Port.
- C. Whenever there are already two or more members of an immediate family in the public service under the Port, no other members of such family shall be eligible to appointment. As used in this Section, "immediate family" means a collective body of persons living together in the same house.

3.300 CONVICTED FELONS

- A. In accordance with Section 4203.1 of Title 4 of the GCA, no person shall be employed as a peace officer in the law enforcement positions with the Authority who has been previously convicted of a felony in any civilian or military court, a crime involving moral turpitude, a crime of domestic or family violence, regardless of whether he was pardoned or commuted by *I Maga'lāhen Guāhan* regarding such conviction.
- B. In accordance with Section 4203.3 of Title 4 of the GCA, no person shall be employed with the Authority who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the GCA or an offense as defined in Article 2 of Chapter 28, Title 9 of the GCA, or an offense in any jurisdiction, which includes, at a minimum all of the elements of said offenses, or who is listed on the Sex Offender Registry, after February 7, 2006.
- C. In accordance with the Family Violence Act, after August 14, 1998, no person thereafter who is convicted of a felony concerning family violence (not a misdemeanor) is eligible to hold the following positions:
 - 1. General Manager,
 - 2. Deputy General Manager,
 - 3. Managerial or supervisory position.

3.400 CRIMINAL CHARGES OR CONVICTION

- A. Employee's Duty to Report: An employee in the classified service who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager with written notice of the charges or the conviction within 72 hours thereof.
- B. Failure to Report: An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, Section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager as required in Rule 3.400.A.

3.500 CONFIDENTIAL INFORMATION

No employee shall disclose information which is considered a private document by existing law, and which the employee acquires in the course of official duties, or use the information for personal gain or for the benefit of someone else.

3.600 FAIR TREATMENT

No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment, for himself, a spouse, children or others, including but not limited to the following:

- A. Seeking other employment or contract for services by the use or attempted use of the individual's office or position;
- B. Accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities, except as provided by law;
- C. Using government time, equipment, or other facilities for private business purposes;
- D. Soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business that the employee inspects or supervises in an official capacity.

CHAPTER 4

EMPLOYMENT OF MARITIME POSITIONS UNIQUE TO PORT OPERATIONS AND CERTIFIED, TECHNICAL AND PROFESSIONAL POSITIONS

STATEMENT OF POLICY

This policy implements a system of recruitment and selection of employees of the Authority occupying Maritime Positions unique to Port Operations and Certified, Technical and Professional Positions in accordance with the merit system principles and equal employment opportunity guidelines. It also defines what classes of positions are Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions.

4.000 DEFINITION

“Maritime Positions Unique to Port Operations, and Certified, Technical and Professional Positions” are defined as and may include, but are not limited to:

- (A) Positions whose qualification requirements mandates certifications and/or licensing requirements, e.g., equipment operators, stevedores, cargo checkers, marine traffic controllers, etc.;
- (B) Positions with multi-skill qualification requirements, e.g., preventive maintenance mechanics, crane mechanics, etc.;
- (C) Positions with specific maritime knowledge and skills, e.g., tariff technicians, etc.; and
- (D) Other similar technical and professional positions which are unique and critical to the Authority’s needs and no other government entity, which is not a port of entry, but not limited to, those jobs listed herein. (12 G.C.A. §10111.3(c))

4.100 IDENTIFICATION OF MARITIME POSITIONS UNIQUE TO PORT OPERATIONS, AND CERTIFIED, TECHNICAL AND PROFESSIONAL POSITIONS

A listing of those positions in Classification and Compensation Plan identified and listed, by title, position description and pay range as Maritime Positions Unique to Port

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Operations and Certified, Technical and Professional Positions and approved by the Board shall be attached to the Personnel Rules and Regulations as Appendix A.

The General Manager shall publish the Board approved list on the Authority's website and a copy of the list shall be maintained by the Authority's Human Resources Division and be available for public inspection.

4.200 AMENDMENT OF MARITIME POSITIONS UNIQUE TO PORT OPERATIONS, AND CERTIFIED, TECHNICAL AND PROFESSIONAL POSITIONS

The General Manager may make a written request to the Board for it to amend, including but not limited to deleting, adding, or modifying positions on the approved list of the Authority's Maritime Positions Unique to Port Operations, and Certified, Technical and Professional Positions.

- A. The request shall include:
 - 1. The justification for amendment.
 - 2. The essential details of the amendment.
 - 3. An analysis of the similarities or differences between the existing position and the amendment.
 - 4. The job title, pay range, and position description affected by the amendment.
- B. The General Manager shall post the request for amendment on the Authority's website for ten (10) days (Saturdays, Sundays, and Government of Guam holidays excepted). After the posting, the General Manager shall forward the request, along with evidence that prompt notice of the posting was provided to each newspaper of general circulation and broadcasting station which airs a regular local news program within Guam, to the Board. The Board shall approve, disapprove, or amend the request at any regularly scheduled meeting or at a special meeting called for this purpose.

4.300 APPOINTMENT THROUGH THE MERIT SYSTEM

4.301 Recruitment and Examinations

Recruitment of persons for employment in the classified service shall be accomplished consistent with the merit principles of recruiting, selecting applicants, and advancing employees on the basis of their relative knowledge, ability and skill.

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4.302 Filling of Vacancies

- A. No person shall be appointed to, or employed in, or paid for service in any permanent classified position until that position has been established, funded, and allocated to its proper class by the General Manager. Nor, shall any person be allowed to begin work before such person submits an employment application, is placed on the eligibility list as "eligible" for the position applied for, and is certified, selected and processed by following competitive examination procedures. This applies to all original and promotional appointments. Exception to the certification requirements may be made for those actions listed in Rule 4.800 of the Personnel Rules and Regulations.
- B. Competitive examinations procedures shall also apply to the following:
 - 1. demotion to a position with known promotional potential within a class series;
 - 2. transfer to a position with known promotional potential within a class series;
 - 3. reinstatement or reemployment to a position with known promotional potential within a class series; or
 - 4. appointment to a position with known promotional potential within a class series.
- C. Drug Testing: Applicants selected for and offered employment with the Port shall undergo and pass a mandatory drug test before being employed. Failure to submit to, or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

Employees selected for any position within the Authority will be tested as provided in the Drug Free Workplace Program Operating Procedures (DFWPOP).

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- D. Minimum Educational Requirements: All new employment in the service of the Authority shall have, as a reasonable measure of job performance, minimum requirement of high school diploma or a successful completion of a General Educational Development (GED) Test, or any equivalent of a general education high school program, apprenticeship program or successful completion of certification program, from a recognized, accredited or certified vocational technical institution, in specialized field required for the job. This section shall not be applicable to the Summer Youth Employment and any person with a disability which prevent him from complying with this section consistent with the Americans with Disabilities Act or its successor's laws.

4.303 Maintenance List of Authorized Positions

- A. The General Manager shall maintain a list of authorized positions for each organized unit within the Port, showing by class of positions those that have been established and the current status of the positions. No change in the numbers of authorized positions shall be made except upon approval of the Board of Directors.
- B. The procedure for authorizing additional positions shall be subject to the approved budget by the Board. Filling of vacancies shall not be more than the number of authorized positions within its Full-Time Equivalency (FTE) ceiling, except as authorized by law as follows:
1. Part-time employees may be counted as a fraction, which is determined by dividing 40 hours into the average number of hours of such employees' regularly scheduled workweek.
 2. The number of employees may be increased beyond the number authorized for a period of no longer than ninety (90) days in the event Guam is declared to be a condition of disaster or emergency by the Governor, or by the President of the United States.

4.304 Certification from Eligibility Lists

All original and promotional appointments to positions shall be made through certifications from eligibility lists resulting from competitive examinations and for selections covered under the Merit Career Plan.

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4.305 Order of Use and Limitation on the Establishment of Lists

The order listed below shall be followed in the use of the eligibility lists, and the General Manager shall be restricted to selection from the top five/ten (5/10) found on these lists in the order of precedence herewith established:

A. Port-wide

1. Priority Placement/Lay-off Reinstatement List
2. Promotional List
3. Temporary or Short-Term Appointments List

B. Government-wide or Open

1. Preferential/Priority Placement List; Lay-off Reinstatement List; Enhanced Placement for Public Employees Displaced Due to Outsourcing
2. Re-employment List
3. Promotional List; Temporary or Short-Term Appointment List;
4. Open Competitive List

4.400 RECRUITMENT

4.401 Announcement of Recruitment and Examination

A. Upon receipt of a Request for Personnel Action (GG-1) and if there is a need to establish a list of eligibles, the General Manager shall publish and disseminate announcements of recruitment and examination on a Port-wide, Government-wide and/or Open competitive basis, and shall cause such announcements to be posted throughout the Port, Government of Guam instrumentalities, departments and agencies and community. Other methods of announcing examinations may be used at the discretion of the General Manager, so as to better disseminate information to the employees and the public.

1. Port-wide competitive examinations shall be held to allow all interested and qualified employees within the Port the opportunity to compete for vacant positions.
2. Government-wide or open competitive examinations may be held when there are insufficient number of qualified applicants within

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the Port for adequate competition and flexibility of selection. The Port shall determine the need for open competitive announcements.

- B. Competitive examinations may be re-announced when the General Manager determines that there is an insufficient list of eligibles for the positions or within one month of the anticipated expiration date of the eligibility list of the positions.
- C. A job announcement may be cancelled upon approval of the General Manager. If this occurs, all applicants shall be notified of the cancellation.
- D. The General Manager may publish job announcements pending the receipt of the GG-1 provided the Division Head submits justification in writing of the urgency of the recruitment request.
- E. The General Manager may request for certification of eligibles regardless of the number of eligibles in the eligibility listing.

4.402 Selective Factors

- A. Upon the request of the Division Head and approval of the General Manager, selective factors may be used on job announcements when specific identifiable knowledge, abilities or skills are essential to the successful performance of the duties and responsibilities of the position. The factors shall pertain to knowledge, abilities and skills pertinent to certain program operations when these qualifications and skills cannot be readily acquired after appointment. As a standard for determining eligibility based on a selective factor, applicants must have at least six (6) months of work experience in the particular selective knowledge, ability and skill or the equivalent in education.
- B. All selective factor statements must be job related and must be included in the proper job announcement.
- C. The General Manager shall establish appropriate procedures for selective factor requests and approvals.

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4.403 Bona Fide Occupational Qualification Requirements:

Job announcements may include bona fide occupational qualification (BFOQ) requirements when justified. For example, certification based on sex is a BFOQ when the duties and responsibilities involve certain institutional or custodial services which can be properly performed only by a member of the same sex as the recipient of the services.

4.404 Maintenance of Distribution Lists

The General Manager shall establish and maintain distribution lists of public and private agencies or groups, by occupation or other appropriate categories, to which appropriate examination announcements or other information regarding prospective examinations shall be sent for further dissemination to prospective applicants.

4.405 Content of Recruitment and Examination Announcements

- A. Each recruitment and examination announcement for an original appointment or promotion shall contain the title of the class, applicable pay grade, selective certification when applicable, area of consideration, character of duties and responsibilities and examples thereof, minimum qualifications for entry into the position, the required supporting documents, such as, but not limited to education, police and/or court clearances, closing date and place for filing applications, and other information deemed necessary by the General Manager.
- B. Appointments other than from an eligibility list, for example by transfer, demotion, or reinstatement shall be bound by the minimum qualification requirements.

4.406 Minimum Period of Recruitment

- A. Job announcements shall be posted for at least ten (10) working days for Government-wide and Open examination announcements and at least five (5) working days for Port-wide examination announcements.
- B. The General Manager may post job announcements on a continuous basis for positions deemed to be difficult to recruit. Notice of the final closing of such announcement shall be sent to the original distribution list at least one week prior to the final closing date for receipt of applications.

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- C. The General Manager may extend the announcement period for receipt of applications. Announcement of such extension shall be disseminated to the original distribution list for posting.

4.407 The Application Form

- A. The General Manager shall prescribe a form to be used by applicants, which shall require information covering experience, education, training, and other pertinent data, indicated as being necessary in the examination announcement. Applications shall be signed and the truth of all statements therein certified to by such signature. The form may be submitted through an electronic format and should include an electronic signature.
- B. The General Manager may not make any pre-employment inquiry about a disability or about the nature or severity of a disability on application forms, job interviews, or in background or reference checks.
- C. Medical information received on an employee as a result of an employment requirement shall be filed separate and apart from the employee's active personnel records.

4.408 Acceptance of Employment Applications

- A. Applications for competitive examinations shall be accepted only during the filing period specified in the examination announcement. All applications submitted shall be date stamped to indicate the date received by the Human Resources Division.
- B. Applications submitted by mail must be postmarked by midnight of the announced last day for filing applications in order to be accepted.
- C. Late applications for competitive examinations may be accepted if the examination has not been administered and an eligibility list established. This is provided that the late filer is a Government of Guam employee who can establish to the satisfaction of the General Manager that he was not aware of the job announcement and unable to file a job application due to factors beyond his control (i.e., official off-island training, on extended annual or sick leave, etc.).

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4.409 Evaluation of Applications

- A. An eligibility list shall be established no later than one (1) month after the closing date of the position announcement. Failure to establish an eligibility list within one (1) month of the closing date will require that the position be re-announced with a new closing date and that all applications previously received shall be re-stamped and re-accepted to coincide with the new announcement period.
- B. The closing date of the announcement shall be the ending date to credit the job applicant's education, experience and training for the position applied for.
- C. For continuous job announcements, the ending date to credit the job applicant's education, experience and training shall be the date of application.

4.410 Rejection of Applicants

The General Manager shall not be required to accept applications or, after acceptance and evaluation, establish an applicant as eligible on an eligibility list or allow an applicant admission to an examination when any of the following conditions exists:

- A. Conviction of a crime within seven (7) years from date of application, which bears a nexus to the position, applied for, unless otherwise required by statute.
- B. Evidence that the applicant has been identified by the U.S. Department of Homeland Security to not possess the appropriate legal status to work in the Territory or pose to be a security threat.
- C. Conviction of a sex offense or listed on the Sex Offender Registry.
- D. Refusal or failure to furnish documents required verifying any statements made in the application.
- E. Intentional false statements or deception or fraud in the application process.

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- F. Failure to attest to the accuracy of information presented on the application form.
- G. Failure to submit an application within the announcement period, with exception of Rules 4.408.B and 4.408.C.
- H. Evidence that the applicant has been removed from the position with the Port, other Government departments or agencies, or otherwise for reasons which would render him unsatisfactory for the position in the Port's services for the class for which he is applying.
- I. Failure to submit to a drug test for a position with the Port or successfully complete the drug rehabilitation program.

When such finding is made, the General Manager may reject the application and notify the applicant of such action.

4.411 Notification of Rejection of Applicants

- A. A rejected applicant shall be notified promptly of such action and reasons for rejection within ten (10) workdays of the rejection.
- B. Whenever an application has been rejected prior to a schedule examination (assembled), notice thereof, with the reason or reasons for such rejection, shall be given ample time to permit the applicant to respond in writing, or to amend an incomplete or defective application at least three (3) days before the date of the examination. If sufficient time is not available for this purpose, the applicant may be admitted to the examination with the condition that the applicant shall not be certified as eligible until all the established requirements for eligibility are met.

4.500 EXAMINATIONS

4.501 Scope and Character of Examinations

- A. Competitive examinations shall be held for original appointments and promotions and shall be job related in nature and designed to reveal the capacity and fitness of the applicant to satisfactorily perform the characteristic duties of the class or position for which the examination is held.

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- B. Any accepted personnel examining technique may be used, including a verification and evaluation of education, training and experience; tests of skill, knowledge, ability, intelligence or aptitude; medical examinations, appraisals of personal suitability; and any other matters that the General Manager deems appropriate.
- C. All examinations shall be either or both:
 - 1. Assembled, wherein the applicants assemble in a designated place at a specific time to take written, oral or performance tests pertinent to the position(s) sought; or
 - 2. Unassembled, wherein interested persons responding to an examination announcement, submit to designated places and by designated times, their records of education, training, experience and such other information as requested in the announcement be evaluated and rated by a qualified analyst or by a board of rating examiners.

4.502 Parts of Examination

- A. The parts of total examination may consist, in various combinations of such selection devices as work sample and performance tests, written tests, individual or group oral examinations, assessment center exams, medical examinations, rating of training and experience and background and reference inquiries. Examination parts will be appropriately weighed.
- B. An applicant for any examination must pass all parts of that examination in order to qualify for appointment to a position.

4.503 Education and Experience

If education and experience form a part of the total examination, the General Manager shall determine a procedure for the evaluation of the education and experience qualifications of the various applicants. The formula used in appraisal shall give regard to recent and quality, as well as, quantity of experience and to the pertinence of the education. This procedure shall allow for the substitution of the education for experience, and experience for education within the limits stated in the class standards.

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4.504 Development and Validation of Tests

Tests for each examination shall be developed and validated in compliance with EEO objectives and merit system principles, and in accordance with professionally approved validation strategies, such as, content, criterion-related or construct validation where it is technically feasible.

4.505 Admission to Compete in Assembled Examinations

Persons submitting applications during the period specified in the examination announcement shall be admitted to compete in the examination provided it is clearly shown that requirement for admission is met. Where doubt exists as to whether or not the applicant meets the minimum requirements for admission to the examination, the General Manager may authorize conditional admission. Such action shall not be construed as entitling the applicant to certification or appointment until the General Manager has confirmed such conditional admission. Persons admitted to take an examination must provide a valid document verifying their identity.

4.506 Conduct of Examinations

- A. Examinations shall be held at the time and place which is most practical and meets the need of the service, and shall be administered by an authorized representative designated by the General Manager.
- B. If an assembled examination is to be administered, qualified applicants shall be notified of the date, time and place of the examination. The General Manager shall not be responsible if a notice is lost or delayed in the mail, or sent to an applicant's former address through failure of the applicant to inform the Port of a change of address.
- C. No applicant shall be entitled to take an examination at a date, time or place other than that stated in his notification, except as the General Manager may authorize.
- D. All applicants for examinations involving physical ability or performance tests may be required to sign a waiver of liability.

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- E. All reasonable precautions shall be taken to protect the confidentiality of information about applicants.
- F. Applicants with disabilities shall be given reasonable accommodation in the administration of tests.

4.507 Assembled Examinations for Closed and Continuous Announcements

- A. For announcements having a specific closing date, and closed announcements, an examination shall not be administered until after the closing date and until such time all applications have been evaluated. Applicants applying under a closed announcement may take the required examination only once and only one eligibility list established.
- B. For continuous announcements, the following provisions shall prevail:
 - 1. No examination shall be administered until ten (10) workdays after the date of the announcement.
 - 2. Candidates who fail an examination may retake the same examination after thirty (30) days have elapsed. Exception to this rule may apply when the General Manager has certified that there are less than five (5) eligibles for each vacancy in a given class of position.
 - 3. An applicant who has passed all parts of an examination for a particular position and who requests to retake the examination for the purpose of upgrading his final earned rating, may retake the examination provided that thirty (30) days have elapsed since his last examination, and provided the announcement has not been closed. The higher score shall be used to determine the final earned rating.
 - 4. When a closing date is announced, a final eligibility list shall be established and no examinations shall be administered thereafter.

4.508 Ratings of Examinations

- A. Appropriate psychometrics and measurement techniques and procedures shall be used in evaluating the results of examinations, and in determining

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the minimum rating by which eligibility may be achieved, and the relative rank of candidates.

- B. The General Manager shall set the minimum ratings for each part of an examination. All candidates shall be required to obtain the set minimum passing score for each part of the examination in order to proceed to each successive test. In order to receive a final passing rating, the final earned rating of each applicant shall be determined by combining the earned rating of each part of the examination in accordance with the weights established for each part.

4.509 Notification of Examination Results

Each applicant who participates in an examination shall be given written notice, in person or by mail, of his examination results. The record of ratings, as well as, examination papers, shall be held as official records for the life of the resulting eligibility lists.

4.510 Inspection of Written Examination Papers

The General Manager shall, upon request of a candidate, authorize such candidate to inspect his own written examination papers, within thirty (30) days of the date of examination and in the presence of a representative of the Human Resources Division, except that when a candidate is scheduled to retake the same examination, inspection shall not be allowed more than five (5) work days prior to the examination date. The privilege of inspection shall not be deemed to include authorization to copy examination papers; or to inspect or to copy examination instructions, questions, or answers.

4.511 Administrative Review of Examination Ratings

An applicant may request administrative review of his rating assigned in an examination by submitting to the General Manager, in writing, information to substantiate his request within ten (10) workdays following the date of his examination notice was postmarked. Certification of eligibles is authorized only after the administrative review period has elapsed. Unless the General Manager determines that a delay in services will hamper the operations of a division, certification of eligibles is authorized only after the administrative review period has elapsed.

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4.512 Changes in Rating

- A. Changes in rating may be made as a result of a discovery of errors in the rating or scoring process, or as a result of an administrative review wherein the facts warrant a change.
- B. Rating errors may be corrected throughout the life of the eligibility list.
- C. Any such changes shall be reported to the applicants affected.
- D. Changes in rating will not affect a certification issued, or invalidate an appointment made from the eligibility list.

4.513 Duration of Examination Ratings

- A. Examination ratings are good only for the life of the eligibility list and shall not be carried over to a new eligibility list for the same position after a period of one (1) year.
- B. Exceptions to this rule shall also apply when minimum qualifications are amended or when written, oral or performance examinations are likewise amended. In this event, the existing eligibility list will be invalidated and candidates must take and pass any and all new examinations, both assembled and unassembled, in order to remain eligible for certification.

4.514 Security of Tests

Examination questions shall, at all times, be maintained under conditions affording maximum security. All precautions to safeguard the confidential nature of examination materials shall be taken. No information concerning the nature of the tests shall be divulged to any person prior to the examination. Proved disclosure of unauthorized release of examination material by any employee shall be the basis for disciplinary action.

4.515 Protection of Confidentiality of Materials

- A. Because of the continuing use of the examination materials prepared by the Human Resources Division, and where exposure would jeopardize the

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confidentiality of the examination questions, the review of such test materials shall not be permitted.

- B. All examination materials relating to a particular applicant, or applicants including, but not limited to reports of character and material regarding personal suitability of the applicant, shall be considered confidential material. Such examination material shall be maintained for a period of one (1) year from date the eligibility list was established.

4.516 Special Provisions

Special arrangement for examinations on a non-competitive basis, such as, upon reallocation of position and temporary appointments, may be made by the General Manager subject to the limitations which follows:

A. Non-Competitive Examinations

The General Manager may authorize non-competitive examinations under the following conditions:

1. No more than one person applies who meets the minimum qualification requirements.
2. Examination given is to test the fitness of an employee who has a permanent appointment and who seeks transfer to a position in a class in the same pay grade, but which requires a skill not required in the present classification. However, the provisions of the Merit Career Plan shall apply to a transfer to a position with Known Promotional Potential (KPP).
3. The examination is to test an employee who has a permanent appointment in a position, which has been reallocated to a class requiring a new skill.
4. When a permanent position is to be filled by a temporary appointment.
5. To facilitate the employment of qualified persons with disabilities consistent with provisions of law and these rules.

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6. Examination given is to test the fitness of a permanent employee who has been previously selected under an announcement for a position with Known Promotional Potential (KPP) and who is promoted to a higher grade position.

B. Appointment of Qualified Individuals with Disabilities

1. The Port shall employ at least two percent (2%) of the work force with severe disabilities and certified by the Division of Vocational Rehabilitation of Department of Integrated Services for Individuals with Disabilities (DISID). The Port may meet such requirement through direct employment or by contract with non-profit organizations employing individuals with disabilities. Such employment shall be on a temporary limited-term appointment not to exceed a total of six (6) months regardless of whether the position being filled is budgeted as temporary or permanent.
2. All such individuals with disabilities shall possess the qualifications for the position to which appointed. Eligibility lists shall be developed for the various positions for which individuals with disabilities are certified.
3. Nothing contained in this section shall be construed to deter or prevent the General Manager from employing:
 - a. Individuals with disabilities when available and eligible for permanent employment.
 - b. Individuals with disabilities employed pursuant to the provisions of Rule 4.516.B.2, if such persons qualify for permanent employment before the termination of their temporary appointment.
 - c. If such individual is appointed pursuant to this rule to a permanent position during or immediately after the six (6) month period, such six (6) months or portion thereof shall be credited toward such employee's probationary period.
 - d. Appointment of individuals with disabilities to permanent positions must be consistent with the merit system requirements. In this exception, if the immediate

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supervisor determines satisfactory performance either prior to, or after the expiration of the six (6) months appointment, the position occupied by the person with a disability shall be converted to permanent employment.

- e. If the performance evaluation recommends that the individual may require an extension of employment, the immediate supervisor and Division of Vocational Rehabilitation shall develop a revised Individual Work Rehabilitation Plan to assure successful placement not to exceed an additional six (6) months, which may include consideration of the Port's acquisition, or modification of assistive technology devices or services, or placement to other positions in another Government of Guam department or agency. Division of Vocational Rehabilitation shall provide a work coach to assist the Port when necessary.

4.600 PREFERENCE

4.601 Preference Credit for Individuals with Disabilities

Residents of Guam who have physical or mental disabilities, but are physically or mentally able to perform efficiently and safely the duties of the position applied for, as certified by the Director of Public Health and Social Services, shall receive a preferential credit of five (5) points which shall be added to their passing examination score for initial appointment only to a position. The preference credit does not apply to subsequent applications for employment in the Government after separation.

4.602 Preference Credit for Veterans of the United States Armed Forces or Former Members of the Guam Police Combat Patrol

Veterans of the Armed Forces of the United States, or former members of the Guam Police Combat Patrol, as certified by the Chief of Police, shall receive a preferential credit of five (5) points which shall be added to their passing examination score upon initial employment only. Such veterans, or former members who are disabled as a result of their services in the Armed Forces or Combat Patrol, shall receive a preferential credit of ten (10) points which shall be added to their passing examination scores upon initial employment only. The preference credit does not apply to subsequent applications for employment in the Government after separation.

4.603 Proof of Eligibility for Veteran's Preference Credit

Persons claiming veteran's status must submit their DD Form 214, Armed Forces of the United States Report of Transfer or Discharge. A person must have completed at least 180 consecutive days of service in the Armed Forces of the United States and must have received other than a dishonorable discharge from such service to be eligible for veteran's preference.

4.604 Offer of Employment for Preference Credit Recipient

When two applicants are equally qualified for the position to be filled and one is a recipient, pursuant to Rules 4.601 or 4.602, while the other is not, the former shall be given the first offer of position.

4.605 Preferential Hiring of a Recipient of an Award or Scholarship

Residents of Guam, who have completed their post-secondary education assisted by the award of educational scholarships or loans from the Government of Guam, shall be given preference to jobs with the Authority for which they have applied and are qualified. Such preference shall be applicable only in selection for initial employment. The preference does not apply to subsequent applications for employment after separation or after an initial job offer is declined.

4.700 CERTIFICATION

4.701 Eligibility Lists

Employees shall be selected from among the eligibles on appropriate eligibility lists, established and maintained by the General Manager, except those employees who are demoted, transferred, reinstated or re-employed. Within the limitations found elsewhere in these rules, qualified applicants shall be placed on eligibility lists as a result of examinations. When more than one (1) competitive examination, or area of consideration is announced simultaneously for a particular class, an appropriate eligibility list shall be established for each competitive or area of consideration for that class.

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4.702 Establishment of Eligibility Lists

Names of candidates shall be placed on the eligibility lists in rank order of qualifying scores after appropriate examination. This list shall be designated as an "Eligibility List" for that class of position and area of consideration. After the General Manager has approved the eligibility list, it shall then be considered "established".

4.703 Ranking of Eligibles

After each examination, the General Manager shall prepare a list of persons with passing scores. The names of such persons shall be placed on eligibility lists in order of their final earned rating, starting with the highest. Prior eligibility lists resulting from a continuous examination announcement shall be merged by ranking the names of all successful applicants in order of their final earned rating.

4.704 Determination of Rank in Event of Tie

Final earned ratings shall be calculated in three decimal places and ranked from highest to lowest. When, upon certification of eligibles in accordance with Rule 4.710 a tie score occurs, such tied scores shall not be broken and all such eligibles shall be certified as being the fifth (5th) eligible.

4.705 Duration of the Eligibility List

An eligible on a Port-wide, Government-wide, or open competitive eligibility list, shall have eligibility for employment consideration for one (1) year from the establishment date of the eligibility list. Once a list is established, its life should be viable for one (1) year. Whenever a position is re-announced at the discretion of the General Manager, and a new eligible is established, the names of eligibles on a former list, which has yet to expire, shall be combined with those on a new list according to the final score.

4.706 Port-wide Competitive Eligibility Lists

Authority-wide competitive lists shall be established consistent with Rules 4.702 and 4.703 and selections shall be made in accordance with the Merit Career Plan.

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4.707 Government-wide Competitive Eligibility Lists

Government-wide competitive lists shall be established consistent with Rules 4.702 and 4.703 and selections shall be made in accordance with the Merit Career Plan.

4.708 Open Competitive Eligibility Lists

Open competitive eligibility lists shall be established consistent with Rules 4.702 and 4.703.

4.709 Certification of Eligibles

Certification of eligibles shall consist of five (5) or such fewer eligibles as may be available for the class. Eligibles shall be certified in the order that they appear on the eligible list provided that:

- A. eligibles with reemployment rights shall be accorded priority certification.
- B. when the fifth (5th) eligible to be certified is one (1) of two (2) or more eligibles who have identical examination scores, such two (2) or more eligibles shall be certified notwithstanding the fact that more than five (5) persons are thereby certified to fill a vacancy.
- C. in the event one (1) or more eligibles decline or fail to respond to an employment interview, the Division Head shall be entitled to such additional eligibles as would provide him with a full certification. (Refer to Rule 4.712, Supplemental Certification.)
- D. if the Division Head rejects one (1) or more of the eligibles certified, he shall submit in writing to the General Manager the reasons for rejection. If the rejections are approved by the General Manager, the Division Head shall be entitled to such additional eligibles as would provide him with a full certification. (Refer to Rule 4.712, Supplemental Certification.)
- E. a certification of eligibles shall be effective for no more than thirty (30) days after the date of certification, unless extended by the General Manager.

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4.710 Certification of Eligibles from a Multiple List

After eligibility lists are established for a particular job announcement with multiple competitive examinations or areas of consideration, the General Manager may request to certify in one (1) of two (2) ways:

- A. Merge the lists and certify according to Rules 4.710 and 4.712; or
- B. Certify, in accordance with Rules 4.710 and 4.712 from each list in the following order: Port-wide, Government-wide, and Open. Each list must be exhausted in accordance with these rules before certification from the next list will be authorized.

Merging Open competitive lists with Port-wide or Government-wide competitive lists is prohibited.

4.711 Certification of Eligibles for More than One (1) Vacancy

- A. For more than one (1) vacancy, the General Manager shall certify an additional eligible for each additional vacancy.
- B. When the last eligible to be referred is one (1) of two (2) or more eligibles who have identical examination scores such two (2) or more eligibles shall also be certified.
- C. For example, when certification is made for two (2) vacancies, certification of eligibles will appear as follows:

First Ranked Eligible
Second Ranked Eligible
Third Ranked Eligible
Fourth Ranked Eligible
Fifth Ranked Eligible
Sixth Ranked Eligible

The General Manager shall make his selection according to the following:

- 1. The General Manager may select two (2) persons from the six (6) certified to fill two (2) vacancies.
- 2. Should the General Manager decide to fill only one (1) of two (2) vacancies to be filled, he shall be restricted to select from the first

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five (5) eligibles on the certification and may not select the sixth (6th) ranked eligible.

3. Should an additional vacancy exist and certification was not made for such vacancy, the General Manager may not select from among the six (6) eligibles to fill the third (3rd) vacancy. He must request an additional eligible and then make the selection for the third (3rd) vacancy from among the seven (7) certified eligibles.
4. If the General Manager does not wish to select any of the eligibles certified, he must document the reasons for non-selection of each eligible, before a new certification is authorized.

4.712 Supplemental Certification

The General Manager may submit a supplemental certification of eligibles to provide the Division Head with a full certification.

- A. The supplemental certification may be used only upon failure to appear for an interview, refusal of appointment by eligibles, or the rejection of eligibles by the Division Head for cause.
- B. The additional eligibles to be certified shall be of such number that will provide the Division Head with a full certification.
- C. The Division Head shall contact eligibles in descending order to ascertain their interest in the vacant position. If the last eligible contacted is one (1) of two (2) or more eligibles with identical examination scores, such two (2) or more eligibles shall also be contacted.

4.713 Selective Certification

- A. Upon approval of the General Manager, selective certification may be made when specific identifiable qualifications and skills are essential to successful performance of the duties and responsibilities of the position. The factors shall pertain to knowledge, skills and abilities pertinent to certain program operations when these qualifications and skills cannot be readily acquired after appointment. As a standard for determining qualifications on a selective factor basis, applicants must have at least six (6) months of work experience in the particular selective knowledge, skill or ability or the equivalent in education.

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- B. Selective certification may also be made which specifies a BFOQ when justified. For example, certification based on sex is a BFOQ when duties and responsibilities involve certain institutional or custodial services, which can be properly performed only by a member of the same sex as the recipient of the services.
- C. All selective certifications must be indicated on the proper job announcement and be job-related.

4.714 Interview of Eligibles and Notification of Selection/Non-Selection

- A. The General Manager shall establish procedures for interviewing certified eligibles for selection.
- B. Within thirty (30) calendar days from the date a selection is made, the General Manager shall notify, in writing, all eligibles certified as to whether they were selected or not.

4.715 Suspension and Removal of Eligible from Competitive List of Eligibles; Restoration to List

- A. The General Manager may suspend or remove an eligible from an Eligibility List for any of the following reasons:
 - 1. Refusal to two (2) offers of permanent employment in the class of position for which eligibility has been established.
 - 2. Failure to reply within fifteen (15) calendar days to a written inquiry relative to availability for employment.
 - 3. Appointment to a permanent position for the class.
 - 4. Failure to report after two (2) days after notice, or failure to report for duty within the prescribed time.
 - 5. In the case of Port-wide or Government-wide lists, termination of service with the Government.
 - 6. When further investigation of eligible's suitability needs to be conducted.

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7. Withdrawal by the eligible.
8. Findings of deception and fraud in the employment process.
9. Conviction of a crime, which bears a nexus to the position, applied for.
10. Conviction of a sex offense under the provisions of Chapter 25 of Title 9 of the GCA, or an offense as defined in Article 2 of Chapter 28 of Title 9 of the GCA, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry.
11. Advocates, aids or belongs to any party, organization or association which advocates the overthrow of the Government of Guam or United States.
12. Evidence that the applicant has been identified by the U.S. Department of Homeland Security to not possess the appropriate legal status to work in the Territory or pose to be a security threat.
13. Refuses or ignores the requirement to take a drug test without cause or the verified drug test result is found to be positive and the applicant is not participating in a rehabilitation treatment program.

In the event, the eligible has already received an appointment; the General Manager shall take appropriate action to ensure the termination of the employee.

- B. The following eligibles, upon their request, may have their names restored to the list of eligibles if the list is still active:
1. A probational employee who is separated without cause.
 2. An eligible who had been removed from the list under A.7 above, and who then makes himself available for employment.
 3. An eligible who received an appointment as a result of this list, then resigned in good standing and wishes to be placed on the list for future consideration. This provision applies only to open

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competitive eligibility lists.

4. An eligible who had been removed from the list as a result of a positive drug test, and who then submits documentation that he has successfully completed a rehabilitation program.

4.716 Notification of Disqualification of Eligibles

An eligible who is disqualified pursuant to Rule 4.715 shall be notified in writing of such action and the reasons of disqualification within ten (10) workdays of the action.

4.717 Cancellation of Competitive Eligibility Lists

The General Manager may cancel an eligibility list for any of the following reasons:

- A. Changes in the minimum qualifications or classification standards of a class of position.
- B. Abolishment of the class for which the list of eligibles was established.
- C. All eligibles on the list are unavailable for employment.

4.800 NON-COMPETITIVE ACTIONS

4.801 Transfer

A. Transfer Defined

A transfer is defined as a change from one position to another position of the same class, or a change to a related position in another class, which carries the same pay grade and substantially the same qualification requirements.

B. Involuntary Transfer

No employee may be involuntarily transferred to a position, which is unrelated with respect to duties and responsibilities to the position occupied by the employee before the transfer.

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C. Transfer Prohibited

1. No employee shall be transferred:
 - a. if the employee has filed a legitimate grievance with the Commission for discrimination based on political affiliation, gender or sexual harassment; or
 - b. if employees, acting in good faith, report or expose bad business practices, illegal activities, or inappropriate conduct by public officials.
2. Such transfer can be made only if it has been agreed to by the employee.

D. Intra-departmental and Inter-departmental

Upon the approval of the General Manager, employees may transfer within the Port or from another Government of Guam department or agency when the following conditions are met:

1. the employee meets the minimum qualification requirements for the position which he seeks movement, including any assembled examination requirements.
2. movement is within the same class of position or from one class of position to another class of position having comparable duties and responsibilities and qualification requirements.
3. any such transfer shall require the clearance of the General Manager and the consent of the employee. The employee shall give the releasing department reasonable notice of the transfer. Prior approval of the transfer is not required by the releasing department. The releasing department cannot require the employee to resign.
4. any employee affected by this section shall not have affected adversely his government service, retirement credits, sick or annual leave and other fringe benefits normally granted to an employee of the Government.

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5. The General Manager may require a transferred employee to serve a probationary period.

E. Inter-Government

The transfer of an employee of any Federal, State or other local government to the Port may be made when the following conditions are met:

1. the position requires highly developed skills and technical abilities as determined by the General Manager.
2. the employee meets the minimum qualification requirements for the position, including any assembled examination requirements.

4.802 Reemployment

A permanent classified employee who separated through resignation or retirement while in good standing may be eligible for reemployment, without competition to the same or comparable position within the Port within four (4) years from the date of separation. For reemployment, the General Manager must determine that the person has met the current minimum qualification requirements for the class to which reemployment are requested. A reemployed employee may be hired at not less than the salary earned at the former position. Reemployment appointments are subject to the certification procedures as described in these rules. Former employees covered by this rule shall not be affected by the Merit Career Plan requirements.

4.803 Reinstatement Immediately After Active Military Service

- A. To be entitled to reinstatement rights at the Authority, a veteran must meet the following requirements:
 1. Leave a classified position at the Authority for the purpose of entering the Armed Forces, voluntarily or involuntarily.

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2. Provided written or verbal notice to the Port prior to leaving for military training or service, except when precluded by military necessity. Written notification for military leave without pay is to be submitted to the General Manager for approval accompanied with a copy of the military orders or other appropriate documents authorizing such duty.
 3. Must not have exceeded the five (5) cumulative limit on periods of service. There are certain limited circumstances in which the five (5) year limit may be extended, including, but not limited to, when the military service beyond five (5) years is required to complete an initial period of obligated service or the employee was unable to obtain orders releasing him from service before the end of the five (5) year period and the inability to obtain such orders was not at the fault of the employee.
 4. Released from active military service under conditions other than dishonorable.
 5. Be qualified to perform the duties of his position. If the employee is disabled during military service and cannot perform the duties of his former position, the employee may be entitled to the nearest comparable job he is qualified to perform.
 6. Make timely application for reinstatement within ninety (90) days after discharge from military service.
- B. Upon meeting the foregoing requirements, the veteran employee shall submit a written request for reinstatement provided written documentation, such as, a copy of the military orders and/or a DD-214, to show that:
1. the request is timely;
 2. the cumulative length of military service did not exceed the allowable limit; and
 3. the employee's entitlement to benefits under USERRA (Uniformed Services Employment and Reemployment Rights Act) has not been terminated, e.g., due to a dishonorable discharge.

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Pursuant to USERRA, the veteran employee who submits a written request for reinstatement shall simultaneously provide the documents requested by the Port as indicated in B above.

The Port shall not refuse to reinstate the veteran employee who does not provide this documentation, if documentation does not exist or is not available at the time of the request. However, if documentation becomes available at a later time which shows that the employee was not entitled to be reinstated, the Port may dismiss him and terminate any rights or benefits otherwise required by USERRA.

- C. The veteran employee is entitled to reinstatement to his previous position or its equivalent, in the step within his former pay, to which such employee would have attained before military service. In the event, the veteran employee's former position is reallocated to a higher or lower pay grade, appropriate pay adjustments shall be made. An employee on military leave without pay forfeits his reinstatement rights if he re-enlists or voluntarily extends the original tour of active duty, except as authorized in Rule 4.803.A.3 above.
- D. The Port is not required to reinstate the veteran employee if:
 - 1. Circumstances have changed to such an extent that reinstatement is impossible or unreasonable;
 - 2. In certain situations as outlined in USERRA, if employment would cause an undue hardship for the Port; or
 - 3. The employee's job was for a brief, non-recurrent period and there was no reasonable expectation that the job would continue indefinitely or for a significant period of time.

4.804 Voluntary Demotion

A voluntary demotion may be made when the following conditions are met:

- A. The employee meets the minimum qualification requirements of the position to which he seeks movement, including any assembled examination requirements.
- B. The employee to be demoted is a permanent employee and the movement

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is from a position in which he last held permanent appointment.

- C. Such demotion shall require the prior approval of the General Manager with the consent of the employee.

4.805 Developmental Promotions under Known Promotional Potential (KPP) Conditions

- A. Promotions without competition may be made where at an earlier date, an employee was selected under an announcement (competitive examination) for a position with Known Promotional Potential (KPP) and the employee is now to be promoted to the higher level position, provided the employee:

- 1. has completed the probationary period in the position he currently holds;
- 2. meets the minimum qualifications of the higher grade position including any assembled examination requirements; and
- 3. meets management's developmental criteria guidelines for advancement to the higher grade position.

- B. The types of KPP are:

- 1. KPP within a class or related class series not to exceed the highest non-supervisory level position within the series.
- 2. KPP within a class series up to the supervisory position within the series (first line), provided the KPP position is no more than two levels below the supervisory position.
- 3. KPP within an organizational program for supervisory positions not to include the managerial position ultimately responsible for the operational or conceptual integration, or coordination of activities within the organizational program.

(NOTE: Organizational charts shall be utilized to determine the position for KPP.)

- C. To be eligible for promotion without competition when the position is upgraded under these conditions, an employee must continue to perform

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the same basic functions; and his former position must be absorbed in the new one.

- D. When an additional position is created, or when the new position is not a clear successor to the former position, non-competitive promotion is not authorized and the provisions of the Merit Career Plan must be complied with.

4.806 Detail Assignments

- A. A detail is a temporary assignment to meet management needs of an employee to another position or to a group of specific duties and responsibilities for a specified period with the employee returning to his regular duties at the end of the detail. A position is not filled by a detail as the employee continues to be the incumbent of the position from which he is detailed, and his salary during the detail does not change. For details to unbudgeted positions, the Division Head must provide to the General Manager a position description and justification for such detail prior to the detail appointment.
- B. Details shall be made only for meeting temporary needs of the Authority's programs, such as:
1. Emergency details - to meet emergencies occasioned by abnormal workload, change in organization, or unanticipated absences; or
 2. Pending description and formal classification of a new position; or
 3. To replace an incumbent who is undergoing training.
- C. All details commencing on the first calendar day must be documented and submitted to the General Manager prior to the effective date of the detail for approval. No personnel action shall be transacted unless proper documentation is provided.
- D. An employee shall not be detailed while serving an original probationary period.
- E. No employee shall be temporarily assigned or detailed to a position nor, shall the employee assume the duties and responsibilities of a position other than the one to which he has been appointed for a period in excess of

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ninety (90) days within a calendar year, unless the General Manager obtains an exemption upon written application to DOA. Such exemption shall not extend beyond the additional ninety (90) days within that calendar year.

- F. An employee in the unclassified position, or an individual employed under a contract will not be detailed to a position in the classified service.
- G. Nothing in this regulation is intended to infringe on management's prerogatives in day-to-day operational activities which may occasionally require that an employee be assigned, for brief periods immediately on the first calendar day.
- H. Employees serving on a detail in excess of thirty (30) days in a position having a higher pay grade than his regular position, shall receive a payment differential in accordance with Rule 6.009, provided the detail appointment is consistent with classification principles as determined by the General Manager.
- I. Employees serving a detail on the first calendar day in a position having a lower pay grade shall not have their pay adjusted to the lower pay.
- J. An employee may not be detailed beyond 180 calendar days to any classified position, unless the employee has met all of the qualification requirements of the position.
- K. Payment of differential shall be deferred until the employee has served at least thirty (30) calendar days in a detail.

4.807 Acting Capacity as General Manager

- A. The Board, at its discretion, may appoint a classified or unclassified employee to serve temporarily in an acting capacity as General Manager not to exceed one (1) year.
- B. An employee so appointed has the right to return to the position the employee held immediately before the appointment to serve in an acting capacity after the one (1) year period is exhausted. The time limitation of this section may not be circumvented by an interruption in the appointment to an acting capacity or the position the employee held before the appointment for a period of less than thirty (30) days.

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- C. Such employee shall receive a payment differential according to Rule 6.010.

4.900 TYPES OF APPOINTMENTS

4.901 Permanent Appointment

A permanent appointment is granted to an employee after successfully completing a probationary period in the permanent position.

4.902 Probationary Appointment

A. Probationary Period

The probationary period shall be utilized as fully as possible to determine the fitness of the employee for the position.

B. Original Probationary Period

An original probationary period shall be required when an individual who has not obtained permanent status is appointed a permanent position. This also applies to former employees who have not been employed in the Government of Guam service after four (4) years of separation in good standing.

C. Duration of Probationary Period

1. Original probationary periods will be for six (6) months, except that service as a result of the six (6) months employment program provided for placement of persons with severe disabilities may be credited consistent with statute. Employees holding classified positions under temporary employment, who are subsequently appointed to the same position under a permanent appointment, may be credited for time served towards their probationary period under temporary appointment.
2. In entry level trainee positions, the probationary period may be established at not more than twelve (12) months, upon the request of the Division Head and approval of the General Manager.

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3. Upon the request of the Division Head, the General Manager may extend an original probationary period not to exceed a total of twelve (12) months. The General Manager prior to the expiration of the probationary period shall give written notice of extension to the employee.

D. Discontinuance of a Probationary Appointment

If the employee fails to render satisfactory service during the original probationary period, the General Manager may dismiss him provided he has served a probationary period of at least three (3) months. The Division Head shall submit a recommendation for dismissal, together with the employee's performance evaluation report, to the General Manager for his approval. The dismissal notice shall indicate the effective date of the action.

Failure by the General Manager to submit a probationary letter to the employee prior to the expiration of the established end date of the probationary period does not grant him permanent status.

Employees dismissed while completing an original probationary period may appeal the dismissal only if the employee alleges that the dismissal was discriminatory based on sex, race, color, creed, religion, age, marital status, political affiliation, disability, or national origin. Submission of such appeals shall be in accordance with the EEO Discrimination Complaint Procedures adopted by DOA.

4.903 Temporary Appointment

A. Short-Term Appointments

1. Short-term appointments may be made to fill temporary vacancies in temporary positions. Appointments of this nature shall be restricted to waterfront and support personnel of the Port, involved in the loading and unloading of cargo.
2. Employees on such short-term appointments shall not be entitled to any employee benefits; any civil service protections reserved for classified employees of the Government of Guam; nor any right for promotions.

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3. Employees on such appointments shall work on an “on-call” basis and may be terminated when their services are no longer required for the operations prescribed in this section.

B. Limited-Term Appointments

1. Limited-term appointments may be made to fill:
 - a. federally funded positions, grant specific positions and project specific positions for specific periods of time that are commensurate with the funding sources or the project’s duration; or
 - b. professional level position in the classified service for a specific project or program which commensurate with the duration of a specific project or program.
2. Limited-term appointments are made through the competitive process and that any person appointed on a limited-term basis must meet all qualification requirements including any assembled examinations.
3. Separation from government service of employees serving in limited-term appointments is through resignation, layoff, suspension, dismissal, termination or completion of a grant, federal grant, source of federal funds, specific program or project and for incapacity to perform required duties, provided that the employee is provided with an opportunity to seek reconsideration of suspension, dismissal and removal for incapacity to perform by answering any charges within ten (10) days in having a conference with the General Manager.

Notice of separation of government service must be provided to the employee by written notice at least sixty (60) days prior to the effective date of separation for any reason. In situations where the convenience of the Port is necessary to separate the employment without giving sixty (60) days notice, the employee shall be retained in pay status until the notice period shall have run.

4. Employees appointed on a limited-term basis shall be given the usual employee benefits.

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5. Limited-term employees do not serve a probationary period.

C. 120-Day Appointments

Temporary appointments shall be consistent with the provisions of GCA, Title 4, Sections 4102(a)(6) and 4103(e) as follows:

1. A person may not be temporarily employed in a non-professional capacity for more than 120 work days or 960 hours in any calendar year except pursuant to an exception provided for in Section 4103(d).
2. A person may not be temporarily employed in a professional capacity for more than 120 work days or 960 hours except, upon a contract in writing and a determination in writing by the General Manager that such employment is critical to the public health, safety or welfare of the community. (A person is employed as a professional if the person's job description in the Dictionary of Occupational Titles published by the U.S. Department of Labor, has as its first digit zero (0) or one (1). Any person whose job description does not have as its first digit zero (0) or one (1) shall be deemed to be a non-professional employee.)
3. The following provisions shall apply to appointments made consistent with Sub-rules 1 and 2 above:
 - a. A classified employee who fills a temporary classified or unclassified position has classified employment status absent other controlling legislation.
 - b. A newly hired employee who fills a temporary classified or unclassified position has unclassified employment status.
 - c. Such temporary appointments shall be made without competition, except that any person appointed on a temporary basis must meet the minimum qualification requirements and satisfy all examination requirements for the position as determined by the General Manager prior to appointment.

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- d. A person appointed on a temporary basis shall not perform the duties and responsibilities of a position other than that to which he was appointed.

4.904 Contracts for Personnel Services

- A. Contracts shall not be used as a substitute for merit system employment. The Authority will not contract for personnel services, which normally are performed by employees under the merit system, unless every effort has been exhausted to recruit on-island. Such effort must be documented to prove there was lack of qualified individual on-island.
- B. Contracts for personnel services may be used only when the use of a contract is in accordance with all legal provisions, including the merit system, laws, and rules.
- C. All contracts shall, after approval by the Board, the Commission, and Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor.
- D. Factors to be considered which could provide an adequate justification for using contracts with individuals for services include:
 - 1. emergency short-term (less than two months) normally exempt from competitive appointment methods;
 - 2. part-time professional work;
 - 3. inability of the Authority's merit personnel system to provide qualified employees;
 - 4. contract for expert consultation services not available in the Authority, when full-time employment is not needed or practical, or when the need is intermittent or for a short period of time. Such an expert might provide views or recommendations, but would not perform or supervise the performance of any of the Authority's functions;
 - 5. part-time services of a medical, dental, or other professional specialists; and

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6. contract with an individual to produce a product such as an individual research paper.

4.905 Vacation Employment for Students

The General Manager may employ during the vacation period between school years, at a rate not exceeding the minimum wage specified by any applicable Federal or Guam law, students of the various public or private schools in Guam who are at least 16 years of age, provided that such employment may not exceed eight hours in one (1) day and five (5) days in one (1) week and that such employment may not be of a hazardous nature or in any way injurious to, or endangering the student. Students employed under the authority under this section shall not be eligible for retirement, sick, or annual leave benefits.

CHAPTER 5

POSITION CLASSIFICATION SYSTEM AND COMPENSATION PLAN

STATEMENT OF POLICY

The purpose of this chapter is to develop and maintain a system for the objective, consistent and timely classification of Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions and for the reasonable and consistent assignment of classes of such positions to pay grades.

Compensation of position classes shall be based on a strategic pay job evaluation system which assesses the content and relative importance of jobs within an organization using a total of twelve (12) measurement factors.

5.000 POSITION CLASSIFICATION SYSTEM

5.001 The Classification Plan

Title 12, Chapter 10 of the GCA authorized the Board to adopt rules and regulations governing the selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment of personnel occupying maritime positions unique to Port operations and certified, technical and professional positions.

5.002 Preparation and Publication of Classification Standards

Established classification standards placed positions in their proper classes and pay grades to:

- A. define the various classes of positions that exist in the classified service in terms of duties, responsibilities and qualification requirements. Standards may be created, amended or abolished;
- B. establish the official class titles; and
- C. set forth the pay grades.

5.003 Delegation of Classification Authority and Responsibilities

The General Manager is authorized to classify maritime positions unique to Port operations and certified, technical and professional positions under its jurisdiction, subject to:

- A. existing policies and procedures;
- B. established class standards;
- C. post-audit by the Commission; and
- D. classification appeal by the employee.

The General Manager may review published standards and submit amendments to the standards for approval to the Board.

5.004 Classification Maintenance

- A. The Commission may review maritime positions unique to Port operations and certified, technical and professional positions to determine whether positions are allocated to classes and grades in conformance with, or consistent with the Port's position classification and compensation plan.
- B. Positions shall be placed in its appropriate class and grade, provided that if a position is downgraded, the position title and pay grade shall not be applicable to an incumbent until the expiration of two (2) years from the date of downgrade. The General Manager shall take action in accordance with such determination.
- C. Whenever the Commission finds that the positions are not placed in classes and grades in conformance with the classification and compensation plan, it may prescribe, revoke or suspend in whole, or in part the classification authority of the General Manager. Further, the Commission may require its prior approval be secured before an action placing a position in a class and pay grade becomes effective for payroll and other purposes. The Commission may at any time restore such authority to the extent that it is satisfied that subsequent actions placing positions in classes and pay grades will be taken in conformance with the Classification Plan.

5.005 Class Standards

The class standards shall be considered in allocating positions and shall be applied as follows:

- A. Class standards are descriptive and explanatory and are not restrictive. The use of a particular expression or illustration of duties, qualification

requirements or other attributes shall not be regarded as excluding others not mentioned which are of similar nature.

- B. In determining the class to which any position shall be allocated, the standards for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities, minimum qualification requirements, and relationships to other classes consistent with statutory provisions.
- C. A class standard shall be construed as general description of kinds of work characteristic of positions that are properly allocated to that class, and not as prescribing what the duties or responsibilities of any position shall be; nor as limiting or modifying the authority which the General Manager has to take from, add to, eliminate entirely, or otherwise change the duties and responsibilities; to assign duties or delegate responsibilities to employees; or direct and control their work.
- D. The fact that all of the actual tasks performed by the incumbent of a position do not appear in the standards of a class to which the position has been allocated, shall not be taken to mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.
- E. The statement of minimum qualification is to be construed as an expression of the minimum knowledge, abilities and skills, and experience and training which would be required of any appointee to a position in the class as partial evidence of his ability to perform the work satisfactorily.
- F. Qualification requirements in the standard for any class, as interpreted herein, shall constitute the basis for other tests to be included in examinations for the class, and for the evaluation of qualifications of applicants.

5.006 Title of Positions

The assigned class title shall be the official title for the purpose of personnel actions, and shall be used on payroll, budget, and official records and reports. This requirement, however, shall not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

5.007 Position Description

- A. The Port must prepare a written description of duties and responsibilities of each budgeted position on a form prescribed by the Board. A group of

like positions may be covered by a single description. The employee, supervisor and/or position classifier may prepare the description. However, the major responsibility to insure accurate descriptions is on the supervisor.

- B. The supervisor must certify as to the accuracy of the duties assigned and such certification should be authenticated by the Division Head and the General Manager. The position classifier must certify as to the proper classification of the position. Copies of the position description must be filed with the Port's Human Resources Division and the respective division concerned.
- C. The position description must be amended whenever significant changes occur that would affect the recruitment and classification of a position, and must be promptly reported to the General Manager so that a review of the position can be made to determine the proper classification of the position.

5.008 Port Responsibilities

- A. The Port shall insure that the duties and responsibilities assigned to each of its positions are accurately reflected in an official position description. Amended descriptions should be submitted on a timely basis if significant changes in the duties and responsibilities of a position are made.
- B. The Authority shall not use the classification process to evade the principles of the merit system and effect personnel changes for which other personnel processes exist.

5.009 Periodic Review of Descriptions and Classifications

In addition to the day to day work of describing and classifying new or changed positions to reflect current duties assigned and reported by supervisors, or employees, the General Manager must review, at intervals not exceeding two (2) years, all positions of the classified service within the Port to insure that the official position descriptions accurately reflect the work being performed and that the positions are properly classified, and shall take appropriate action as necessary.

5.010 Determination of Proper Allocation for Newly Budgeted or Vacant Positions

When a new position is to be established/budgeted or vacant position is to be filled, the Division Head shall submit a position description to the General Manager in order that a determination of proper classification and pay allocation may be made. After the General Manager approves the allocation, he shall notify the Division Head affected, in writing, of the approved allocation. No position may be filled until the General Manager certifies that the position is properly

classified. Copies of all classification reviews shall be filed with the Commission for post-audit purposes.

5.011 Reclassification/Reallocation of Positions

- A. The General Manager may, upon his own initiative, or upon the written request of a permanent employee, or the Division Head, review the duties of any position to determine if it is properly classified; and shall take appropriate action as necessary, in accordance with the Port regulations, policies and procedures.

In making a request for the review of a position, the employee or division head shall set forth the changes that have occurred in the particular position since the last review or other factors which in his opinion warrant reclassification provided, that such changes in duties and responsibilities have been acquired or performed for at least three (3) months and are not temporary in nature.

- B. The General Manager shall, after a thorough review of position, notify the division head and employee affected of the classification study result within twenty (20) work days from the completion of the audit. A copy of the study, documented in a form prescribed by the Port, and the personnel action shall be filed with the Commission for post audit purposes.

5.012 Effective Date of Reclassification of Positions

- A. When a position is reclassified to a class of the same or higher pay grade, the effective date of such reclassification shall not be prior to the date of the General Manager's approval.
- B. When a position is reclassified to a class of a lower pay grade, the effective date of such reclassification shall not be applicable to an incumbent until the expiration of two (2) years from the date of downgrade.

5.013 Status of Incumbents when Positions are Reallocated

- A. When a position is reallocated as a result of gradual accretion of duties and responsibilities, the employee in the position shall be entitled to serve in that class provided he continues to perform the same basic functions and meets the minimum qualifications for the class to which the position is reallocated. Reallocation within a series of positions that is non-supervisory shall be without competition.

- B. When a position is reallocated as a result of planned management action, the requirements of the Merit Career Plan must be complied with. The employee holding a permanent position shall retain the position currently held should the requirements of the Merit Career Plan result in his non-selection.
- C. If ineligible for reallocation to the position as reallocated, the employee may be transferred, promoted, or demoted to an appropriate class by appropriate action in accordance with the provisions of these rules.
- D. The incumbent of the position designated for downgrade shall not have his current salary reduced. Salary adjustment in the reclassified position shall be suspended until the incumbent's salary increment in the new grade is granted. This salary adjustment is subsequent to Rule 5.012.B.

5.014 Administrative Review

- A. An administrative review may be requested by an employee of the position, his designated representative acting on his behalf or, the division head in which the position is located under.
- B. All requests for administrative review must be in writing, shall contain the specific reason(s) for disagreement with the classification action taken by the General Manager, and shall state the action requested and the reasons the action is deemed more appropriate.
- C. An administrative review consists of a reevaluation of a classification action and is, therefore confined to the duties and responsibilities assigned to the position at the time the description were prepared, and which were the basis for the classification action. Subsequent changes in duties and responsibilities cannot be the basis for a request for administrative review, but must be reported on a new description and submitted for another classification action.
- D. The division head shall notify the affected employees of the original notice of classification action immediately upon receipt from the General Manager. Requests for administrative review shall be filed with the General Manager within twenty (20) calendar days of the date of notice of classification action was received by the employee.
- E. The General Manager shall take such action as he deems appropriate, which may include rescinding the earlier action and taking a different classification action. The affected employee and department head shall be notified of the action taken.
- F. Any permanent employee whose position is reviewed may appeal to the

Commission. The employee may file a written appeal with the Commission within fifteen (15) calendar days upon receipt of the General Manager's decision.

5.015 Creation of New Positions and Classes of Positions

- A. Pursuant to Section 6303(d), Title 4, GCA, the General Manager shall petition the Board to create new positions or classes of positions when necessary for the efficient performance of the duties and functions of the Port.
- B. The petition shall include:
 - 1. the justification for the new position;
 - 2. the essential details concerning the creation of the position;
 - 3. an analysis of the similarities and differences between the position to be created and the positions listed pursuant to Title 4, GCA, Section 4101.1(d);
 - 4. the position description;
 - 5. the proposed pay range and demonstration of compliance with Section 6301 of Title 4, GCA; and
 - 6. a fiscal note as that term is described in Title 2, GCA, Section 9101 *et seq.*; and any other pertinent information.
- C. The petition shall be posted on the Port's website for ten (10) days (Saturdays, Sundays and Government of Guam holidays excepted). After the posting, the General Manager shall forward the petition, along with evidence of his compliance with Title 5, GCA, Section 6303.1(a) to the Board who, if they approve the same, shall approve the petition by resolution and file the petition and resolution for record with the Director of Administration and the Legislative Secretary.
- D. No new position may be filled until after compliance of the provisions of this Section and thirty (30) days have elapsed from the date of filing with the Legislative Secretary.

5.016. Transparency and Disclosure of Creation of New Positions or Classes of Positions

- A. Prompt notice of the postings required by Title 4, GCA, Sections 6205 and 6303 shall be provided to each newspaper of general circulation and broadcasting station which airs a regular local news program within Guam.

- B. The petitions required by Title 4, GCA, Sections 6205 and 6303 are public documents for the purposes of Title 5, GCA, Chapter 10, Article 1 (The Sunshine Law).
- C. Any attempted creation of a position or above-step recruitment are not in compliance with provisions of Title 4, GCA, Sections 6205, 6303 and 6303.1(a) is void.

5.100 COMPENSATION PLAN

5.101 Authority

Pursuant to Title 12, GCA, Section 10111.3, the Port is authorized to adopt rules and regulations governing the compensation for Maritime Positions Unique to Port Operations and Certified, Technical and Professional Positions. The compensation policy and following rules shall only apply to the maritime positions unique to Port operations and certified, technical and professional positions. Compensation for all other positions shall remain consistent with compensation plans and pay scales as determined by law.

5.102 Compensation Policy

- A. The Port's compensation for maritime positions unique to Port operations and certified, technical and professional positions shall be based on internal equity and external competitiveness.
- B. To the extent practical, compensation will be targeted at the U.S. National Average levels compared to the appropriate labor markets and account shall be taken of the relevant economic factors.
- C. Internal equity should be reviewed annually and external competitiveness at least every three (3) years.
- D. Compensation structures and administrative policies should also be recognized and reward individual employees commensurate with performance.
- E. All aspects of compensation (base salaries, benefits, pay differentials, and other factors) will be considered as a total reward and incentive package for employees and shall be consistent and uniformly administered through the Port.
- F. A program of on-going communications and training shall be a critical component of compensation administration.

5.103 Administration of a Unified Pay Scale

The Board shall approve a unified pay scale for maritime positions unique to Port operations and certified, technical and professional positions as recommended by the Port Position Classification and Benefits Study.

5.104 Assignment of Classes to Pay Grades

Pay grades for all classes of maritime positions unique to Port operations and certified, technical and professional positions are assigned as recommended by the Port Position Classification, Compensation and Benefits Study and approved by the Board.

5.105 Evaluation of Classes for Assignment to Pay Grades

- A. The evaluation is a systematic process of assessing the relative size and importance of maritime positions unique to Port operations and certified, technical and professional positions in the Port.
- B. The evaluation provides a structured approach to assessing the relative work of each position and used measurement factors universally applicable across all sectors of industry, commerce and government.
- C. Classes shall be evaluated on the basis of twelve (12) measurement factors. Each factor indicates a point rating and the sum of all points represents the total “points” value for the job.
- D. The 12 factors, consistent with the Methodology of Position Classification and Salary Administration Guidelines, are:
 - 1. Education: The minimum level of education required to perform the functions of the position. This combines both formal and informal levels of training and education.
 - 2. Experience: The length of practical experience and nature of specialist or managerial familiarity required. This experience is in addition to formal education.
 - 3. Complexity: Measured in terms of:
 - (a) the time taken to learn and adjust to the specific job requirements;
 - (b) the level to which the job functions are defined and must follow established and predictable patterns;
 - (c) the thinking challenge required to adapt to rapidly changing circumstances, and the innovative or conceptual thinking required to initiate new corporate directions.

4. Scope of Work: The managerial breadth or scope of the position.
 5. Problem-Solving: The nature and complexity of problem solving expected of the job. Judgment exercised, availability of rules and guidelines to assist in problem solving, the degree of analysis and research required, and the originality, ingenuity and initiative required to arrive at a solution are all considered.
 6. Freedom to Act/Supervision Received: The extent of supervision, direction or guidance imposed on the job holder and the freedom the job holder has to take action.
 7. Work Environment: This factor measure the physical work environment in which the job is substantially performed. It considers environmental influences, such as, noise, dirt, heat, cold and dampness in excess of that normally associated with office conditions.
 8. Physical Demands: This factor measures the physical demands of the job in terms of work posture and physical exertion.
 9. Impact of Discretionary Decisions: The level of discretionary decision making taken solely by the job holder and the direct cost to the organization as a result of poor judgment or the direct contribution to the organization achieved through good judgment.
 10. Human Relations Skills/Contacts: The requirement for human relations skills in dealing with other personnel and external contacts.
 11. Authority Exercised: Authority levels expressed in term: staffing, contractual and financial.
 12. Supervisory/Managerial Responsibility: The responsibility for the control and management of staff within the Port, including direct line management and project team management.
- E. The assignment of classes of pay grades shall be in accordance with policies and standards established in conformance with statute and the following principles:
1. Classes, which are related and are substantially equal, shall be assigned to the same pay grade.

2. Significant differences between related classes in the twelve (12) factors shall be reflected in the relative difference in assignment to pay grades.

5.106 Approval of Amendments of Unified Pay Scale and Implementation Plan: The General Manager shall petition the Board for approval of the future amendments of unified pay scale as recommended by the Port Position Classification, Compensation and Benefits Study as follows:

- A. The petition shall include:
 1. the amendment to the unified pay scale;
 2. the justification for the amendment of the unified pay scale; and
 3. the implementation plan.
- B. The petition shall be posted on the Port's website for ten (10) days (Saturdays, Sundays and Government of Guam holidays excepted).
- C. The notice of posting shall be sent to each newspaper of general circulation and broadcasting station which airs a regular local news program on Guam. After posting, the General Manager shall forward the petition, along with the evidence of his compliance with posting to the Board.
- D. The Board may approve, disapprove or amend the amendments to the unified pay scale by resolution at any regularly scheduled meeting or a special meeting called for this purpose.

CHAPTER 6

PAY ADMINISTRATION

STATEMENT OF POLICY

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.

6.000 PAY ACTIONS RELATED TO APPOINTMENTS

6.001 Compensation at Initial Appointments

All initial appointments shall be made using the position's designated implementation range within the appropriate pay grade except as provided below:

- A. The General Manager may, with the approval of the Board, authorize initial employment in a position above the position's designated implementation range if such action is warranted by recruitment difficulties or exceptional qualifications. This petition to the Board shall be made before the applicant is hired.
- B. The pay grade schedule consisting of Steps 11 through 20 shall not be used for recruitment above-step.

The General Manager may establish policies to administer this action.

6.002 Compensation for Recruitment Above Designated (Above-Step) Implementation Range

- A. Policy: The Board expects that every request for recruitment above designated (above-step) implementation range is based on good faith recruitment efforts, objective evaluation of candidates' qualifications, and in the best interest of the Port.
- B. Recruitment Above Current Market Percentile (Above-Step): The General Manager may make a request to the Board for recruitment not to exceed twenty-five percent (25%) above current market percentile (upon which the Port's compensation plan is currently based) because of the documented recruitment difficulty or exceptional qualifications.

Increment schedule consisting of Steps 11 through 20 shall not be used for recruitment above current market percentile.

The request to recruit above the current market percentile shall include the following:

1. Identifying information about the applicant and the position to be filled.
2. For exceptional qualifications, documentation supporting the quality of experience.
 - a. performance evaluations;
 - b. professional accomplishments;
 - c. professional awards/recognition;
 - d. training certificates/certifications;
 - e. academic achievements; and
 - f. other testimonials
3. Application and rating forms of all candidates competing for the position.
4. Justification for pay grade, step and salary being requested. Justification must include information of the applicant's current salary.
5. A complete justification on the basis for the recruitment above the current market percentile.
6. The applicant was advised before being hired that all initial appointments shall be made using the position's designated implementation range within the appropriate pay grade unless the request is approved by the Board.
7. Organization and functional charts of the division of which the position is located.
8. Staffing pattern of the division of which the position is located.
9. Other information as may be requested by the Board.

C. Transparency and Disclosure Process: The following transparency and disclosure process shall be used to authorize recruitment for initial employment above the current market percentile:

1. The General Manager shall request for recruitment above the current market percentile to the Board for their review and approval to authorize management to proceed with the transparency process.
2. Once authorization is granted by the Board, the General Manager shall post the petition and supporting documents for ten (10) days (Saturdays, Sundays, and Government of Guam holidays excepted).

3. Issue press releases to each newspaper of general circulation and broadcasting stations which airs a local news program within Guam of the Port's request to recruit above the current market percentile. Such notice shall include the availability of the request under the Sunshine Act.
 4. In addition, a memorandum is to be issued to all employees notifying them of the request and acceptance of comments to the request.
- D. Board Action of Recruitment Above Current Market Percentile (Above-Step): After the expiration of the ten (10) days and at the next regularly scheduled or special meeting, the request, documents showing compliance of the transparency process and comments received by the public and/or employees shall be presented to the Board for review and possible approval. Approval of the request shall not occur if the transparency process was not complied with.

Approval by the Board shall include a resolution authorizing recruitment above the current market percentile which must be passed by a majority of the members present at the meeting.

The General Manager shall notify the applicant of the approval or disapproval of the request.

If approved, the personnel action reflecting the recruitment above the current market percentile shall be effective the date of the Board's approval. Copies of the personnel action, request, supporting transparency documents and Board resolution shall be provided to the Commission and filed in the employee's personnel jacket.

6.003 Compensation Adjustment Following a Promotion

- A. A payment adjustment resulting in a promotion is effectuated by identifying from the new pay grade, the salary (sub-step) closest to, but not less than the salary currently being received prior to promotion plus an additional six (6) sub-steps. This identifies the new base salary of the employee.
- B. A pay adjustment where the salary received prior to promotion is below the low end of the new implementation range shall be slotted at the lowest sub-step of the new implementation range plus an additional six (6) sub-steps. This identifies the new base salary of the employee.
- C. The General Manager, at his discretion, or upon the recommendation of the Division Head, may grant up to three (3) additional sub-steps based on

superior performance, significant contributions made to the business unit or the Port as a whole, or demonstration of personal enrichment and development related to and beyond the requirements of the position. All requests for additional sub-step placement must be in writing and approved by the General Manager prior to the effective date of the promotion, reclassification or pay grade reassignment.

6.004 Compensation Adjustment Following a Voluntary Demotion

- A. A pay adjustment resulting in a decrease by a voluntary demotion is effectuated by identifying the amended pay grade, the salary (sub-step) closest to, but not more than the salary (sub-step) currently being received prior to demotion less an additional six (6) sub-steps. This identifies the new base salary of the employee.
- B. A pay adjustment where the salary received prior to a voluntary demotion is below the lowest sub-step of the new implementation range shall be slotted at the lowest sub-step of the new implementation range. This identifies the new base salary of the employee.

6.005 Compensation Adjustment Following an Involuntary Demotion

- A. A pay adjustment resulting from an involuntary demotion is effectuated by identifying from the amended pay grade, the salary (sub-step) closest to, but not more than the salary (sub-step) currently being reviewed prior to demotion less than an additional six (6) sub-steps. This identifies the new base salary of the employee.
- B. A pay adjustment where the salary received prior to the involuntary demotion is below the lowest sub-step of the new implementation range shall be slotted at the lowest sub-step of the new implementation range. This identifies the new base salary of the employee.
- C. The General Manager, at his discretion, may further adjust the amended base salary following an involuntary demotion for cause or due to an adverse action (as opposed to an involuntary demotion due to a medical disability, which is not an adverse action) to an even lower sub-step to that outlined in Sections A and B above.

6.006 Compensation Following a Non-Service Connected Disability Demotion
(Medical Condition)

A pay adjustment resulting from the employee who is unfit to perform the duties and responsibilities of his position due to a medical condition that is non-service connected, is effectuated by identifying from the amended pay grade the salary (sub-step) closest to, but not more than the salary (sub-step) currently being

reviewed prior to demotion less than an additional six (6) sub-steps. This identifies the new base salary of the employee.

6.007 Compensation Adjustment Following Reemployment

A person who is reemployed under the provisions of Rule 4.802, shall be paid at the rate to which he would have been entitled had he remained in service, but that no credit shall be given toward progressive salary step increases within the pay grade.

6.008 Compensation Following a Transfer

An employee who is laterally transferred to a position in the same pay grade or reclassified to another class of position within the same pay grade, the current salary (sub-step) is maintained provided it is not less than the lowest sub-step of the new implementation range. Should the latter occur, a pay adjustment to the lowest sub-step of the new implementation range will identify the new base salary.

6.009 Compensation Following a Detail Appointment

- A. A pay adjustment due to a detail appointment effectuated by identifying from the new pay grade, the salary (sub-step) closest to, but not less than the salary currently being received prior to the detail appointment plus an additional six (6) sub-steps. This identifies the new base salary of the employee.
- B. A pay adjustment due to a detail appointment where the salary received prior to the detail appointment is below the low end of the new implementation range shall be slotted at the lowest sub-step of the new implementation range. This identifies the new base salary of the employee.
- C. Employees serving a detail appointment, consistent with Rule 4.806 in excess of 30 consecutive calendar days in a detailed position shall receive a pay adjustment in accordance with Sections A or B above. Payment of differential shall begin on the first calendar day the employee is serving in a detail.

6.010 Compensation Following Appointment in an Acting Capacity

An employee who is appointed by the Board to serve temporarily in an acting capacity as the General Manager shall be compensated during the period of such services by a payment differential to be added to his base rate of pay, measured by the difference in the amount between the step in the pay grade he holds and the salary paid the General Manager position, provided that:

1. The period in an acting capacity shall not be less than thirty (30) calendar days and not to exceed one (1) year.
2. Payment differential shall be deferred until the employee has served thirty (30) calendar days in an acting capacity.

6.100 PAY ACTIONS RELATED TO REALLOCATION OF POSITIONS

6.101 Compensation Following Reallocation of Positions

- A. When a position is reallocated to a class of a higher pay grade, the pay adjustment effectuated is by identifying from the new pay grade, the salary (sub-step) closest to, but not less than the salary currently being received prior to reallocation plus an additional six (6) sub-steps.
- B. When a position is reallocated to another class of the same pay grade, the current salary (sub-step) is retained provided it is not less than the lowest sub-step of the new implementation range. Should the latter occur, a pay adjustment to the lowest sub-step of the new implementation range will identify the new base salary.
- C. When a position is reallocated to a class of a lower pay grade, the implementation shall not be effected until the expiration of the two (2) year waiver, as provided for in Rule 5.012.B.

6.102 Salary Adjustment Upon Demotion Due to Position Reclassification Action

- A. The pay adjustment resulting in a decrease because of a position reclassification action is effectuated by identifying the amended pay grade, the salary (sub-step) closest to, but not more than the salary (sub-step) currently being received prior to demotion less than an additional six (6) sub-steps. This identifies the new base salary.
- B. Implementation of the reclassification in terms of position title shall be made upon approval of the reclassification determination by the General Manager.
- C. The incumbent of the position designated for downgrade shall not have his current salary reduced. Salary adjustment in the reclassified position shall be suspended until the incumbent's salary increment in the new grade is granted.
- D. The salary increment anniversary date before reclassification determination shall be used to determine the appropriate salary increment date in the new pay grade. Where there is no change in the waiting period, the salary increment date and the pay grade before the reclassification

shall be maintained.

6.200 PAY ACTIONS RELATED TO PAY GRADE REASSIGNMENT

6.201 Pay Grade Reassignment

An employee and/or supervisory official may initiate a written request for consideration of an amendment to the pay grade allocation for the class of position with justification to the General Manager. If the findings of the General Manager indicate the need to amend the pay grade allocation, he shall submit a written request with justification to the Board in accordance with the Board's policies and procedures. Changes adopted shall become effective as directed by the Board.

6.202 Pay Adjustment Following Pay Grade Reassignment

- A. A pay adjustment resulting in a higher pay grade reassignment and there is no change in the position classification is effectuated by identifying from the new pay grade, the salary (sub-step) closest to, but not less than the salary currently being received prior to the pay grade reassignment plus an additional six (6) sub-steps. This identifies the new base salary.
- B. A pay adjustment resulting in a lower pay grade reassignment and there is no change in position classification is effectuated by identifying from the amended pay grade, the salary (sub-step) closest to, but not more than the salary (sub-step) currently being received prior to the lower reassignment less an additional six (6) sub-steps. This identifies the new base salary.

6.300 PAY ACTIONS RELATED TO INCREMENTS

6.301 General Provisions Relating to Salary Increment Increases

- A. Salary increment increases shall be granted as authorized in the Personnel Rules and Regulations.
- B. Increment Status upon Demotion Due to Position Reclassification:

The salary increment anniversary date before the reclassification determination shall be used to determine the appropriate salary increment date in the new pay grade.
- C. Personnel Actions Not Affecting Increment Anniversary Dates:

The following personnel actions shall not change increment anniversary dates:

1. the pay grade for a class or classes of positions have been reassigned;
2. pay adjustments from statutory amendments to the pay grade schedule;
3. detail appointment;
4. transfer from one position to another of the same or related class of position while retaining the same salary rate upon transfer;
5. involuntary demotion for other than adverse or disciplinary reasons;
6. reclassification to a class of the same pay grade or lower while the employee retains the same salary rate;
7. salary increment freeze; and
8. other situations as may be determined by the Board.

D. Voluntary Demotion to the Same or Related Class of Positions:

The employee's next salary increment shall include the period served prior to the voluntary demotion; and provided that work performed is satisfactory.

E. Creditable Service Upon Reemployment:

Permanent classified employees who separated with the Port in good standing shall be credited for time served in the increment held prior to separation when exercising their reemployment rights.

6.302 Salary Increment - Procedure

Employees entitled to an increment increase shall be based on an annual review of performance as outlined in Chapter 7. As part of the appraisal process, an employee'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 percent (1%) the performance (and resulting salary increment) range from zero (0), or a nil increase, through up to six percent (6%).

The salary increment will be granted upon certification by the General Manager that satisfactory service has been rendered for the performance rating period preceding such increase.

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.

6.400 ONE-STEP MERIT PAY INCREASE – DR. PEDRO SANCHEZ SCHOLARSHIP GRADUATES

- A. Employees are eligible for a mandatory pay merit increase upon graduation from the Pedro "Doc" Sanchez Scholarship Program. The employees entered into the program, as evidenced with the awarding of an undergraduate or graduate degree in Public Administration or Business Administration by the University of Guam shall be entitled to receive one-step merit pay raise from the Port effective Fiscal Year 2008 following certification by the University of Guam that the employee has completed all degree requirements.
- B. Employees who were enrolled in the Pedro "Doc" Sanchez Scholarship Program and graduated with a degree between the enactment of Public Law 23-111 (effective July 23, 1996) and the enactment of Public Law 29-137 (January 30, 2009) who would otherwise have received the one-step merit pay raise, shall be entitled to the same incentive benefit, provided that the employee is an active employee at the time of enactment of Public Law 29-137 and the merit pay increase shall not be retroactive. Awarding of the one-step merit pay raise shall be subject to the availability of funds.

6.500 TRANSMITTAL OF PERSONNEL ACTIONS TO COMMISSION

6.501 Filing of Personnel Actions:

All personnel actions regarding the classified service shall be filed with the Commission within twenty (20) days after their effective date. The Commission may set aside and declare null and void any personnel action if the Commission finds that it was taken in violation of personnel laws or rules, except for those personnel actions for adverse actions, such null and void must be in accordance with the Adverse Action Appeals and Hearing Procedures.

6.502 Agency Response

Prior to declaring any personnel action null and void, the Commission shall provide written notice of the alleged violation to the General Manager. The General Manager shall respond within ten (10) days after receipt of the notice to the Commission's proposed action.

6.503 Commission Action

All actions taken by the commission pursuant to Section 4403(d) of Title 4, GCA shall be taken within 120 days after personnel action is filed with the Commission.

The Commission shall submit its final decision to the Guam Legislature. The Commission's decision shall be final but subject to judicial review.

CHAPTER 7

PERFORMANCE APPRAISAL

STATEMENT OF POLICY

The purpose of this Chapter 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 Authority.

7.000 PERFORMANCE APPRAISAL

7.001 Objectives

The objectives of this policy are to:

- A. Establish a process whereby the work performance of each employee can be informally evaluated on an ongoing basis;
- B. Establish standards for quality and quantity of work;
- C. Provide a formal review of each employee's work performance on a twelve (12) month basis;
- D. Improve individual performance;
- E. Identify specific requirements for training and development of employees;
- F. Strengthen supervisor/employee relationships;
- G. Grant or deny salary increments;
- H. Recognize employee accomplishments;
- I. Determine order of layoffs;
- J. Grant or deny permanent appointment to a probationary employee;
- K. Determine eligibility for promotions or transfers; or
- L. Determine whether disciplinary action is warranted.

7.002 Training

The General Manager shall be responsible for providing periodic training for all levels of management concerning the performance appraisal system, including the development of performance standards, performance interview techniques and performance ratings.

7.003 Performance Appraisal Records

- A. The performance appraisal report shall be transmitted to the General Manager, thirty (30) days prior to the anniversary date. Upon receipt of the performance evaluation report and recommendations, the General Manager shall effect the appropriate personnel action in accordance with

the recommendation of the supervisor and Division Manager. No action will be taken by the General Manager until receipt of the performance appraisal report.

- B. Records of the performance appraisal report shall be filed in the employee's personnel file.

7.004 General Manager's Responsibility for Performance Appraisal

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 ratings made within the Port 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.

7.005 Supervisor's Responsibility for Performance Appraisal

- A. The performance standards shall be developed and the performance appraisal shall be completed by the supervisor immediately responsible for the employee's work with input from the employee. The rater should be the individual who oversees, reviews, and checks the daily performance of the employee being rated, or is the supervisor who is most closely acquainted with the employee's work. The supervisor shall also be responsible for the timely preparation and submission of performance appraisals of all employees under his supervision. The employee's supervisor must have supervised the employee for at least ninety (90) days to render a fair appraisal. When a supervisor retires, resigns or transfers, he shall render an appraisal for the assigned employees before leaving the Port.
- B. For employees on temporary assignments due to work injury, disability (light duty), details, etc. for ninety (90) days or more, the supervisor may establish additional performance standards to reflect current duties. A composite rating for the temporary assignment and permanent position may be made.

7.006 Performance Appraisal Form

Performance appraisals shall be accomplished on a form approved by the General Manager, consistent with the performance appraisal system in effect. The performance appraisal form shall be filed in the employee's personnel jacket.

7.007 Performance Appraisal Period

- A. Supervisors shall evaluate and submit the employee's work performance for every twelve (12) months of service to the General Manager.
- B. Performance appraisal reports must be prepared and submitted for processing to the General Manager no sooner than thirty (30) days prior to above period.
- C. Supervisors are required to conduct mid-term performance appraisal for all of their subordinates.
- D. No later than the end of the probationary period for those employees serving original probationary appointments, including those probationary periods that have been extended. The final Probationary Performance Appraisal Report shall be submitted and received by the General Manager no later than (10) work days prior to the probationary due date.

7.008 Salary Increment

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 outlined in this Chapter. 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 percent (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.

7.009 Performance Appraisal for Original Probationary Employees

- A. An overall performance rating of at least a **Satisfactory** shall be necessary before an employee serving an original probationary period may receive a permanent appointment in the class of position he occupies.
- B. When an employee serving an original probationary period receives an overall performance rating of **Marginal**, the probationary period shall be extended for a minimum period of sixty (60) days during which the employee has the opportunity to improve work performance, provided the total probationary period does not exceed twelve (12) months. The Division Head must justify, in writing, to the General Manager stating specific reasons for the request for extension based on the duties and responsibilities associated with the employee's current position description and job standard. No extension beyond twelve (12) months may be granted.

- C. When an employee, serving an original probationary period, receives an overall performance rating of **Unsatisfactory**, the employee serving the original probationary period shall be terminated from the Port. A probationary employee who is dismissed has no recourse to file a grievance or appeal his release from employment unless the release from employment is a result of discriminatory action by management.

7.1010 Approval of Performance Appraisal

A Division Head shall submit, on a twelve (12) month basis, a written recommendation to the General Manager regarding the performance appraisal of every employee occupying a maritime position unique to Port operations and certified, technical and professional position. The General Manager shall make a final performance appraisal accepting or rejecting said recommendation and make the corresponding salary adjustments.

7.100 APPEAL PROCEDURES FOR RE-DETERMINATION OF PERFORMANCE APPRAISAL

7.101 Purpose

This procedure outlines the responsibilities and procedures to be followed by management and employees in handling performance appraisal appeals.

7.102 Coverage

Employees occupying maritime positions unique to Port operations and certified, technical, and professional positions covered by these procedures are those employees who have satisfactorily completed their original probationary period and have attained permanent status with the Port. Such employee who believes he was unjustly rated may request for redetermination of the performance rating. Original probationary period performance ratings are not appealable under this procedure.

7.103 Representation

An employee has the right to present an appeal with or without representation. He also has the right to be accompanied, represented, and advised by a representative of his choice at any step of the appeal proceeding.

7.104 Freedom of Reprisal or Interference

An employee and his representative shall be free to appeal a performance rating without restraint, interference, coercion, discrimination, or reprisal.

7.105 Management's Responsibility for Timely Action

Management shall expedite the processing of an appeal and shall abide by the allotted time. Failure to render a decision within the allotted time at any step constitutes denial, and the employee may then proceed to the next step of the appeal procedure.

7.106 Informal Appeal Procedure – Division Head

- A. After the rating conference has been held and the employee has been informed of his overall annual rating, the employee who believes that he was unjustly rated shall bring the matter to the attention of his Division Head not later than five (5) workdays after the conference date.
- B. A review of the rating shall be afforded the employee by the rater and/or higher-level supervisor. Settlement of aggrieved matters is encouraged at the lowest possible administrative level and in the shortest possible time. The employee shall be notified of the decision not later than five (5) workdays after presentation of his informal appeal to Division Head.
- C. If the employee's concerns are not resolved, or a decision is not issued within five (5) workdays, the employee may file a formal appeal to the General Manager.

7.107 Formal Appeal Procedure – General Manager/Performance Rating Board of Review

- A. Whenever resolution of a performance rating cannot be reached at the informal level, an employee may appeal to the Performance Rating Board of Review via the General Manager. The appeal shall be in writing to the General Manager and filed within five (5) workdays after the employee receives the Division Head's decision.
- B. The Board shall be appointed by the General Manager and consist of three members, who are classified employees and occupy maritime positions unique to Port operations and certified, professional and technical positions, of which one shall be at the same position level as the appellant, one shall be at the managerial level or designated official who will serve as the hearing officer. Board members shall not be from the same division where appellant is assigned. The General Manager shall appoint the Board within five (5) workdays of receipt of the written appeal.
- C. The Board shall conduct its first hearing within five (5) workdays of its appointment. The Board shall complete the investigation and conduct the final hearing not later than ten (10) workdays from the date the Board convened. The Board shall give notice of hearings and shall provide all

pertinent documents related to the appeal to the employee, his representative, the rater, and all other parties concerned.

The conduct of the hearings shall be consistent with the opportunity to present all information necessary to decide the merits of the appeal. Both oral and written information, which the Board considers pertinent, shall be submitted and other information the Board requests concerning the appeal.

- D. The hearing officer shall preside and rule on all questions and conduct of the hearing during the proceedings. Board members shall consider the case and vote objectively. They shall give consideration to the merits of the case and secure all necessary information. They shall encourage a harmonious relationship between the employees and supervisors during proceedings before the Board. All members of the Board shall be present at all times during hearings and shall participate in the decision. Hearings shall be recorded and summarized in writing.
- E. When all pertinent information in an appeal has been presented to the Board, the Board shall render a decision by majority vote. The Board may either amend the performance rating, or sustain the rating without change. When an amendment is made by the Board, to the performance rating, that amended rating shall not be lower than the original rating.

The Board shall make its final decision within five (5) workdays of the final hearing. The Board's decision shall be in writing with the hearing officer's signature. The decision shall contain a brief summary of the facts on which the Board based its decision. The written decision shall be immediately sent to the appellant, and signed copies forwarded to the Division Head and General Manager.

- F. When the Division Head receives a Board decision amending the employee's rating, the Division Head shall immediately substitute the original rating for the amended rating. The Division Head must reconsider administrative actions based on the original rating and re-determine and adjust those administrative actions to conform to the amended rating.

CHAPTER 8

HOURS OF WORK, OVERTIME AND PREMIUM PAY

STATEMENT OF POLICY

The purpose of this Chapter is to establish the standard for hours of work, wages, overtime compensation, compensatory time-off in lieu of overtime pay, observance of holidays and a system under which the pay of certain employees shall be adjusted for certain hours, days or conditions of work. These provisions shall be in compliance with the Fair Labor Standards Act (FLSA).

8.000 GENERAL PROVISIONS

8.001 Work Week

- A. The basic work week is forty (40) hours. Alternatively, a workweek is a regular recurring period of 168 consecutive hours—seven (7) consecutive 24-hour periods. The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must in each case, be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade overtime requirements or policies.
- B. An employee's work week may be in accordance with office hours, with designated shifts, or with such flexible or variable hours program as are implemented by the Port provided that the Port shall not operate less than a forty (40) hour work week, except as provided by law.

8.002 Break Periods

A full-time employee may be allowed a fifteen (15) minute break period in the first half and second half of the work day, except for law enforcement employees subject to Section 7(K) of the FLSA provided further that:

- A. No single work break shall exceed fifteen (15) minutes absence from the employee's workstation.
- B. An employee may not accumulate unused work breaks.
- C. Work break time shall not be authorized for covering an employee's late arrival on duty or early departure from duty.

8.003 Meal Periods

- A. Full-time employees shall be allowed a minimum of thirty (30) minutes and up to a one-hour meal period during each workday of more than five hours.
- B. When a work day of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of the employee and the Port.
- C. Meal period shall not be considered "on duty" or counted as time worked, unless the nature of work prevents an employee from being relieved of duty.

8.004 Work Week Schedule

- A. The schedule of workweek for shift workers shall be prepared and prominently posted at least two (2) weeks in advance so that the employees affected will be informed. Such schedules shall not be less than two (2) weeks and shall not be changed, except for good cause and provided affected employees are given at least 24 hours prior notice. Whenever possible, work schedules should permit an employee to enjoy a holiday on the day it is observed.
- B. The General Manager may permit flexible work schedules as may be appropriate.

8.005 Safe Hours of Work

- A. To ensure that the employee's work is performed in a safe manner, the following maximum hours of work will be observed:
 - 1. An employee shall not be allowed to work more than 14 hours consecutively, or in one 24-hour day.
 - 2. An employee shall not be authorized to work more than 84 hours total within a single seven-day period.
 - 3. An employee shall not be required to work more than 28 hours within a time span of two days.
- B. Exceptions to the above may be made only:
 - 1. if the employee volunteers his services and has the specific approval of his Division Head; or

2. in cases where excessive hours of work are necessary because of weather conditions, necessary seasonal activities or emergencies.

Should such an occasion for Section A arise, written documentation must be submitted by the Division Head to the General Manager within 48 hours of such occurrence.

8.100 MINIMUM WAGE

Employees shall be paid not less than the established minimum wage for Guam.

8.200 HOURS WORKED

A. As a general rule, hours worked will include:

1. All time during which an employee is required to be on the Port's premises or at a prescribed work place.
2. All time during which an employee is suffered or permitted to work, whether or not required to do so. The determination of an employee's working hours will include, in the ordinary case, all hours from the beginning of the work day to the end of the work day, with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.

8.300 HOURLY RATE OF PAY

The hourly rate of pay is the rate reflected on the pay grade schedule approved by the Board.

8.400 OVERTIME

8.401 Coverage

- A. Upon the occurrence of overtime work, covered classified employees shall be entitled to receive overtime compensation calculated at the rate of 1 and ½ times the regular rate of pay for each hour or portion of the hour of overtime worked.
- B. In determining the number of hours worked by an employee within a given workweek or work period, time spent off on annual, administrative, sick, compensatory time-off, other leave (with or without pay), or holidays will not be counted as time worked. Such time off with pay shall be included in the straight time pay, but it is not included in computing whether a covered employee has worked in excess of forty (40) straight time hours in a workweek.

- C. Any fraction of an hour of overtime worked shall be converted to the nearest fifteen (15) minutes.
- D. Covered employees, include those classes of positions that are not in the executive, administrative, and professional categories, in accordance with the FLSA.

8.402 Occurrence of Overtime Work

- A. Overtime work may be authorized by the General Manager in cases of emergency, or when the best interests of the Port indicate that overtime work is required.
- B. The General Manager shall hold hours worked by the employees to the Port's established forty (40) hour work week standard, except in those cases where excessive hours of work are necessary because of weather conditions, necessary seasonal activities, or emergencies.
- C. It shall be the responsibility of each Division Head to determine that the provisions of overtime pay are administered in the best interest of the Port's services. Recognizing that the General Manager is responsible for the manner in which overtime work is authorized, it is especially important to control unauthorized overtime.
- D. Each Division Head is responsible for internal controls, which will provide a means of reviewing and evaluating the use of overtime. The practice of overtime work will be subject to review by the General Manager.
- E. Overtime work will occur when an employee renders service under any of the following conditions:
 - 1. The employee renders service in excess of forty (40) straight time hours per workweek.
 - 2. The employee renders service on the employee's scheduled day off and there has been no change, by mutual consent or by due prior notice, in the work schedule.

8.403 Emergency Situations Defined

The General Manager shall arrange the employment and work programs of the Port in such a way that overtime is not required except in emergency situations.

Overtime work may be required for any covered employee in emergency situations as described below:

- A. Where an established post of duty must be covered twenty-four (24) hours per day, and an employee is not available to cover that post on a given shift.
- B. When danger to life, health, or well-being of the public, employees, patients, inmates or other persons could occur if an employee is not required to be on duty or where danger to property is eminent.
- C. Other situations where the General Manager determines that the responsibilities prescribed for the Port cannot be accomplished unless overtime work is authorized.
- D. Employees who work during emergency periods as declared by the Governor of Guam.

8.404 Compensation for Overtime Work

- A. Payment for overtime work shall be made no later than the next pay period after the overtime work is performed.
- B. Overtime compensation shall be at the rate of 1 and ½ times the regular rate of pay for each hour or portion of the hour of overtime worked.
- C. An employee who is subject to the maximum 240 (480 for law enforcement) hours of compensatory time under the FLSA, as amended, shall be paid cash wages of time and one-half (1½) the regular rate of pay for overtime hours in excess of this maximum. Overtime must be authorized in advance and applicable only for the pay period.
- D. The requirement that overtime must be paid after forty (40) hours a week may not be waived by an agreement between management and the employee except provided in Rule 8.405.
- E. Consistent with Section 4105(d)(3) , Title 4 of the GCA, no person shall be required to work overtime unless the employee has received certification by the General Manager that funds for overtime pay are available.
- F. Employees, who work during emergency periods as declared by the Governor of Guam, shall be compensated in the following manner.
 - 1. Employees occupying permanent positions in the classified service or the unclassified service, except for the General Manager and his first assistants, by whatever title called, whose regularly scheduled

hours of work fall within such an emergency period, but whose presence is not required at work, shall be granted administrative leave. Employees not occupying permanent positions are not eligible for administrative leave.

2. Employees not occupying permanent positions in the classified service, who were required to report to, and did work during such an emergency period, shall be entitled to overtime pay for all such hours worked.
3. Employees occupying permanent positions in the classified service or unclassified service, except for General Manager and his first assistants, by whatever title called, whose regularly scheduled hours of work fall within such an emergency period, and who are required to report for, and be on duty during such emergency period, shall be entitled to overtime pay for all such hours worked, in addition to full compensation for any administrative leave taken.
4. Employees occupying permanent positions in the classified service or the unclassified service, except the General Manager and his first assistants, by whatever title called, whose regularly scheduled hours of work do not fall within such an emergency period, but who are required to report for, and be on duty, shall be entitled to overtime pay for all such hours worked, including overtime, but not for administrative leave.
5. In the event that a typhoon emergency period includes a legal holiday, then such employees required to report for and be on duty, shall be entitled to overtime pay for all hours worked, including overtime, in addition to full compensation for holiday leave.

8.405 Compensatory Time Off in Lieu of Overtime Pay

- A. In the absence of any funds for overtime compensation, compensatory time off shall be granted in lieu of overtime pay by mutual agreement between the employee and management, before the work is performed. A record of this agreement must be kept with Payroll Office.
- B. The number of hours of overtime work shall be converted to compensatory time credit at the rate of 1 and ½ hours for each hour of overtime work, or portion of the hour consistent with Rule 8.401.
- C. Employees engaged in law enforcement work may accrue not more than 480 hours of compensatory time. Employees engaged in non-law enforcement work may accrue not more than 240 hours of compensatory time.

- D. Any additional overtime work performed by employees, who have already accumulated the maximum 240 of compensatory time off, or 160 hours of actual overtime work, (480 for law enforcement), compensatory time off credits shall be compensated not later than the pay period immediately following the period during which the overtime was worked.
- E. When sickness lasting one or more days occurs during a scheduled compensatory time off, and the employee substantiates such to the satisfaction of the General Manager, the employee shall be charged for sick leave and permitted to reschedule his compensatory time off. Application for such substitution of sick leave for compensatory time off shall be made within three (3) workdays upon return to duty and shall be in conformance to applicable provisions of the sick leave policies and rules and regulations.
- F. An employee who has requested the use of compensatory time-off shall be permitted to use such time, within a reasonable period after making the request, if the use of the compensatory time does not unduly disrupt the operations of the Port.
- G. An employee on compensatory time off shall be deemed to be on official leave with pay status.
- H. The General Manager may require an employee to use any accumulated compensatory time off credits upon mutual agreement with the employee as to the schedule and use of these credits.

8.406 Conversion of Compensatory Time Off to Cash

- A. The General Manager may direct, at the option of the employee, payments for accrued compensatory time earned, at any time, in any combination, and which shall be paid at the regular rate earned by the employee at the time the employee receives such payment.
- B. At the time of separation, the employee shall be paid in cash for all unused compensatory time credit earned at a rate of compensation not less than:
 - 1. the average regular rate received by such employee during the last three (3) years of the employee's employment; or
 - 2. the final three (3) regular rate received by such employee, whichever is higher.

8.450 CANCELLATION TIME

The General Manager shall establish a policy on the payment of cancellation pay for those employees who are assigned to work on water carriers and the assignment is cancelled either prior, during, or completion.

8.500 NON-OVERTIME WORK WEEKS

When an employee is on non-duty pay status for less than forty (40) hours during a work week, such work week shall be considered a non-overtime work week and all hours shall be paid at the regular rate in accordance with established personnel policies except as provided by law.

8.600 UNAUTHORIZED WORK

Hours worked by an employee without the General Manager's permission or contrary to his instructions, or not authorized by such applicable budget funds shall not be considered as hours worked. Unrecorded hours worked during a workweek or work period by an employee at the job site, or at his home or other duly authorized designated place, must be counted as hours worked if the General Manager has reason to know of such practice. The General Manager must enforce his no work rule and may not unjustly benefit from work performed without his knowledge.

8.700 HOLIDAY PAY

- A. When an employee is absent from duty at the close of the work day immediately preceding a holiday, and at the beginning of the working day immediately following a holiday, and such absences are determined to have been on leave without pay status, the employee shall not be eligible for compensation for the holiday under these rules, but shall be considered as on leave without pay status.
- B. Employees who are required, because of an emergency or other reasons, to work on holidays (or their equivalent day) shall be paid at the rate equivalent to double their hourly rate of pay exclusive of any additional pay, except as otherwise provided by statute.
- C. For purposes of these rules, holidays are declared to be those identified in rules.

8.750 NIGHT DIFFERENTIAL PAY

Work performed between the hours of 6:00 p.m. to 6:00 a.m. shall be compensated as follows:

- A. Any employee (except the General Manager and his first assistants, by whatever title called) who works between the hours of 6:00 p.m. to 6:00 a.m. shall be

entitled to night differential pay, calculated at the rate of their regular wage plus 10% for all periods worked between the hours of 6:00 p.m. and 6:00 a.m., provided the employee works a minimum of four (4) consecutive hours within that time period.

8.800 HAZARDOUS/ENVIRONMENTAL PAY DIFFERENTIALS

8.801 Hazardous/Environmental Pay Policy:

- A. The General Manager may grant pay differentials in accordance with Department of Administration's Hazardous/Environmental Pay Policy and Procedure to employees who are temporarily exposed to hazardous duty, or duty involving physical hardship (environmental) when the following conditions are met:
 - 1. the exposure of hazardous duty or duty involving physical hardship (environmental) is temporary;
 - 2. the hazardous duty or duty involving physical hardship (environmental) has not been considered in the assignment of the position class or pay grade;
 - 3. the hazardous duty is performed by the employee for each assigned hazardous duty; and
 - 4. subject to Guam Occupational Safety & Health review and certification of the hazardous/environmental duty.
- B. It shall be the responsibility of the General Manager to eliminate or reduce to the lowest possible level, all hazards and physical hardships, and implement safe working conditions.
- C. Hazardous/environmental pay shall not be used as an incentive to encourage employees to work in an unsafe place, or under safe conditions.
- D. In no event shall the General Manager grant or authorize multiple differential rates of pay to an employee for the same period. In the event the employee performs more than one hazardous or physical hardship (environmental) duty, the highest authorized differential rate shall be used to calculate the differential pay.
- E. The General Manager shall submit a copy of all approved hazardous pay requests to the Civil Service Commission for post audit review.
- F. Hazardous/environmental differentials are in addition to the employee's base pay and shall not be used to compute overtime pay, holiday pay, night differential and other pay differential, including paid leave and severance pay.

- G. Approved hazardous/environmental differentials shall be paid within four (4) pay periods from which the performance of hazardous or physical hardship (environmental) duty began.
- H. The assignment of hazardous/environmental duty shall not exclude person(s) with disabilities.
- I. Employees who are not certain (aware) of existing hazardous/environmental conditions may request certification via the General Manager from the Office of Guam Occupational Safety and Health (GOSH) of Department of Labor. Certifications approved by GOSH shall qualify employees for differential pay.
- J. Hazardous duty certifications from the Office of GOSH are valid for a period of five (5) years from date of approval. Requests for an extension are subject to GOSH review, certification and approval.

8.802 Hazardous/Environmental Pay Request Procedures:

- A. The initial determination of the existence of a temporary, unusually hazardous working condition shall be made by the immediate supervisor of the affected employee. Upon making this determination, the supervisor shall alert the Division Head, Safety Administrator and General Manager and shall request an inspection from the GOSH Administrator of the identified unusually hazardous working conditions prior to the planned work activity. When pre-work inspections are conducted by GOSH, the following procedures will be followed when a determination of the existence of a temporary, unusually hazardous condition is identified:
 - 1. The supervisor completes the Hazardous Environmental Pay Request Form. The form and any supporting documents are forwarded to the Division Head, Safety Administrator and General Manager for review.
 - 2. The General Manager may concur or not concur with the request. The request is then forwarded to GOSH for inspection, investigation and certification.

The General Manager shall notify the immediate supervisor, Division Head and Safety Administrator of his non-concurrence of the hazardous pay request within ten (10) working days after receipt of the request.
 - 3. The GOSH Administrator shall determine if the hazardous/environmental or hardship condition exists.

4. Upon certification from GOSH, the General Manager will forward the approved request to the Payroll Section of the Finance Division for processing and payment to employee. If not certified, one copy is returned back to the supervisor with a copy to the Safety Administrator.

8.803 GOSH Certification

- A. Request for hazardous pay certifications shall be submitted to GOSH at least thirty (30) days prior to the scheduled operations, where exposure to hazardous working conditions or hardships is projected.
- B. Requests for certification resulting from unanticipated exposure to hazardous working conditions or physical hardship (environmental), must be submitted to GOSH within ten (10) working days from the start of the hazardous/environmental or hardship condition.

8.804 Funds Certification

The differential pay granted under this Chapter is subject to certification by the General Manager or designated fiscal officer as to the availability of funds.

8.805 Table of Hazardous/Environmental Duties

The following table shall be used by the General Manager when authorizing pay differentials for employees. The percentage shall be calculated by multiplying the employee's hourly rate times the number of hour(s) the hazardous/environmental duty was performed.

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
COLD WORK: Working in cold storage or other climate controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit) where such exposure is not practically eliminated by mechanical equipment or protective devices being used.	4%
HOT WORK: A. Physical Hardship: Working in spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit. B. Hazardous Condition: Exposure to burning gasoline/fuel as a result of vehicular accidents/impacts where such exposure is not practically eliminated by mechanical equipment or protective devices being used.	4% 25%

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CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
HIGH VOLTAGE ELECTRIC ENERGY: Working on energized electrical lines rated at 4,160 volts or more which are suspended from utility poles or towers, when adverse weather conditions, such as, steady rain, high winds, lightning or similar environmental factors make the work unusually hazardous.	50%
WORK IN OPEN TRENCHES: Work in an open trench five (5) feet deep or more until proper shoring has been installed.	25%
EXPLOSIVES INCENDIARIES: Working with or close proximity to any situation where explosives are being handled.	25%
HIGH WORK: Working, training, or rappelling from any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc. under open conditions, if structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions, such as, darkness, lightning, steady rain, or high wind velocity.	25%
MICRO-ORGANISMS: LOW DEGREE HAZARD: Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers or organisms pathogenic for man, such as, culture flasks, culture test tubes, hypodermic syringes, and similar instruments, and biopsy and autopsy material and wherein the use of safety measures have been practically eliminated the potential for personal injury.	4%
COMMUNICABLE/INFECTIOUS DISEASES: Assigned to work with or in close proximity to micro-organisms in situations for which the nature of work requires the employee to be in direct contact with communicable/infectious diseases, such as, tuberculosis, human immune deficiency virus, Hepatitis B, measles, mumps, and other reportable communicable/infectious diseases.	8%
UNDERGROUND WORK: Work underground performed in the construction of tunnels and shafts, and in the inspection of such underground constructions, until the necessary lining of the shaft or tunnel has eliminated the hazard.	25%

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CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
WORK IN UNSAFE STRUCTURES: Work within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, typhoon, flood or similar cause when the structure has been declared unsafe by competent technical authority and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority.	25%
ASBESTOS: Working in an area where airborne concentrations of asbestos fibers may expose the employee to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury.	8%
FIBROUS GLASS WORK: Working with or in close proximity to fibrous glass materials which results in exposures on the skin, eyes or respiratory system to irritating fibrous glass particles or slivers where exposure is not practically eliminated by the mechanical equipment or preventive devices being used.	6%
DEEP SEA DIVING AND DANGEROUS SEAS: Deep sea diving below 20 feet requiring the use of scuba (underwater breathing apparatus) or working in dangerous water or similar factors which make the work unusually hazardous when such work is considered necessary for the rescue of human lives or the recovery of human bodies; to obtain water samples from the sewage treatment plant outfalls, and to conduct inspection, research and other activities underwater.	25%
LAW ENFORCEMENT: When assigned duties that expose the employee to unusually hazardous factors. The differential shall only be applicable during times of exposure.	10%
MENTALLY ILL, EMOTIONALLY DISTURBED AND PSYCHOTIC SUBSTANCE ABUSE DISORDER PATIENTS: When confronting or working in close proximity to mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictable, combative or volatile.	10%

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CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p>GUARDING PRISONERS: A uniformed officer or any employee of the Government who performs the duty of guarding prisoners in transit or is otherwise exposed to a life-threatening environment with respect to incarceration of prisoners shall be entitled to hazardous pay for all periods he or she is on such duty. The differential shall be applicable only during time of exposure.</p>	10%
<p>POISONS (TOXIC CHEMICALS): HIGH DEGREE HAZARD: Working with or close proximity to poisons (toxic chemicals), other than tear gas or similar irritants, which involves potential serious personal injury, such as, permanent or temporary, partial or complete loss of faculties and/or loss of life including exposure of an unusual degree to toxic chemicals, dust, fumes or equal toxicity generated in work situations by processes required to perform work assignments wherein protective devices and/or safety measures have been developed but have not practically eliminated the potential for such personal injury.</p> <p>EXAMPLES: Handling and storing toxic chemical agents including monitoring of areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work relating to disposal of deteriorated materials; (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous systems, possible death.)</p>	8%
<p>POISONS (TOXIC CHEMICALS): LOW DEGREE HAZARD: Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury.</p> <p>EXAMPLES: Handling for shipping, marketing, labeling, hauling and storing loaded containers or toxic chemical agents that have been monitored.</p>	4%

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CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p>DIRTY WORK: Performing work which subjects the employee to soil of body or clothing:</p> <ol style="list-style-type: none"> 1. beyond that normally to be expected in performing the duties of the classification; and 2. where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health consideration (excessive temperature, asthmatic conditions, etc.); or 3. when the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort. 	4%
<p>NATURAL DISASTERS: Working in a hazardous environment, such as, high velocity wind, darkness and unsafe structure; and exposing employees to hazard duties, such as, evacuation, search and rescue and damage assessment efforts.</p>	25%
<p>LOW LEVEL AIRCRAFT OPERATIONS: Low-level flights in an aircraft flying at altitudes of 200 feet and under while conducting wildlife surveys and law enforcement activities, animal depredation abatement and making agriculture applications, and conducting or facilitating search and rescue operations; flights in helicopters at low levels involving line inspection, maintenance, erection, or salvage operations.</p>	100%

8.900 DUAL EMPLOYMENT

No employee of the Port may be employed on a full-time, part-time, or contractual basis or hold an appointment to more than one (1) position in the classified or unclassified service in any department or agency or by more than one department, agency, or branch of the Government of Guam at any time, except for:

- A. Persons serving as part-time teachers, part-time school health counselors and University of Guam instructors for the Guam Community College, and instructors for the University of Guam and instructors who may be employed during the summer or at any other time not in conflict with their primary employment with the Port.
- B. Persons employed by the Youth Congress.

- C. Persons employed on a part-time basis by boards or commissions.
- D. Persons employed as nurses, physicians, and as ancillary/allied health professionals in the Government of Guam.
- E. Attorneys engaging in the active practice of law, or part-time judges or part-time court referees.
- F. Persons employed on a part-time or contractual basis who are individuals and family counselors or chemical dependency specialists.
- G. Any employee of the Government whose primary employment is not in any of the agencies or professions listed above, but has training and experience to qualify to be employed in the professions listed above may be employed in secondary jobs in such professions within the Government; provided that such secondary job is not in conflict with that person's primary job and there are no qualified applicants not within the employ of the Government.

8.950 OUTSIDE EMPLOYMENT

Employees may be permitted to work at outside private employment not in conflict with their service to the Port, nor such as would bring the Port or its employees into disrepute. Any employee may undertake outside employment only if such is not in conflict with his work assignments and duly scheduled hours of work with the Port and only with the consent in writing of the General Manager. Consent may not be unreasonably withheld. The General Manager may review the adequacy of such request and the approval shall be renewed on an annual basis. In the case of an employee placed on furlough, the Furlough Policy shall govern.

8.960 RECORD KEEPING

Records of hours worked and wages paid are required to be kept for each employee subject to this policy. The General Manager is responsible for making available the following information for review by the Federal Wage and Hour Division. Records must be preserved for at least three (3) years.

- A. Name
- B. Home Address
- C. Date of birth
- D. Sex and position classification in which employed
- E. Time and day of work, the workweek or work period begins
- F. Total wages paid each pay period
- G. Date of payment and pay period covered
- H. Basis on which wages are paid
- I. Regular hourly rate of pay for any week in which overtime is worked
- J. Amount and nature of each payment excluded from regular rate

- K. Hours worked each work day and total hours worked each workweek
- L. Total daily or weekly straight time earned or wages
- M. Other records or information as the General Manager may require.

8.970 OFFICIAL PERSONNEL FOLDER

An official personnel folder shall be maintained for each employee by the Human Resources Office. The folder shall contain the employee's employment application, employment history, pertinent letters and papers, personal data, and any training and education records sponsored by the Port or other educational training or institutions. Employees are required to keep the Human Resources Office informed of name, address, telephone number and next of kin changes.

8.980 OFFICIAL MEDICAL FOLDER

An official medical folder shall be maintained for each employee by the Human Resources Office. The folder shall contain the employee's medical documents, drug testing results, life insurance and other pertinent documents. The authorized personnel to have accessibility to an employee's official medical folder shall be the employee's supervisor, division head, General Manager and safety and human resources personnel.

8.990 IDENTIFICATION CARDS

- A. Any person accepting employment with the Port shall be required to possess and display an identification card. Identification cards will be on a form prescribed by the General Manager and will be initially issued at no cost to the employee. If the employee loses his identification card, he will be charged a replacement fee. Identification cards will be surrendered to the Port upon separation from employment.
- B. In addition to a Port identification card, newly hired employees whose work assignments are in the secured areas of the Port terminal facility is required to possess a Transportation Workers Identification Card (TWIC) from Transportation Security Agency. During employment processing, the employee will be processed for enrollment for the TWIC by Human Resources Division. The processing fee will be at no cost to the employee. While receiving clearance from Transportation Security Agency and pending the arrival of the TWIC card, the employee will be granted a temporary badge at Port Police Division. Replacement of the TWIC will be at the cost of the employee. The General Manager will issue procedures on the initial employment processing of employees whose assignments are in the secured areas of the Port terminal facility.

- C. Employees will be required to undergo Maritime Security training on the Maritime Security Levels and Port Facility Security Plan, as mandated by the Maritime Transportation Security Act of 2002 (MTSA). Such training shall include the types of maritime security levels and the degrees of security precautions the Port will take when a threat of an unlawful act against a vessel or its facility is to take place. Such training shall be conducted on a yearly basis to orientate employees on revised or new provisions of the Port Security Plan or Maritime Security Act. All employees will be required to take U.S. Coast IS 100 and IS 200 (Incident Command System) training. Supervisors and management personnel are required to take U.S. Coast Guard ICS 700 and ICS 800 (National Incident Management Command System) training.

CHAPTER 9

LEAVE OF ABSENCE

STATEMENT OF POLICY

The purpose of this Chapter establishes a uniform and equitable system where employees may be reasonably excused from work for rest, recreation, health, education, welfare and other purposes without any appreciable decrease in the productivity of and services provided by the Port.

The Procedures for Leave Sharing may be used to augment the provisions of this Chapter.

9.000 GENERAL PROVISIONS FOR LEAVE OF ABSENCE

9.001 Leave of Absence Defined

A leave of absence is an approved absence from duty, by the General Manager or his designated representative, for a prescribed period of time, with or without pay.

9.002 Revocation of Leave

Approved leave may be revoked by the General Manager or any delegated authority when the good of the service requires it, or when evidence shows that the employee on leave is engaged in activities for which the leave would not have been granted.

9.003 Denial of Leave of Absence

- A. No leave of absence, with or without pay, shall be authorized where it appears or was discovered that it was requested for the purpose of:
 - 1. Allowing the employee to work at his outside employment.
 - 2. Engaging in prohibited or unlawful activities.
- B. Leave may also be denied when the loss of the employee's services on days for which leave is requested would result in discontinuance of critical services to the public.

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9.004 Form of Leave Application

Application for leave of absence shall be made in the form prescribed by the General Manager.

9.005 Failure to Return

Failure to report for assignment at the expiration of leave of absence without acceptable excuse shall be subject to Employee Disciplinary Action pursuant to Chapter 11.

9.100 ANNUAL LEAVE

9.101 Policy

It shall be the policy of the Port to afford an opportunity for employees to take leave, and particularly to avoid, whenever possible, loss of leave by forfeiture. However, leave may be denied by the General Manager or delegated authority when the services of the employee are required after good faith consideration of the employee's request and operational requirements.

9.102 Request for Annual Leave

Requests for annual leave shall be submitted to the appropriate supervisor by the employee, at least forty-eight (48) hours in advance, for leaves in excess of forty (40) consecutive hours; and twenty-four (24) hours in advance for leaves less than forty (40) hours, in order to avoid unnecessary disruption of work. Reasonable consideration shall be afforded for emergency situations.

9.103 Minimum Charge for Annual Leave

An employee, who uses annual leave in the amount of time which is less than a full hour, shall be charged leave daily according to the following table:

<u>Minutes Used</u>	<u>Time Charged (Minutes)</u>
0 - 14	00
15 - 30	30
31 - 60	60

9.104 Accrual of Annual Leave

- A. Employees occupying permanent positions shall accrue annual leave in accordance with the following schedule:
 - 1. One-half day (four hours) for each full bi-weekly pay period in the case of employees with less than five (5) years of service.
 - 2. Three-fourths day (six hours) for each full bi-weekly pay period in case of employees with five (5) years of service but less than fifteen (15) years of service.
 - 3. One day (eight hours) for each full bi-weekly pay period in the case of employees with fifteen (15) years or more service.
- B. Annual leave earned during any pay period shall be credited to the employee's account on the last day of that pay period or, in case of separation, the last day the employee is on the payroll.
- C. An employee shall continue to earn annual leave credits during leave of absence with pay for each bi-weekly pay period; otherwise there shall be no accrual for such period.

9.105 Determination of Years of Service for Annual Leave Accrual Purposes

Computation of years of service as a basis for the rate of accrual of annual leave shall be in accordance with the following:

- A. In determining the years of service prior to the 1961 leave year, employees shall be credited with:
 - 1. All periods of employment to include service with the Naval Government of Guam, or with other Federal instrumentalities or agencies within Guam prior to August 1, 1950.
 - 2. Period of service with the Armed Forces of the United States subsequent to August 1, 1950.

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- B. In determining years of service commencing with the 1961 leave year, employees shall be credited with:
 - 1. All service for which annual leave shall accrue.
 - 2. Full-time employment in the Judicial or Legislative branches.
 - 3. Service with the Naval Government of Guam or with other Federal instrumentalities or agencies within Guam prior to August 1, 1950, and to include honorable service with the Armed Forces of the United States, provided no more than three (3) years of service shall be credited to any individual for purposes of this Section. Years of service shall include one (1) year for each year served as a school year employee.

9.106 Maximum Accumulation and Carry Over of Annual Leave

- A. Employees entitled to annual leave may accumulate up to 320 hours.
- B. Any annual leave earned by eligible employees in excess of shall be credited to employee's accumulated sick leave; provided that no more than 100 hours shall be credited to said sick leave at the end of each fiscal year.
- C. However, employees who have accumulated annual leave in excess of 320 hour as of February 28, 2003 may carry over their excess and shall use the excess amount of leave prior to retirement or termination from service. At the time of retirement or termination of service, that portion permitted to be credited to sick leave shall be so credited and the remainder of the excess leave, if any, shall be lost. Nothing herein shall allow lump sum compensation or retirement credit for annual leave in excess of 320 hours.
- D. The determination of accumulation of annual leave, and crediting of excess hours sick leave, shall be done at the end of each fiscal year. Leave year commences October 1 and ends September 30.

9.107 Avoiding Forfeiture of Annual Leave

- A. Employees shall submit advance requests for planned annual leave which will be earned in the current leave year to preclude forfeiture of annual leave.

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- B. Supervisors share the responsibility with employees for avoiding forfeiture of annual leave. Supervisors shall develop by the end of the first quarter of each leave year, a schedule of annual leave for employees under their supervision. Employees shall be expected to submit reasonable estimates for use of their leave for the current leave year.

9.108 Liberal Consideration of Annual Leave Requests upon Birth or Adoption of a Child

Employees may, upon the birth or adoption of a child, submit a request on the appropriate leave form for annual leave for the purposes of assisting or caring for the child. Such requests should be liberally considered by supervisors and for other leaves set forth in the Family and Medical Leave Act (FMLA).

9.109 Annual Leave Requests to Participate in a Athletic Contingent Recognized by the Guam National Olympic Committee

An employee, who is a participating athletic, coach or General Manager in an athletic contingent recognized by the Guam National Olympic Committee representing Guam by invitation in any regional, national or international tournament, game or other sporting event sanctioned by the Committee, shall be granted leave by the General Manager for the time it takes to complete both competition and any necessary travel, not to exceed fifteen (15) working days, provided that his accumulated annual leave or compensatory time is charged with the hours he is absent from duty. The employee must request such leave in writing thirty (30) calendar days prior to his first day of leave. If the employee has exhausted his annual leave, or chooses not to use such, he shall be granted leave without pay. The employee may be granted said leave for competition not more than three (3) times in a calendar year.

9.110 Advance Annual Leave Credit Not Permitted

Annual leave shall not be granted in advance of being earned. If an employee has insufficient leave credit to cover a period of absence, the employee shall be placed on leave without pay status or request for leave sharing provided that all requirements are met under the Leave Sharing Policy.

9.111 Advance Lump Sum Payment for Annual Leave

In accordance with Section 4111, Chapter 4 of Title 4 of the GCA, an employee may, prior to taking authorized annual vacation leave, receive a lump sum payment

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in advance for the period of leave authorized. If any such employee returns to work status prior to the expiration of the leave period for which he received a payment in advance, he shall reimburse the Port for any portion of such period which shall not have expired no later than the pay period following the return to work status and shall be credited with the unused annual leave for future use.

9.112 Lump Sum Payment for Annual Leave upon Separation or Transfer

- A. When an employee is separated from the Port's service, he shall be given a lump sum payment for any accrued and unused annual leave up to a maximum of 320 hours as of the date of separation. In computing lump sum payment, leave on leave shall not be allowed.
- B. Any employee who transfers from a branch of the Government of Guam to another, or from one department, agency, instrumentality, or corporation of the Government of Guam to another department, agency, instrumentality or corporation at his option, may accept cash value of his earned leave, up to a maximum of 320 hours, at the time of transfer, or transfer his accumulated annual leave to his new government position, notwithstanding the fact that such transfer may appear on the employee's personnel records as a resignation and reappointment.
- C. Employees who have accumulated annual leave in excess of 320 hours as of February 28, 2003 may carry over their excess annual leave and shall use the excess amount of leave prior to retirement or termination from service. At the time of retirement or termination of service, that portion shall be credited and the remainder of excess leave, if any, shall be lost.

9.200 SICK LEAVE

9.201 Purpose and Eligibility

- A. Sick leave shall be allowed to an employee when the employee:
 - 1. receives medical, dental or optical examination or treatment, or any mental health examination, counseling or treatment;
 - 2. is incapacitated for the performance of duties by sickness, injury, complications due to pregnancy, medical confinement; or would jeopardize the health of others by his presence at his duty assignment because of exposure to a contagious disease; or

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- 3. gives birth or becomes a father pursuant to maternity or paternity statutes.
- 4. to provide health care for a member of the employee's immediate family as a result of serious illness or injury and the employee has exhausted all annual leave and compensatory time available.
 - a. "serious illness or injury" means an urgent condition that is certified by the attending physician as requiring hospitalization, institutionalization, or extended home care in which the person needs the constant administration of special medical care or support.
- B. Sick leave with pay shall be allowed during leaves of absence or vacations, provided, however, that any sick leave taken by an employee while on vacation must be supported by a certificate issued by a licensed physician.
- C. Responsibility for administration of this section shall remain with the General Manager, subject to such audit as may be ordered by the Department of Administration.

9.202 Notification of Sickness

Notification of absence on account of sickness shall be given to the immediate supervisor or Division on the first day of absence, preferably within two (2) hours of the employee's scheduled work hours, or if impracticable, as soon thereafter as circumstances permit. If such notification has not been given in accordance with this section, the employee may be subject to disciplinary action.

9.203 Application for Sick Leave

- A. Application for sick leave shall be filed on a form prescribed by the General Manager.
- B. Sick leave shall be granted in accordance with statute, rules, policies and procedures.

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9.204 Sick Leave Charged Only for Working Hours

An employee shall be charged for sickness for only those hours for which he was, or would have been scheduled to work.

9.205 Accrual of Sick Leave

Employees occupying permanent positions shall accrue sick leave at the rate of one-half day (four hours) for each bi-weekly pay period in which the employees are on pay status for the entire ten (10) days, otherwise there shall be no accrual.

9.206 Minimum Charge for Sick Leave

An employee who uses sick leave in an amount of time, which is less than a full hour shall be, charged leave according to the following table:

<u>Minutes Used</u>	<u>Time Charged (Minutes)</u>
0 - 14	00
15 - 30	30
31 - 60	60

9.207 Accumulation and Carry Over of Sick Leave

Unused sick leave may be accumulated and carried over to succeeding leave years without limitation.

9.208 Vesting of Sick Leave

Sick leave accrued for service with the Government of Guam or any of its instrumentalities, branches, authorities or any entity, corporation or agency, shall vest in the employee upon accrual and shall remain vested in such employee while he is employed by the Government notwithstanding the fact, that from time to time, he may be transferred from one branch to another or to an autonomous agency, Port or entity within the Government of Guam. Sick leave accrued and unused at the time of separation from Government shall remain credited to the employee if such employee returns to Government service. An employee, approved for disability medical retirement under the Retirement Fund's Defined Benefit Plan, shall exhaust his accrued sick leave prior to effecting his retirement.

9.209 Advance of Sick Leave

- A. An employee who has suffered a serious illness or ailment and has exhausted his sick leave and who intends to return to work may submit a written request, for advance of sick leave to the General Manager. Each request for advance of sick leave must be accompanied by a certification of incapacitation for duty by the employee's physician. An advance of sick leave may not exceed thirteen (13) days, and shall be subject to the approval by the General Manager.
- B. If an employee is separated from service without having earned all of the sick leave allowed and taken, there shall be deducted from any money due him at the time of separation, an amount equal to his salary for the period of unearned sick leave allowed and taken.
- C. If the employee is medically certified as being unable to return to work after all accrued and/or advanced sick leave credits have been used, the employee shall be allowed to use any accrued compensatory or annual leave credits before being placed on leave without pay.

9.210 Physician's Certification of Incapacitation

- A. An employee, who is absent because of illness, injury, or quarantine in excess of three (3) consecutive days, or for the full day immediately before or after a holiday, weekend, day off or vacation, may be required to furnish a certification as to the incapacitation by a licensed physician or furnish administratively acceptable evidence. The General Manager or his delegated authority may require certification for such other periods of illness he deems advisable. Supervisors shall apply reasonable judgment when requesting a doctor's certification.
- B. If the certification required is not furnished, all absences which would have been covered by such certification shall be indicated on the payroll as leave of absence without pay.
- C. If the medical certification furnished by the employee is not acceptable, the General Manager may require the employee to submit to a medical examination which shall be paid for by the Port. Based on the medical certification, the General Manager:

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1. shall not approve further use of sick leave if the employee is medically evaluated as fit to return for work.
 2. shall allow the employee to use accrued sick leave if the employee is medically evaluated as unfit to return to work. In the event, the employee exhausts his sick leave; the provisions of these rules shall apply.
- D. An employee who, upon a written request by the General Manager, refuses to comply with these rules shall not be eligible to use accrued sick leave credits and any absence from work shall be handled in accordance with Rule 9.700.

9.211 Lump Sum Payment for Sick Leave Prohibited

No employee who separates from the Port for any reason may receive a cash payment for sick leave accrued at the time he leaves such service, except for:

- A. death of the employee as provided for by Section 7102, Title 4 of the GCA; and
- B. retirement of an employee under the Defined Contribution Retirement System.

The Port shall issue a lump sum payment for an employee who retires under the Defined Contribution Retirement system shall be calculated by multiplying:

- A. the employee's hourly rate based on the average of three (3) highest salaries received him during his years of credited service by one-half ($\frac{1}{2}$) of the employee's unused accumulated sick leave hours.
- B. payment of the lump sum for unused sick leave shall be the responsibility of the Port.

9.300 ON-THE-JOB INJURY

9.301 Policy

It is the policy of the Port that all employees are provided with safe working conditions. This policy is intended as an employee benefit separate and apart from Workers' Compensation Law (Title 22, GCA, Section 9101). Unless otherwise provided by statute, this policy shall control in the event of conflict with other rules or policies.

9.302 Definitions

- A. Classified employee: A probationary or permanent status employee occupying a classified position.
- B. Day: A work day unless otherwise specified.
- C. Death: Death resulting from an on-the-job injury.
- D. Disability: Physical or mental incapacity due to an on-the-job injury, which prevents the employee from performing the essential functions of the employee's regular position or other temporary duties.
- E. Essential Functions: Those that an employee must be able to perform in the employee's regular position, with or without reasonable accommodation.
- F. Lateral Position: A position with substantially comparable minimum qualifications or equivalent pay grade as the employee's regular position.
- G. Management Official: Official with supervisory or management responsibilities.
- H. On-the-Job Injury: Injury or death arising out of and in the course of employment, including an accidental injury or injury caused by the willful act of a third person directed against an employee because of his employment, and such occupational disease or infection as arises naturally out of such employment, or as naturally or unavoidably results from such accidental injury.
- I. Personal Leave: Annual or sick leave or compensatory time off.
- J. Physician: A person licensed to practice medicine in the United States or its territories or in other medical licensing jurisdictions recognized by the American Medical Association or other practitioners of the healing arts recognized by the Workers' Compensation Commission.
- K. Public Employment: Employment by a department, agency, or instrumentality of the Government of Guam.

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- L. Reasonable Accommodation: A modification or adjustment to the employee's regular position, the work environment, or the way things are usually done that enables the employee to perform the essential functions of his regular position.
- M. Regular Position: The position for which the employee was hired.
- N. Temporary Duties: Specific duties of limited duration assigned to the employee during the work-injury period in lieu of the regular duties of the employee.
- O. Unclassified Employee: An employee occupying an unclassified position or one employed on a temporary or limited term status.
- P. Work-Injury Leave: Leave with pay granted by the General Manager under the provisions of Rule 9.300.
- Q. WCC: Workers' Compensation Commission

9.303 Coverage

- A. A classified or an unclassified employee who suffers an on-the-job injury will be eligible for work-injury leave for up to thirty (30) days without charge to personal leave, beginning the day of the injury, provided:
 - 1. The employee is unable to perform the essential functions of the employee's regular position, or temporary duties, during the 30-day period, or portions thereof, as certified to by the employee's physician, the General Manager shall refer the case to WCC for further medical evaluation to include any necessary tests or testing such as laboratory tests of radiological, sonographic, and computerized axial tomography, and magnetic resonance imagery evaluation. The decision of the WCC shall be final. The General Manager shall identify the essential functions of the employee's position for the purpose of this section.
 - 2. The injury results in the death of the employee. In this event, the employee's designated beneficiary or beneficiaries, or if there are none, the estate of the employee, shall be entitled to a lump sum payment for the entire 30-day work-injury period, or, that portion of

the work-injury period the employee would have been entitled to had the employee survived.

- B. If an employee is able to perform at least the essential functions of his position or undertake temporary assignments, but requires follow-up medical treatment for injuries, the employee shall be allowed work-injury leave for this purpose. The administration of this provision shall be closely monitored by the General Manager or delegated authority and coordinated with the WCC.
- C. An employee who is absent from work due to a work-injury and has completed a minimum of 50% of the performance rating period will be evaluated on his performance for that period. The employee will be entitled to a salary increment upon receiving a satisfactory rating.
- D. The employee on work-injury leave will continue to accrue annual and sick leave as provided in Title 4, GCA, Sections 4108 and 4109.
- E. Employment insurance benefits will continue pursuant to contract provisions in effect for the group life and health insurance program.
- F. Work-injury leave will not be allowed if the death or injury of the employee was self-inflicted or the result of the employee's use of illegal drugs, intoxication, recklessness, gross negligence, criminal conduct, or the result of disciplinary action against the employee.
- G. To prevent dual compensation, work-injury leave will not be allowed if the employee is receiving workers' compensation.

9.304 Responsibilities

- A. An employee's responsibilities include:
 - 1. Immediately reporting the injury to the employee's supervisor. If the supervisor is not available, the employee shall report the injury to the Port's safety personnel or any available management official within the Port.
 - 2. Pursuing a workers' compensation claim in an expedient and timely fashion prior to the expiration of the approved work-injury leave

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period or converting to other leave status at the end of the leave period.

3. Acting in good faith in pursuing work-injury claims. Any employee, who engages in fraud, misrepresentation, or abuse, shall be subject to discipline, prosecution, and be required to provide restitution for all monies and benefits received under Rule 9.300.
4. Obtaining physician's certification to include medical evaluation and physician's detailed recommendation.

B. Management's responsibilities include:

1. Completing all work-injury reports, including the supervisor's portion of the worker's compensation form, to be distributed as follows:
 - a. The original to WCC.
 - b. One copy to the employee, the employee's division, the Port's Occupational Safety & Health Division and Human Resources Division for placement in the employee's medical jacket.
2. The supervisory official who receives the employee's report must take immediate and expedient action to provide necessary medical treatment and prepare and submit injury report to the General Manager and other parties specified in Rule 9.304.B.1.
3. In cases requiring immediate treatment, medical assistance shall be sought for the employee at the nearest available medical facility. If the employee is not ambulatory, or otherwise should not be moved without medical intervention, an ambulance shall be called to transport the employee. A supervisory official or safety personnel shall accompany the injured employee to the medical facility for medical treatment as may be determined by the treating physician. Prompt notification of the employee's immediate family shall be made by the supervisor, Division Head, or General Manager or his delegated authority.
4. Completion of all work-injury reports and immediate submission to the Division Head, who shall submit such reports to the General

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Manager within five (5) working days following the date of notification of injury.

5. Notifying the General Manager if the employee is absent from work without authorization after the expiration of the approved work-injury leave period.
6. Immediately notifying the WCC that an employee is on work-injury leave status for the approved period.
7. Placing the employee on personal leave status pursuant to the provisions of these rules after the expiration of the approved work injury leave period. The type of personal leave to be taken is at the employee's option.
8. Obtaining from the employee per Rule 9.303.A.1. a doctor's certification of the employee's capacity to perform the essential functions of the employee's regular position, along with any specified mental/physical restrictions (e.g., no lifting over 20 pounds, no prolonged walking, standing, bending, stooping, no climbing of ladders, etc.), and recommendations of the physician as to other temporary duties which may be assigned without aggravating the existing condition.
9. Acting in good faith.
10. Complying with all applicable rules and regulations.

9.305 Employment Status

- A. A classified employee, who as a result of an on-the-job injury becomes disabled and is unable to perform the essential functions of his regular position within six (6) months after the date of injury may, if eligible, retire from the Port.

- B. If the classified employee is ineligible or declines to retire, the General Manager may allow the employee to exhaust personal leave; otherwise, the employee shall be placed in lateral or lower vacant position to which the employee qualifies, or be downgraded to a position needed by the Port for which the employee qualifies, at the discretion of the General Manager. If the employee assumes the lateral position, the employee shall maintain his current salary. If the employee is downgraded or placed in a lower position, the employee shall maintain the current salary for one (1) year.

If there is no vacant position to which the employee qualifies, or the General Manager determines that a downgrade is not proper, the General Manager shall exercise expedient and good faith efforts to place the employee in a position in which he qualifies in another division. If placement is unsuccessful, the General Manager shall immediately notify the employee in writing that the employee will be terminated within sixty (60) days from the receipt of the notice by the employee. The notice shall include the employee's right to appeal under Rule 9.306. If the employee is unavailable for personal service, service may be made by certified mail to the last known address, provided management has made reasonable good faith efforts to personally serve the employee. In cases of service by mail, the sixty (60) days begin to run on the date of the mailing.

9.306 Appeal

A classified employee who is terminated in accordance with Rule 9.305.B may appeal the termination to the Commission within twenty (20) days from the effective date of the termination in accordance with Commission's appeal procedures. The Commission may uphold the termination or take whatever action or remedies it deems appropriate. The Commission's decision is final, but subject to judicial review within thirty (30) days after the losing party receives the Commission's written decision.

9.400 EXCUSED ABSENCES/ADMINISTRATIVE LEAVE

9.401 General Provision

An excused absence is an absence from duty administratively authorized without loss of pay and without charge to leave. Supervisors and employees will apply the following procedures for excused absences.

9.402 Attendance at Official Meetings/Conferences On or Off-Island

- A. Employees shall initiate a written request via his supervisor and division head for an excused absence citing the purpose of the meeting/conference, dates involved, and costs, if any, to the General Manager.

- B. The General Manager will evaluate the relative costs, availability of funds, potential for the employee's development, and desirability of the Port's representation when approving the attendance at On or Off-island meetings/conferences.
- C. Upon approval of the request, a copy shall be provided to both the employee and Payroll Office.

9.403 Jury Duty

- A. An employee who is called for jury duty in any court in Guam shall be excused from duty with full pay and without charge to leave for all hours required for such duty, not to exceed the number of hours in the employee's normal work day. However, if the jury duty does not require absence for the entire workday, the employee shall return to duty immediately upon release by the court.
- B. An employee called for jury duty is required to show the Jury Duty Call Notification to his immediate supervisor.
- C. Supervisors are responsible for advising employees that all compensation earned for such jury service, except for the following, must be paid to the Port in accordance with Section 6505, Chapter 6, Title 4 of the GCA:
 - 1. allowances for travel;
 - 2. service rendered on days the employee is not required to report to work;
 - 3. services rendered when employee is sequestered and unable to report to his home after normal working hours; and/or
 - 4. services rendered during the employee's normal working hours but that the Port requires the employee to make up work before or after normal working hours, including work on weekends and Government of Guam holidays.

An employee may elect to request for annual leave for the purpose of jury duty service, which case the employee may keep the compensation earned for such jury duty.

9.404 Witness Leave

- A. Employees who are called to testify or produce official records on behalf of the Government of Guam in any court in Guam shall be excused for duty with full pay and without charge to leave required for such service, not to exceed the number of hours in the employee's normal work day. However, if the witness service does not require absence for the entire workday, the employee shall return to duty immediately upon release by the court.

- B. An employee called to serve, as a witness is required to show the notification to his supervisor. The employee must provide to his immediate supervisor a certificate or certificates showing the time devoted to witness service. The fees shall be the same as the fees of witnesses before the Superior Court, except if the witness is a government employee no witness fees shall be given.
- C. Such leave is applicable to law enforcement officers, who are required to appear in any court of Guam, for contested traffic citations they issued to the public found violating the Motor Vehicle Code. The employee must provide to his immediate supervisor with a copy of the summons requiring his presence in court.

9.405 Participation as a Competitor in a Government of Guam Personnel Examination or Interview

- A. Employees who are participating in a competitive examination or interview for Government of Guam employment shall be excused from work with pay and without charge to leave for the time required for the examination or interview. Employees are required to report to their work location after completion of the examination or interview.
- B. Employees must advise their supervisor in advance of the need for excused absence to participate in a scheduled examination or interview. This notice should be given as soon as the employee receives information of the scheduled date and time of examination or interview.

9.406 Participation in Examinations for Military Service

An employee, who is scheduled to appear for an examination for entrance into the United States military service, shall be excused from work with pay and without charge to leave for the time required for the examination. The employee shall submit written confirmation of scheduled examination to his immediate supervisor.

9.407 Military Training Leave

- A. An employee who is a member of a Reserve Component of the Department of Defense or Transportation, including but not limited to, the U.S. Army, U.S. Navy, U.S. Marine Corps, U.S. Air Force, Army National Guard, Air National Guard and U.S. Coast Guard, shall be entitled to military training leave with pay, without charge to annual leave not to exceed fifteen (15) working days per fiscal year. The leave not used in a fiscal year will be transferred to the next fiscal year until it totals fifteen (15) work days at the beginning of the fiscal year.

- B. The employee shall submit a copy of his military orders or other documents which place the employee on military training, to the General Manager.
- C. A copy of the official orders shall be filed in the employee's personnel files.
- D. Any absence in excess of fifteen (15) work days may, upon request by the employee and approval of the General Manager, be covered by accrued annual leave credits or accrued compensatory leave credits. If not requested by the employee or approved by the General Manager as annual or compensatory time off leave, such absences in excess of fifteen (15) work days shall be considered as leave without pay.

9.408 Military Leave

- A. Purpose: The Uniformed Service Employment and Reemployment Act of 1994 (USERRA) prohibits employers from discriminating against employees who fulfill non-career military obligations in the Uniformed Services and requires employers to provide a leave of absence to allow employees to perform obligations. The purpose of this Rule is to provide military leave as required by law and to comply with other relevant provisions of USERRA.
- B. Eligibility: All full-time and part-time employees who are also members, or intend to become members of one of the Uniformed Service.
- C. Definitions: For the purposes of this Rule, the following definitions apply:
 - 1. Benefit, Benefit of Employment, Rights and Benefits or any variation of these terms means any advantage, profit, privilege, gain, status, account or interest (other than wages or salary for work performed that accrues by reason of employment. These terms include, but not limited to, retirement pension plan, health plan, other types of insurance coverage, awards, paid leave, title, work schedule, and clothing allowance.
 - 2. Federal fiscal year: October 1 through September 30 of each year.
 - 3. Military leave with pay: A period of approved absence, not more than fifteen (15) working days per Federal fiscal year, during which employees are paid their regular rate of compensation while performing military service.

4. Military leave without pay: A period of approved absence during which employees do not receive compensation while performing military service.
5. Military service: The performance of military duty on a voluntary or involuntary basis in a uniformed service. It includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, time spent undergoing an examination to determine fitness to perform military duty, and a period for which an employee is absent to perform funeral honors 10 USC 12503 or 32 USC 115.
6. Qualified or qualify: With respect to an employment position, means having the ability to perform the tasks of the position.
7. Reasonable efforts: In cases of actions required of an employer pursuant to USERRA, means actions, including training provided by the Port that do not place an undue hardship on the Port.
8. Seniority: Longevity in employment, together with any benefit that accrues with or is determined by longevity.
9. Undue hardship: In the case of actions taken by an employer, means requiring significant difficulty or expense when considered in light of:
 - (a) the nature and cost of the action required;
 - (b) the overall financial resources;
 - (c) the effect on expenses and resources as set forth in USERRA.
10. Uniformed services: The Armed Forces (U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard); the reserve components of the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty; and any other category of service designated by the President of the United States in time of war or national emergency.
11. Working days: A working day for a full-time employment shall mean eight (8) hours a day.

D. Leave of Absence for Military Service:

1. Pursuant to USERRA (38 USC Section 4301), a full-time employee who is a former or current member of the uniformed

service shall be entitled to paid leave for military service not to exceed fifteen (15) working days per Federal fiscal year.

2. Employees whose military service was less than thirty-one (31) days, are entitled to an eight (8) hour rest period after safely arriving home from the place of military service before the employee is required to return to work pursuant to Rule 9.408.G, Returning from Military Service, and USERRA.
3. When an employee returns from military service and the eight (8) hour rest period overlaps the employee's scheduled work shift, the employee shall receive paid military leave to the extent of the overlap. For example, if an employee returns home Sunday at 2:00 a.m. and his regular work shift normally begins Monday at 8:00 a.m., the eight (8) hour rest period would overlap the work schedule by two (2) hours and the employee would receive his regular salary for that two (2) hour period.
4. Where leave of absence for military service exceed fifteen (15) working days of paid military leave, employees shall be permitted, upon request, to use any accrued annual, compensatory time-off, leave sharing leave or military leave without pay during the period of military service. However, extended specifically by the terms of USERRA military leave and without pay shall not exceed five (5) years of cumulative military service.

E. Advance Notice:

An employee who is leaving to perform military service shall provide advance written or verbal notice to his immediate supervisor of the need for a leave of absence (including the approximation of the expected dates of the leave.) However, advance notice is not required if precluded by military necessity or under all relevant circumstances it is impossible or unreasonable to give notice. Employees shall submit leave request indicating the type of leave he wants to take. i.e., military leave with pay (if the fifteen (15) days has not been exhausted), military leave without pay, annual leave, compensatory time-off, leave sharing, or an appropriate combination of leaves. It is requested that the employee provide a copy of their military orders, if available, to the supervisor, preferably before leave is taken.

F. Employee Benefit:

- A. During the fifteen (15) days military leave with pay or when an employee requests to use another kind of paid leave to cover a period of military service, an employee shall receive the same

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benefits as if the employee remained continuously employed with the Port.

- B. If on military leave without pay, the employee shall be entitled to retain the same rights and privileges as an employee granted leave without pay in accordance with these rules. The Port shall pay the employer's and employee's Government of Guam retirement contributions, group health and life insurance premiums during the period the employee is on leave without pay status and on active military duty.
- C. All unused leave benefits shall be retained by the employee, who shall have the same credited to the employee's record upon return to his assigned position consistent with Section 6218(d) of Title 4, GCA.

G. Returning from Military Service:

1. Upon completion of military service, the employee shall report back to work in accordance with the time limits indicated below:

Length of Military Service	Employee's Obligation to Report Back to Work
1-30 days (or an absence of any length to have an examination to determine fitness for military service)	<ul style="list-style-type: none">• An employee shall report to work no later than the first full regularly scheduled work shift on the first full calendar day after service ended and the eight (8) hour rest period allowing for the safe transportation back to his home expired; OR• As soon as possible after the expiration of the eight (8) hour rest period, if through no fault of the employee, it would be impossible or unreasonable to report within the time described above.
31-180 days	An employee shall report to work at least fourteen (14) calendar days after completion of military service. If complying with this deadline is impossible or unreasonable through no fault of the employee, the request shall be submitted on the first next full calendar day when submitting the request becomes possible.
More than 180 days	An employee must report to work within ninety (90) calendar days after completion of the period of military service.

2. An employee hospitalized for, or convalescing from an illness or injury incurred in or aggravated during military service shall, at the end of the period necessary to recover from the illness or injury, which cannot exceed two (2) years, report for work. The two (2) year period for recovery from illness or injury shall be extended by the minimum time required to accommodate circumstances beyond the employee's control that make compliance with the reporting deadline impossible or unreasonable. Placement of such employee shall be in accordance with Rule 10.100.
3. If an employee does not comply with the above reporting deadlines, disciplinary action can be imposed by the Port in accordance with Chapter 11, Adverse Action Procedures.

9.409 Military Family Leave

- A. Mandate: The Military Family Leave Act is established through Public Law 29-149 enacted in law on December 31, 2008 and shall apply to all qualified employees of the Government of Guam as defined in this Rule.
- B. Purpose: The purpose of this Act and in order to serve the families of those troops currently serving in the military conflicts in Iraq, Afghanistan, and throughout the world, serving in the Global War on Terrorism, and to assure that these families are able to spend time together during the qualified service member's leave to and from deployment, to include pre-deployment, post-deployment, during deployment, any return from Rest and Relaxation (R&R) leave during deployment or reintegration from deployment, and to handle their personal affairs by their spouse or designated next of kin or attorney in fact, it is necessary that this Act become effective immediately.
- C. Definitions: The following definitions shall be used in this Rule:
 1. Qualified Employee means a person who satisfies all of the following:
 - a. Is the spouse, authorized representative, designated next of kin, or attorney-in-fact of a qualified member.
 - b. Performs service for hire for an employer for an average of twenty (20) or more hours per week, but does not include an independent contractor.
 - c. Provides the qualified employer with notice, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of his or her

intention to take leave provided for in Rule 9.409.D. as requested.

- d. Submits written documentation to the qualified employer certifying that the qualified member will be on leave from deployment during the time the leave provided for in Rule 9.409.C.4. is requested.
- 2. Qualified Employer means any Government of Guam instrumentality, military related unit on Guam, municipal village instrumentality, public authority, or any other governmental entity on Guam subdivision that employs fifteen (15) or more employees.
 - 3. Period of military-conflict means either of the following:
 - a. A service member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States.
 - b. A service member of the National Guard who has been deployed during a period of military conflict; or
 - c. A service member of the Reserves who has been deployed during a period of military conflict.
 - 4. Qualified leave period means the period during which the qualified service member is on leave from deployment during a period of military conflict, to include pre-deployment, post deployment, return from R&R, reintegration, or after deployment.
- D. Leave Required: A qualified employer may allow a qualified employee to take up to fifteen (15) days of unpaid leave during a qualified leave period.
- E. Provisions:
- 1. A qualified employer shall not retaliate against a qualified employee for requesting or taking the leave provided for in this Rule.
 - 2. The leave provided for in this Rule shall not affect or prevent a qualified employer from allowing a qualified employee to take a leave that the qualified employee is otherwise entitled to take.

3. This Rule shall not affect the qualified employee's rights with respect to any other employee benefits provided for in other laws.

9.410 Disabled Veteran's Re-examination or Treatment

An employee, who has been rated by the Veteran's Administration to have incurred a service-connected disability and has been scheduled by the Veterans Administration to be re-examined or treated for such disability shall, upon presentation of written confirmation of having been so scheduled, be excused from duty without charge to leave for such re-examination or treatment. Excused absences shall not exceed five (5) work days in a calendar year. Thereafter, the employee may utilize other forms of leave as provided in these rules.

9.411 Natural Disasters and Other Emergency Conditions

- A. Excused absence with pay and without charge to leave shall be granted to employees when natural disasters or other emergency conditions create unsafe working conditions.
- B. Excused absence, for natural disaster or other emergency conditions, may be granted only when there has been an official proclamation of the hazardous conditions by Executive Order, or an equivalent announcement by the Governor.
- C. When the Governor declares a State of Emergency, the General Manager shall determine whether affected facilities or portions thereof, which are located in the area covered by the Executive Order or proclamation, are to be closed. With the exception of the following:
 1. Employees determined by the General Manager as non-essential for the cause in such emergency situation shall be released from duty with pay, without charge to leave, for the period the facility is closed.
 2. Employees, required to remain on duty to provide essential services, shall be paid at double the regular rate, or granted compensatory leave credits for the hours worked during the period the facility is closed and the other employees are on excused leave.
- D. Employees who are on annual or sick leave status when an emergency condition is declared by Executive Order or announcement by the Governor and are not required to report to duty, shall be considered as released from duty with pay without charge to leave for the period the work facility is closed.

9.412 Volunteer Services During Disasters/Emergencies

An employee who performs volunteer services, privately or as a member of an organization, in times of civil unrest, disasters, search and rescue operations, and other civil emergencies shall be excused from duty with pay, without charge to accrued leave not to exceed two (2) work days.

9.413 Participation in Officially Sanctioned Events

An employee, who is a participating member of an official Guam delegation which is sanctioned by the Governor, shall be excused from duty with pay and without charge to leave for a period not to exceed five (5) work days in a calendar year.

9.414 Absence Pending Formal Investigation

An employee, who is under formal investigation by the Port for misconduct, or violation of a rule or statute, may be placed on excused absence from duty without charge to leave, not to exceed twenty (20) work days when the employee's absence from the work location is essential to the investigation.

9.415 Bereavement Leave

- A. An employee, upon request, shall be granted two (2) days of excused absence with pay, and without charge to leave upon the death of any member of the employee's immediate family as defined in these rules and regulations.
- B. Each employee requesting bereavement leave due to a death in the immediate family, shall submit such request to the General Manager stating the name of the deceased and the relationship to the deceased.

9.416 Paternity Leave

- A. Paternity leave shall be granted to a male employee occupying a permanent position upon the birth of child/children by his wife, including common-law, or adoption of his child/children five (5) years old or younger.
- B. Paternity leave shall not exceed twenty (20) days of paid leave and must encompass the date of childbirth or adoption of child/children.
- C. Additional leave taken for such purpose may be charged against accumulated sick leave, or may be unpaid leave at the option of the

employee. Total leave, whether paternity, sick or unpaid leave, shall not exceed six (6) months without approval of employee's supervisor.

9.417 Maternity Leave

A. General Provisions of Leave Related to Pregnancy

1. A pregnant employee is responsible for notifying her supervisor, in advance of her intention to request leave for maternity purposes including the type of leave, approximate dates and anticipated date of return to duty, to allow the Port time to prepare for any staffing adjustments which may be necessary.
2. The supervisor is responsible for providing gainful employment and making use of her skills for as long as the employee is not incapacitated for duty.
3. Sick leave shall be made available during pregnancy to cover for physical examinations and periods of incapacitation based on certification by the employee's physician.
4. An employee may request for annual or sick leave, or leave without pay (in addition to the authorized maternity leave) to provide for a reasonable period of adjustment, or to make arrangements for the care of the child. Additional leave requirements for maternity purposes must be supported by physician certification or furnish other administratively acceptable evidence of fitness for duty and approved by the General Manager.
5. An employee who wishes to return to work following delivery or confinement shall be assured continued employment in her position or a position of like seniority, status and pay upon presentation of her personal physician's certification of fitness for duty or furnish other administratively acceptable evidence of fitness for duty.
6. The marital status of the pregnant employee shall not adversely affect her right to continued employment or use of leave.

B. Granting of Maternity Leave

1. Maternity leave shall be granted to a female employee occupying a permanent position who is absent from work as a result of childbirth or adoption of a child/children five (5) years old or younger.

2. Such maternity shall not exceed twenty (20) work days encompassing the date of childbirth or adoption.
3. Any additional leave taken for such childbirth or adoption purposes, may be charged against accumulated sick leave, or may be unpaid leave, at the option of the employee.
4. Total leave, whether maternity, sick or unpaid leave, shall not exceed six (6) months without approval of the employee's supervisor.

9.418 Participation in a Medical Examination Requested by the Port

An employee who is required to undergo a medical examination, such as, to determine fitness for the job, shall be excused from work with pay and without charge to leave for the time required for the examination.

9.419 Educational Leave Without Pay

- A. In the event, the Port is desirous of establishing a program where employees are allowed to take educational leave with pay must have the program approved by the Board.
- B. An employee may be granted excused absence from duty with pay, and without charge to leave to attend on a full-time basis a college, university, or training academy for not more than the equivalent of 2,080 hours of pay status for the purpose of receiving training that is of clearly foreseeable benefit to the Port.
- C. The granting of educational leave shall be in accordance with the Port's approved educational program.
- D. Only employees who have completed their original probationary period are eligible to participate in this program.

9.420 Parental Involvement Initiative Leave

- A. An employee, who is a parent and who is not otherwise prohibited from such contact with his child by order of a court, may use up to four (4) hours every two (2) pay periods to meet with a teacher or other school official concerning the employee's child's performance or to volunteer parental-involvement time at his child's school.
- B. The four (4) hours every two (2) pay periods may be utilized at the arrangement of the employee with the employee's supervisor, and may be split into smaller separate segments over the two (2) pay periods. Such

leave hours is not to be accumulative.

- C. An employee requesting such leave shall submit a request to his supervisor in advance and is required to obtain from his child's teacher or school official signed certification that the employee has visited the school for a conference, a function, or as a volunteer to assist in the child's school activities.

9.421 Disaster Service Volunteer Leave

- A. Purpose: It is the purpose of the Government of Guam to allow for its employees to request for disaster leave during periods of disasters and humanitarian need assisting the American Red Cross without loss of seniority, vacation time, sick leave or earned overtime accumulation.

- B. Definitions:

- 1. "Disaster" means a local disaster designated at Level I or higher in the American Red Cross regulations and procedures or a national disaster at Level III or higher in the American National Red Cross regulations.
 - 2. "Certified disaster service volunteer" or "volunteer" means any person who has completed the necessary training for and has been certified as a disaster service specialist by the American Red Cross.

- C. Disaster Service Volunteer Leave

- 1. An employee who is a certified disaster service volunteer may be granted leave from work with pay in accordance with Rule 9.421.C.2 for up to an aggregate of fifteen (15) days, consecutively, or in any twelve (12) month period to participate in specialized disaster relief service for the American Red Cross in connection with any disaster, upon the request of American Red Cross for such employee's services and upon approval of the Port.
 - 2. An employee granted leave pursuant to Rule 9.421.C.1 shall be compensated by the Port at his regular rate of pay for those regular work hours during which the employee is absent from work, but shall not receive overtime pay, shift differential pay, hazardous pay or any other form of pay or compensation in addition to the employee's regular pay.
 - 3. An employee who is granted leave pursuant to Rule 9.421.C.1 shall not lose any seniority or any already accumulated vacation

time, sick time or earned overtime due to such leave.

4. The Port shall not be liable for worker's compensation claims arising from accident or injury while an employee is on assignment as a certified disaster service volunteer for the American Red Cross.
 5. Duties performed while on disaster leave shall not be considered as a work assignment by the Authority.
 6. In determining whether to grant leave to an employee, the Port may consider the needs of the American Red Cross for expertise in a particular certified area.
 7. The employee's activities and job functions while on leave, however, shall not be directed by the Port but shall be determined and controlled solely by the American Red Cross.
 8. An employee who is on leave pursuant to this section shall not be deemed to be an employee of the Port for the purposes of the Government Claims Act, Chapter 6, Title 5 of GCA.
- D. Certification as a Certified Disaster Service Volunteer: No employee shall be paid during regular work hours in the completion of any training towards a certification as a disaster service volunteer unless such employee uses personal or annual leave.

9.422 Medical Donor Leave

Any employee of the Port who has been qualified as a donor for medical purposes and has received notice that the employee has been determined to be a match shall be granted leave with pay by the General Manager for the time it takes to complete the medical procedure involved, however, not to exceed ten (10) working days.

9.500 HOLIDAYS

9.501 General Provisions

- A. Employees may absent themselves from duty on the holidays established by these rules, provided, however, that work assignments may be required to be carried out if previous notification is given by the General Manager.
- B. When an employee is absent from duty at the close of the working day immediately preceding a holiday, and at the beginning of the working day immediately following a holiday, and such absences are determined to

have been on a leave without pay status, the employee shall not be considered eligible for compensation for the holiday under these rules but shall be considered as on leave without pay status.

9.502 Legal Holidays

1. New Year's Day.....January 1
2. Martin Luther King's Day.....Third Monday in January
3. Memorial Day.....Last Monday in May
4. Independence Day.....July 4
5. Liberation Day.....July 21
6. Labor Day.....1st Monday in September
7. All Soul's Day.....November 2
8. Veteran's Day.....November 11
9. Thanksgiving Day.....4th Thursday in November
10. Lady of Camarin Day.....December 8
11. Christmas Day.....December 25

If any of the numbered holidays listed above falls on a Sunday, the following Monday is a holiday, and if any of such holidays falls upon a Saturday, the preceding Friday is a holiday.

9.503 Legal Holiday for Irregular Hours of Duty

For employees whose workweek is other than Monday through Friday, and whose holiday falls on a non-workday, their holiday shall be determined as follows:

A. Sunday Holiday

1. When an employee's workweek does not include Sunday, and a holiday falls on Sunday, his next regular workday within his workweek is his holiday.
2. When an employee's workweek includes Sunday and a holiday falls on the day that has been designated as his non-workday in lieu of Sunday, his next regular workday after his "in lieu of Sunday" within his work week is his holiday.

B. Other Holidays

When a holiday falls on an employee's non-workday other than Sunday, the regular workday preceding the employee's non-workday is his holiday.

9.600 LEAVE WITHOUT PAY

9.601 Leave of Absence Without Pay

- A. Employees may request leave without pay for good cause when their current authorized annual or sick leave with pay will not cover the total period of requested leave. Leave without pay may be granted for a period not to exceed one (1) year. For extenuating circumstances, the General Manager may extend the leave without pay for an additional year. No extension may be granted thereafter.
- B. When an employee is on leave without pay status, accrual of sick, annual, or retirement credit is not allowed.

9.602 Request by the Employee

Leave without pay is temporary non-pay status and absence granted in response to an employee's request. Leave without pay covers only those hours, which an employee would otherwise work or, for which he would be paid.

9.603 Authorization

- A. Authorizing leave without pay is a matter of administrative discretion. An employee cannot demand that he be granted leave without pay as a matter of right, except in the case of:
 - 1. disabled veterans who are entitled to leave without pay, if necessary, for medical treatment; and
 - 2. members of the Reserve Components of the U.S. Armed Forces who are entitled to leave without pay, if necessary, to perform military service duties.
- B. An employee who does not have adequate annual or sick leave credits may submit a written request for leave without pay to his supervisor, which requires the final approval of the General Manager. The employee's request should indicate the reasons and the need for leave without pay and the date employee intends to return to duty from leave.

9.604 Conditions for Approval of Leave Without Pay

- A. Each request, for extended leave without pay, should be evaluated carefully to assure that the value to the Port or the serious needs of the employee is sufficient to offset the costs and administrative inconveniences to the Port which results from the retention of an employee in a leave without pay status. Among these costs are:
 - 1. encumbrance of a position;

2. loss of services which may be needed in the organization; and
 3. obligation to provide active employment at the end of the approved leave period.
- B. As a basic condition for approval of extended leave without pay, there should be reasonable expectation that the employee will return to work at the end of the approved period. In addition, it should be apparent that at least one of the following benefits would result:
1. increased job ability.
 2. protection or improvement of employee's health.
 3. retention of a desirable employee.
 4. furtherance of a program of interest to the Port.

9.605 Examples of Appropriate Use of Leave Without Pay

The following examples of types of cases are not all inclusive for which approval of extended leave without pay would be proper, all other factors being favorable, are:

- A. For educational purposes, when the course of study or research is in line with a type of work which is being performed by the Port, and completion of which would contribute to the Port's best interests.
- B. For the purpose of recovery from illness or disability, not of a permanent or disqualifying nature, when continued employment or immediate return to employment would impact on the employee's health, or the health of other employees.
- C. For the purpose of caring for a child upon birth or adoption.
- D. For the purpose of providing care to a spouse or child who is ill or disabled, or to provide care to elderly parents or parents-in-laws.
- E. For the purpose of conducting union-related business and to address issues important to the employees' collective bargaining units. Such leave without pay is authorized for those employees who are a president or head of a union representing a recognized collective bargaining unit of the Government.

9.700 UNAUTHORIZED LEAVE OF ABSENCE FROM DUTY

An employee who is absent from duty without proper authorization shall be placed on unauthorized leave of absence without pay for payroll purposes. Repeated unauthorized absences may be grounds for disciplinary action.

9.800 FAMILY AND MEDICAL LEAVE ACT

9.801. Policy Statement

FMLA provides eligible employees with job-protected leave for qualifying events or circumstances as described below. Some of those events or circumstances may involve the employee's own health event or circumstance, or may involve the health or military service of the employee's family member, as defined below.

Leave may be taken in continuous full-time periods or may include a reduced or intermittent schedule when medically necessary or for a qualifying exigency due to a call to active duty. When intermittent or reduced scheduled leave is needed to care for an immediate family member or for the employee's own illness and is for planned medical treatment, the employee must consult with the supervisor and make reasonable effort to schedule treatment so as not to unduly disrupt the Port's operations.

9.802 Employee Eligibility

- A. An employee is eligible for FMLA leave if he has worked for the Government of Guam for at least twelve (12) months and worked at least 1,250 hours during the twelve (12) months prior to the start of the FMLA leave.
- B. Temporary employees working part-time, after completion of 1,250 hours, are counted as completing the work week even if they do not work a forty (40) hour workweek.
- C. For the purposes of this Rule, full-time employment is considered to be 2,080 hours per year. An employee returning from fulfilling his or her National Guard or Reserve military obligation will be credited with the hours of work that would have been performed during the period of military service.

9.803 Reasons for Leave

The FMLA allows eligible employees to take leave for the following qualifying events or circumstances.

9.804 Family Leave

- A. An employee may take family leave for the following events or circumstances:
 - 1. Birth and care of a child during the first year.
 - 2. Adoption or foster placement of a child and care during first year.
 - 3. Care of employee's spouse, domestic partner, child or parent with a diagnosed serious health condition, defined under Definitions.
- B. Amount of Leave: Employees taking family leave may take up to twelve (12) weeks of family leave per calendar year (January 1 to December 31).

Leave for birth, adoption of a child or placement of a foster child must be taken in one single period and must be taken within one (1) year of the birth or placement of the child. If both parents work for the Port and request leave for birth or placement of the child, care of that child in the first year, or care for a parent with a serious health condition, the twelve (12) week leave period for both employees is combined. The parents do not each have twelve (12) weeks of FMLA available for those situations.

9.805 Medical Leave

- A. An employee may take leave for his own diagnosed serious health condition, as defined below under Definitions.
- B. Amount of Leave: Employees taking medical leave for their own serious health condition may take up to twelve (12) weeks of medical leave per calendar year (January 1 to December 31).

9.806 Service Member Leave

- A. Exigency: Employees with a spouse, son, daughter, or parent (i.e., the service member) on active duty or call to active duty in the National Guard or Reserves I support of a contingency operation may use leave to address certain qualifying exigencies arising out of the active duty or impending active duty.
- B. Examples of qualifying exigencies include attending certain military events, arranging or providing for alternate child care or school, addressing certain financial and legal arrangements, addressing issues arising from short-notice deployment, attending certain counseling sessions, and attending post-deployment reintegration briefings.

- C. An employee whose family member is on active duty or call to active duty as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.
- D. Amount of Leave: An employee may take up to twelve (12) weeks of leave per calendar year (January 1 to December 31).

9.807 Injury or Illness

- A. Employees may also take leave to care for a covered current service member (the service member) who has a serious injury or illness incurred in line of duty that may render the service member medically unfit to perform his own duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.
- B. In order to care for the covered service member, the employee must be the spouse, son, daughter, parent, or next of kin of the service member.
- C. Amount of Leave: An employee may take up to twenty-six (26) weeks of leave per service member or per injury/illness during the twelve (12) month period, beginning on the first day of leave.

If both parents work for the Port and request leave for birth or placement of child, care of that child in the first year, care for a parent with a serious health condition, or care for a service member, the twenty-six (26) week total leave period for both employees is combined. The parents do not each have twenty-six (26) weeks of FMLA available for those situations.

9.808 Notice and Documentation

- A. When the need for leave is foreseeable, the employee shall notify the Port within thirty (30) days of the need for leave. When the need for leave is not foreseeable, the employee shall notify the Port as soon as possible. An employee requesting leave must explain the reasons for the needed leave so as to allow the Port to determine whether the leave qualifies under the policy.
- B. The employee must provide complete and sufficient medical or military documentation in support of a request for FMLA leave. Failure to provide such documentation may result in the denial or delay of FMLA. The Port may seek a second or third opinion of medical documentation, and may request reasonable updates of supporting documentation. The employee may also be required to provide documentation of the familia relationship to support service member leave.

- C. The Port will promptly notify the employee in writing if the employee is eligible for FMLA and, if so, whether the requested leave will be counted as FMLA leave. In certain circumstances the Port may designate an absence as FMLA even if the employee did not request FMLA. The Port may not retroactively designate an absence as FMLA unless the reasons for the absence were not known to the Port at the time leave began.
- D. An employee taking FMLA leave must comply with the Port's leave notification requirements appropriate for the situation. When notifying the Port, employees must inform the Division Head if requested leave or absence is for a reason for which FMLA was previously taken or certified.
- E. An employee on leave for his own medical condition must present a medical release to return to work. The employee may be asked to medically certify that the employee is able to perform essential functions of the position. Failure to submit a sufficient and complete release may delay the employee's return to work.

9.809 Paid Versus Unpaid Leave

- A. FMLA does not provide paid leave. However, employee wages during a FMLA covered absence(s) will be provided in accordance to the Port leave policies.
- B. Employees eligible for FMLA will use applicable paid leave benefits concurrently with FMLA. Leave benefits may be sick, annual or donated leave dependent on the FMLA reason. If sick and/or annual leave is exhausted, leave will be unpaid (leave without pay). Employees who are qualified for FMLA leave are eligible to retain up to two (2) weeks (80 hours) of accrued annual leave each calendar year.

9.810 Continuation of Insurance Benefits

- A. During an approved leave, paid or unpaid leave, the Port will continue to pay the employer share of the employee's government health insurance benefits. If the employee is responsible for a share of the premium through payroll deduction, the employee must continue to pay his share during any unpaid leave.
- B. Life, long term disability and retirement contribution benefits may be continued at employee expense under the leave without pay regulations. If leave is due to an employee's illness, life, long term disability and retirement contribution benefit coverage may be continued through policy provisions.

9.811 Return to Employment After Leave

- A. At the end of FMLA leave, an employee must be restored to the job he left or one with equivalent benefits, pay and other terms and conditions of employment. Employees on FMLA must receive unconditional pay raises that were granted during their absence.
- B. The FMLA contemplates that there may be situations when an employee cannot return to employment during or after leave. Termination of employment may occur, for example, while an employee is on leave if there is a layoff or reduction in force, or cause that would otherwise support dismissal, if the employee's job would have been lost if he was actively working. Similarly, termination of employment may occur if the employee is unable to perform one or more essential functions of the position, with or without reasonable accommodation, after the leave is over.

9.812 No Retaliation or Interference

The Port will not discriminate or retaliate against an employee who exercises his rights under the FMLA, or otherwise interfere with those rights.

9.813 Definitions

- A. Child – May be a biological, adopted, foster or step child or legal ward, or child of a person standing “in loco parentis” by providing day-to-day care and financial support, where the child is under age 18, or age 18 or older and incapable of self care because of a mental or physical disability.
- B. Next of Kin – The nearest blood relative other than the covered service member's spouse, parent, son or daughter in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his nearest blood relative for purposes of military caregiver leave under the FMLA.
- C. Parent – A biological, adoptive, step or foster parent or other person who stood “in loco parentis” to a child by providing day-to-day care and financial support. In-laws are not covered by this policy.
- D. Spouse – A legal or common-law spouse. This policy also covers domestic partners. Both spouses and domestic partners must have on file an

Affidavit of Domestic Relationship to be eligible for leave to care for the spouse or partner.

- E. Serious health condition – An illness, injury, impairment or physical or mental condition that involves inpatient care of continuing treatment by a health care provider.
1. Incapacity – Inability to work, attend school or perform other regularly daily activities due to the serious health condition, treatment therefore, or recovery therefrom.
 2. Inpatient care – An overnight stay in the hospital, hospice or residential medical care or any subsequent treatment in connection with the inpatient care.
 3. Treatment – Includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.
 4. Continuing treatment by a health care provider – any one of the following:
 - (a) A period of incapacity of more than three (3) consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two (2) or more times within thirty (30) days or treatment by a health care provider on at least one (1) occasion, which results in a regimen of continuing treatment under the supervision of a health care provider.
 - (b) Any period of incapacity due to pregnancy or prenatal care.
 - (c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which requires periodic visits (i.e., at least twice per year) for treatment by a health care provider, which continues over an extended period of time, and any cause episodic rather than a continuing period of incapacity.
 - (d) Permanent or long-term conditions.
 - (e) Conditions requiring multiple treatments.

9.814 Enforcement

If an employee has concerns or complaints regarding FMLA, the employee may contact the Human Resources Division. In addition, an employee may file a complaint with the Department of Labor or may file a private lawsuit.

CHAPTER 10

HEALTH AND SAFETY

STATEMENT OF POLICY

The purpose of this chapter is to ensure that applicants and employees meet the health and physical requirements for the efficient performance of their duties. In addition, this chapter is to develop a safe and healthful environment for employees and for the public when using the Port's facilities, by establishing/maintaining and properly supervising an active safety and health program tailored to meet the needs of the organizations.

10.000 MEDICAL STANDARDS

10.001 Establishment of Medical Standards

Medical standards shall include, but need not be limited to, pre-entry medical examinations, medical re-evaluations, the method of administration of medical examinations, and the consequences of failure to meet health and physical condition requirements.

The General Manager is authorized to establish medical standards in order to:

- A. Ensure that persons seeking employment with the Port meet the health and physical requirements necessary for the safe and efficient performance of the duties of the class of position in which they seek employment, and can continue to meet the health and physical requirements for a reasonable period of time.
- B. Ensure that each employee is able to perform the duties of his position satisfactorily and without undue hazard or imminent threat to himself or others or without undue hardship on the operation of the program.
- C. After making a conditional job offer and before an individual starts work, the General Manager may request a medical examination or ask health-related questions, provided that all candidates who receive a conditional job offer in the same job category are required to take the same examination and/or respond to the same inquiries.

10.002 Kinds of Employment Medical Examinations

The General Manager is authorized to require three (3) types of medical examinations:

A. Pre-entry

Pre-entry physical examinations shall be required of all persons prior to initial appointment to the position.

B. Periodic

Periodic physical examinations shall be required of all employees holding positions in classes which the Division Head and Safety Administrator certifies, and the General Manager approves, that the nature of the work performed is such that a periodic check of ability to meet the health and physical condition standards is necessary. The General Manager will determine the intervals, at which periodic physical examinations shall be taken consistent with the Port's operational requirements. The Port shall implement the standards imposed by the U.S. Department of Transportation and other OSHA standards applicable to periodic medical physical examinations for certain type of vehicle operations. Other OSHA standards are applicable relating to periodic medical examinations of certain vehicle operations (Chapter 87, Title 10, GCA).

C. Special

The Division Head may request the General Manager to authorize special medical physical or psychological examinations to determine the fitness for duty of employees to continue with their assigned duties. Special physical or psychological medical examinations shall have as their purpose the determination of whether an employee should be retired from the government service or assigned to duties and responsibilities that are within his physical or psychological ability to perform. The Port shall pay costs for the special medical examinations.

10.003 Administration of Employment Medical Examinations

Medical examinations shall be administered by a licensed physician or other licensed professional on forms prescribed by the General Manager. The examination form shall request a medical determination of the individual's fitness for employment in the class of position. For special medical examinations, forms shall provide a means for recommendations by the examining physician or licensed professional, as to whether the individual employee should be retired or placed in other employment more suited to his physical or mental condition and ability and for which the employee can perform the essential function of the job.

10.004 Temporary Medical Exemptions

The General Manager may determine that a position must be filled immediately, making it impossible to complete the medical examination prior to appointment. In these unusual cases, the General Manager may temporarily waive the medical examination, provided that the medical examination is completed at the earliest possible date and in no instance, later than thirty (30) days after the appointment.

10.100 PLACEMENT OF EMPLOYEES WHO BECOME MEDICALLY NON-QUALIFIED

10.101 General Provisions

- A. The provisions of this section shall apply to permanent employees who become medically non-qualified and to original probationary employees with a service-connected disability.
- B. It is the responsibility of the Port to assure, to the extent possible, the continued employment of employees who:
 - 1. become disabled as a result of an injury, accident or illness that is not a result of misconduct;
 - 2. are found to be medically non-qualified for their present position; or
 - 3. has a disability incurred in or aggravated during military service but who are medically qualified for other types of positions within the Port.
- C. The employee shall be examined at the expense of the Port by a government or private physician or physicians, in such field or fields of medicine and/or psychiatry as may be applicable to evaluate the employee's qualifications for his present position, or assess his current physical and emotional capacities and/or evaluate his qualifications for a vacancy for which he is being considered under the provisions of this section.
- D. Employees affected by this rule shall be considered for those vacancies for which they qualify.
- E. In the placement of an employee with a disability, the Port shall consider the following:

1. The ability of the employee to safely perform the essential functions of the position without undue interruption to the work program and/or undue hardship on the operations of the program.
 2. The ability of the employee to absorb any required training or re-training; and
 3. The mutual interest of both the Port and the employee.
- F. If demotion is involved, whether or not initiated by the employee, he shall be compensated in accordance with Rule 6.006.

10.102 Placement of Employees with Disabilities

After medical, physical, or psychological re-evaluation, an employee who is no longer qualified to perform the duties of his position satisfactorily within a stated reasonable period of time and in spite of reasonable accommodations due to permanent medical physical or mental incapacity, the General Manager shall take the following action (provided the employee is qualified and able to perform the new duties within the limitations established by these rules and the American with Disabilities Act (ADA)):

- A. Transfer the employee to an equivalent position elsewhere in the Port organizational structure; or
- B. Placement of the employee consistent with Chapter 4; or
- C. If no equivalent position is available, to reassign the employee to a lower graded position, without loss of pay, elsewhere in the Port.

10.103 Reasonable Accommodation

Every effort shall be made by the General Manager to provide reasonable accommodations to assure continued employment.

10.104 Termination of Employment

The General Manager shall terminate the employment of those employees who become disabled as a result of an injury, accident or illness that is not a result of misconduct or found to be medically non-qualified for their present position only for the following reasons:

- A. If no suitable placement can be made or if the employee refuses placement in a suitable position.
- B. If the employee refuses or is ineligible for retirement.

- C. If the General Manager has evidence that the employee is permanently disabled from performing the job, or will be disabled for a long time that termination is necessary in light of demonstrated business realities.

Such termination shall be consistent with the Adverse Action Procedures, Chapter 11.

10.200 SAFETY STANDARDS

The minimum safety standards shall be those as established in the Occupational Safety and Health Code (Chapter 87, Title 10 of the GCA) and administered by the Division of Occupational Safety and Health of Department of Labor.

CHAPTER 11

ADVERSE ACTION PROCEDURES

STATEMENT OF POLICY

This chapter sets forth the guidelines and procedures by which the General Manager may suspend, demote, or dismiss a permanent employee.

11.000 COVERAGE

This chapter shall apply to all permanent classified employees.

11.100 SCOPE

For the purpose of this Chapter, the term “dismissal” shall not be interpreted to include:

- A. Actions taken by the General Manager referenced in the Chapter on “Resignation, Termination and Clearance”; or
- B. Action taken by the General Manager in the termination of services of an original probationary employee.

11.200 EMPLOYEE DISCIPLINE

11.201 General Provisions

A. Responsibility for Discipline

The General Manager derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the GCA.

The General Manager has the responsibility to remove, suspend, or demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal, suspension or demotion will promote the efficiency of government service.

B. Delegation of Authority

The General Manager may delegate responsibility for administration of day-to-day discipline to his line-management, to include such progressive discipline, as oral admonitions, letters of warning, letters of reprimands, and recommendation of adverse actions.

C. Vested Authority

The General Manager is the only official vested with the final authority to take adverse action, including removal, demotion, or suspension against an employee.

11.202 Job Protection Procedures in Employee Discipline Actions

- A. All levels of supervisory and management officials, share the responsibility for strict adherence to employee's job protection rights and considerations including:
1. Informal counseling at the first indication that an on-the-job or personal problem is affecting the employee's job performance.
 2. A reasonable opportunity for the employee to correct inadequate performance including providing specific training to the employee to improve the level of his job performance, or to correct unacceptable habits or practices, such as tardiness or lack of attention to work requirements.
 3. The right to reply to the notice of proposed adverse action that may result in a suspension, demotion or dismissal.
 4. The right to reply to the notice of proposed adverse action and careful consideration of any reply; and
 5. The right to appeal to the Commission as provided in the CSC Rules and Regulations Relative to Demotion, Suspension, Dismissal and Appeal of Adverse Actions.

- B. The General Manager shall require each supervisor and manager receive orientation and training on the Authority's basic intent that discipline is a tool for correcting people in such a way as to produce satisfactory job performance. The use of discipline in a punitive manner is inconsistent with the Authority's concept of discipline as an opportunity to provide constructive correction.

11.300 ADVERSE ACTION PROCEDURES

11.301 General Requirements

- A. An employee must be given the final notice and statement of the charges pursuant to Title 4, GCA, Section 4406, no later than sixty (60) days after management knew, or should have known the facts or events which form the alleged basis for the adverse action.

In no event may an employee in the classified service be given notice and statement of the charges required by this Rule after the sixtieth (60) day after management knew or should have known of the facts or even that form the alleged basis for such action. Any action brought by management is in violation of Section 4406 of Title 4, GCA is barred and any decision based upon such action is void.

- B. An employee covered by the Adverse Action Procedures may be suspended for not more than thirty (30) work days as the result of a single adverse action, nor may an employee be suspended for more than a total of sixty (60) work days in a calendar year, as the result of multiple adverse actions taken by the Authority.
- C. Copies of the adverse action rules and appeal procedures should be made available upon request by the employee.

11.302 Definition

- A. Suspension: The temporary removal of an employee from his position with loss of pay as a disciplinary measure.
- B. Demotion: The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class, to a position in another class, where the maximum rate of pay is less than the maximum rate of pay for the class which he had held, or a reduction to a lower salary step in the same class.
- C. Dismissal: The termination of an employee for authorized cause for adverse action.

- D. Day: Refers to calendar day unless otherwise specified.

11.303 Authorized Causes for Adverse Action

The General Manager may remove an employee for such misconduct(s), which affect(s) the efficiency of the service. The authorized causes for adverse action include:

- A. Fraud in securing appointment.
- B. Refusal or failure to perform prescribed duties and responsibilities.
- C. Violation of the Authority's Drug Free Workplace Policy.
- D. Falsification of records, such as, but not limited to reports, time records, information system records, leave records, employment applications, or other official Authority documents.
- E. Insubordination, including but not limited to, resisting management's directives through actions and/or verbal exchange, or failure or refusal to follow supervisor's instructions to perform assigned work, or otherwise failure to comply with applicable established written policy(ies).
- F. Reporting to work under the influence of, or when ability is impaired by the use of alcohol or the unlawful use of controlled substance.
- G. Unlawful manufacture, distribution, dispensing, possession or use of controlled substances while on the job or on the Authority's premises including while operating the Authority's equipment.
- H. Unauthorized absence.
- I. Criminal convictions for felonies or misdemeanors while employed, including conviction of a moving traffic violation while operating the Authority's equipment.
- J. Discourteous treatment of the public, customers or other employees.
- K. Engaging in political activity prohibited by law.
- L. Misuse or theft of government property.
- M. Acts of physical violence or fighting endangering and threatening the life or safety of customers, employees, or the public.
- N. Violation of safety rules and regulations.

- O. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.
- P. Acts prohibited by Section 9102, Title 4 of GCA relating to strikes against the Government.
- Q. Threatening, coercing, harassing or acts of discrimination to employees, supervisor, customers or individuals, to include sexual harassment.
- R. Unsatisfactory performance.

11.304 Employees Covered

All employees in the classified service are covered by these Rules, except for the following:

- A. Contract employees whose contracts are not renewed upon expiration.
- B. Probationary employees serving original appointments.
- C. Employees on limited-term, temporary, seasonal, intermittent, part-time, provisional, or only for a specific project.
- D. Employees who are exempt by law or other legal authority from the jurisdiction of the Commission with regards to adverse actions.

11.305 Adverse Action Covered

- A. These Rules apply to the following adverse actions:
 - 1. Suspension
 - 2. Demotion (disciplinary action)
 - 3. Dismissal
- B. The use of any combination of the adverse actions listed for the same offense is prohibited.

11.306 Notice of Proposed Adverse Action

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided. A copy of the notice of proposed adverse action shall be submitted to the Commission. The General

Manager or delegated management official may issue the proposed adverse action to the employee.

11.307 Employee's Answer

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within ten (10) days after receipt of the notice. The answer may be made orally, in writing, or both. The General Manager shall be available during the notice period to meet with the employee at the designated date and time requested by the employee. The General Manager may designate a committee to hear the employee's answer. The employee may be represented by a person of his choice. The General Manager must consider the employee's answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer, and the General Manager may proceed with the adverse action upon expiration of the notice period. The employee is not prohibited from meeting the General Manager during the notice period.

The entire ten (10) days for the employee to respond to the notice of proposed adverse action must expire before a final notice of adverse action is issued.

11.308 Suspension During Notice Period

- A. An employee, against whom adverse action is proposed, must be retained in active duty status during the notice period. However, in an emergency situation, an employee may be immediately suspended during the notice period under the following conditions:
 - 1. The continued presence of the employee may interfere with the efficient operation of the Authority, or the health or safety of the employee or others.
 - 2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents.
 - 3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the Authority's attempt to contact the employee was unsuccessful.
- B. Suspension under this Section is a separate adverse action and it is appealable to the Commission within twenty (20) days of the effective date of the action. A copy of the notice of immediate suspension shall be filed with the Commission not later than the working day next following the effective date of the suspension.

- C. If the Commission sustains the Authority's action in suspending the employee during the notice period, the number of days of suspension under this Section shall be considered part of the final disciplinary penalty and in no case shall the final days of suspension be more than thirty (30) work days.

11.309 Leave Pending Investigation

In cases requiring investigations of allegations against an employee involving misappropriation of public funds or property, mistreatment of persons in a government institution or acts which constitutes a crime, the General Manager may authorize the employee an administrative leave of absence with pay for up to twenty (20) work days. The administrative leave may be terminated by the General Manager by giving the employee twenty-four (24) hours written notice.

11.310 Employment Status During Imprisonment

- A. An employee who is incarcerated pending disposition of a case by the court, and who does not have accrued annual leave, may be granted leave without pay at the discretion of the General Manager.
- B. The General Manager shall determine whether to take adverse action against an employee so imprisoned or take such appropriate action as he deems necessary pursuant to laws and the Authority's Personnel Rules and Regulations. Nothing in this Section shall preclude the General Manager from taking adverse action against an employee during imprisonment or upon release.

11.311 Final Notice of Adverse Action

- A. An employee is entitled to written notice of the Authority's decision within ten (10) days after receipt of the employee's answer to the charge(s) except as provided in the Commission's Hearing Procedures for Adverse Action Appeals, and provided further that the General Manager shall not issue a final decision during the notice period. The decision shall be made by the General Manager and shall be delivered to the employee at, or before the time the action will be made effective except as provided in the Commission's Hearing Procedures for Adverse Action Appeals. The notice shall be in writing; be dated; state the specific facts found upon which such action is based; inform the employee of his right to appeal to the Commission; and, inform him of the time limit within which an appeal may be submitted as provided in the Commission's Hearing Procedures for Adverse Action Appeals.
- B. Prior to the final notice of adverse action, the General Manager may conduct an inquiry or investigation into the charges and proposed adverse

action, including calling a meeting with the employee.

- C. Copies of the final notice of adverse action shall be filed by the Authority with the Commission not later than the next work day following the effective date of the action. A copy of the final notice shall be retained by the Human Resources Division.

11.312 Appeal to the Civil Service Commission

The Hearing Procedures for Adverse Action Appeals adopted by the Commission shall be applicable for all Adverse Action Appeals Proceedings.

11.313 Service of Proposed and Final Notices of Adverse Action

The proposed and final notices of adverse action shall be personally served upon the employee. In the event, the General Manager cannot locate the employee, after reasonable efforts have been made to locate the employee, service of the proposed or final notices may be made by leaving the notice at the employee's dwelling or usual place of abode with some person of suitable age and discretion residing therein, or by registered mailing the notice to the employee at the last known address. Service by registered mail is complete upon mailing.

11.400 GUIDELINES FOR DISCIPLINARY OFFENSES AND PENALTIES

11.401 General Provisions

- A. The list that follows is not intended to cover every possible type of offense affecting the efficiency of the service. Penalties for offenses not listed will be prescribed by the General Manager.
- B. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it non-specific. Use only the items, which describe the employee's actual conduct and leave out parts which do not apply.
- C. Penalties for disciplinary offenses will, in general, range from the minimum penalty to the maximum indicated. In unusual circumstances, depending on the gravity of the offense, the past record, and the position of the employee, a penalty outside the general range may be imposed.
- D. Suspension penalties on this schedule apply to work days and holidays.
- E. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed. A greater penalty may be imposed for any offense if the circumstances justify greater penalty.

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- F. In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule of penalty to provide certain flexibility for management's discretion to institute progressive disciplinary action against an employee or group of employees.
- G. Documents relating to reprimand(s) shall not remain in an employee's personnel jacket for more than one (1) year from date of issue.

11.402 Range of Penalties for Stated Offenses: (Reprimands – Suspensions – Dismissals)

In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule to institute a progressive disciplinary action against an employee or group of employees. Reprimands shall not remain in an employee's personnel jacket for more than one (1) year.

	NATURE OF OFFENSE	FIRST OFFENSE		SECOND OFFENSE	
		Minimum	Maximum	Minimum	Maximum
A.	Unauthorized absence	Reprimand	Suspension	Suspension	Dismissal
B.	Falsifying attendance record for oneself or another employee.	Reprimand	Suspension	Suspension	Dismissal
C.	Leaving job to which assigned at any time during working hours without proper permission.	Reprimand	Suspension	Suspension	Dismissal
D.	Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand	Suspension	Suspension	Dismissal
E.	Unexcused tardiness	Reprimand	Suspension	Suspension	Dismissal
F.	Actual or attempted theft of government or Authority's property or property of others.	Reprimand	Dismissal	Suspension	Dismissal

CONDUCT

A.	Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee-employer relationship (on duty or off-duty).	Reprimand	Suspension	Suspension	Dismissal
B.	Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; Insubordination.	Reprimand	Dismissal	Suspension	Dismissal

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	NATURE OF OFFENSE	FIRST OFFENSE		SECOND OFFENSE	
		Minimum	Maximum	Minimum	Maximum
C.	Disorderly conduct, fighting, threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay or resisting competent authority.	Reprimand	Dismissal	Suspension	Dismissal
D.	Disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel.	Reprimand	Dismissal	Suspension	Dismissal
E.	Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand	Dismissal	Suspension	Dismissal
F.	False testimony or refusal to testify in an inquiry, investigation or other official proceeding.	Reprimand	Dismissal	Suspension	Dismissal
G.	Knowingly make false or malicious statements with the intent to harm or destroy the reputation of authority, or other official standing of individuals or organizations.	Reprimand	Dismissal	Suspension	Dismissal
H.	Gambling or unlawful betting during working hours.	Reprimand	Dismissal	Suspension	Dismissal
I.	Promotion of gambling on Government or Port premises	Reprimand	Dismissal	Suspension	Dismissal
J.	Willful damage to Government or Port premises or the property of others.	Reprimand	Dismissal	Suspension	Dismissal
K.	Engaging in prohibited acts covered in Section 9102 of Title 4, GCA.	Penalty shall be imposed pursuant to Section 9103, Title 4, GCA			

DISCRIMINATION

A.	Discriminating against an employee or applicant because of race, color, religion, sex, national origin, age, disability, creed, political affiliation or marital status or other prohibited discriminatory practices.	Reprimand	Dismissal	Suspension	Dismissal
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	NATURE OF OFFENSE	FIRST OFFENSE		SECOND OFFENSE	
		Minimum	Maximum	Minimum	Maximum

INTOXICANTS

A.	Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on Government or Port premises.	Reprimand	Dismissal	Suspension	Dismissal
B.	Reporting for duty while under the influence of a narcotic or dangerous drug or use of same on Government or Port property or on duty.	Reprimand	Dismissal	Suspension	Dismissal
C.	Unauthorized sale or transfer of narcotic or dangerous drug on Government or Port property or during duty hours.	Reprimand	Dismissal	Suspension	Dismissal

PERFORMANCE

A.	Careless workmanship resulting in spoilage or delay in production.	Reprimand	Suspension	Suspension	Dismissal
B.	Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand	Suspension	Suspension	Dismissal
C.	Failure or delay in carrying out orders, work assignments or instructions of superiors.	Reprimand	Suspension	Suspension	Dismissal
D.	Loafing, wasting time or inattention to duty.	Reprimand	Suspension	Suspension	Dismissal
E.	Sleeping on duty where life or property is endangered.	Reprimand	Suspension	Suspension	Dismissal
F.	Unauthorized use or possession of, loss of, or damage to Government or Port property or the property of others.	Reprimand	Suspension	Suspension	Dismissal

SAFETY

A.	Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand	Suspension	Suspension	Dismissal
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	NATURE OF OFFENSE	FIRST OFFENSE		SECOND OFFENSE	
		Minimum	Maximum	Minimum	Maximum
B.	Violation of safety regulations which endangers life or property.	Reprimand	Suspension	Suspension	Dismissal
C.	Endangering the safety of or causing injury to personnel through carelessness.	Reprimand	Suspension	Suspension	Dismissal
D.	Failure to observe no smoking regulations or carrying matches in restricted areas.	Reprimand	Suspension	Suspension	Dismissal
E.	Violating traffic regulations driving on Government premises, or improper operation of government motor vehicles.	Reprimand	Dismissal	Suspension	Dismissal

**11.500 CIVIL SERVICE COMMISSION HEARING PROCEDURES COVERING
SUSPENSIONS, DEMOTIONS AND DISMISSALS.**

It shall be the responsibility of the General Manager to ensure that the Commission's hearing procedures be disseminated to each employee.

CHAPTER 12

GRIEVANCE PROCEDURES

STATEMENT OF POLICY

It shall be the policy of the Authority to promote favorable relations between management and its employees by resolving complaints expeditiously; prevent similar complaints; assure fair and equitable treatment of all employees; and promote harmonious working relationships among all levels of employees.

The General Manager shall develop procedures outlining the responsibilities and steps to be followed by employees in the presentation of an informal or formal grievance. All levels of management shall carefully and promptly respond to an employee's grievance and shall be guided by these procedures.

12.000 APPLICABILITY

The regulations shall apply to all permanent classified employees.

12.100 DEFINITION

A grievance is any question or complaint filed by a permanent employee alleging that there has been a misinterpretation, misapplication or violation of a personnel statute, rule, regulation, written policy which directly affects the employee in the performance of his official duties; or that he has received prejudicial, unfair, arbitrary, capricious treatment in his working conditions or work relationships.

The time frames will serve as guide and may be extended or shortened based on concurrence of the parties involved.

12.200 COVERAGE

Grievances may include, but are not limited to, such actions as employee-supervisor relationships, duty assignments not related to job classification, shift and job location assignments, hours worked, working facilities and conditions, policies for granting leave, and other related matters.

12.300 EXCLUSIONS

12.301 General Exclusions

The following actions are not covered by the grievance procedures:

- A. Disqualification of an applicant;
- B. Disqualification of an eligible;
- C. Examination ratings;
- D. Removal during original probationary period;
- E. Appeals from classification determinations;
- F. Appeals from adverse personnel actions;
- G. Allegations or complaints of discrimination; and
- H. Appeals of performance evaluations.

12.302 Grievance Procedures for Employee Organizations

The procedures are also not applicable when the employee is in a unit covered by an exclusive recognition, as an employee organization, which has negotiated grievance procedures for that unit. When negotiated procedures exist, they shall be the exclusive procedures available to public employees in the unit for settlement or group grievances.

12.303 Equal Employment Opportunity Discrimination Complaint

When an aggrieved employee submits a written allegation of discrimination on grounds of race, color, religion, sex, national origin, marital status, age, disability or political affiliation in connection with a matter which is subject to the Authority's grievance procedures, as well as, the EEO Discrimination Complaint Procedures, that allegation shall be processed under the EEO Discrimination Complaint Procedures.

12.400 GENERAL PROVISIONS FOR USE OF GRIEVANCE PROCEDURES

12.401 Freedom from Reprisal or Interference

- A. An employee and his representative shall be free to use the grievance system without restraint, interference, coercion, discrimination, or reprisal.
- B. An employee, whether acting in an official capacity for the Authority, or on any other basis, must not interfere with, or attempt to interfere with, another employee's exercise of his rights under the grievance system. To be fully effective, the spirit as well as the letter of this non-interference requirement must be enforced. It is not enough for an official to abstain from overt threats or interference. He should refrain from making any statement or taking any action, which has the appearance or even the flavor of a threat, interference, or intimidation.

12.402 Employee's Status During Grievance Procedures

An employee's status during each procedural level shall be status quo.

12.403 Right to Seek Advice

All levels of management will provide an opportunity for an employee to communicate with and seek advice from:

- A. The Authority's Human Resources Division;
- B. The EEO Coordinator or Counselor; or
- C. A supervisory or management official of higher rank than the employee's immediate supervisor.

12.404 Representation

- A. An employee has the right to present a grievance without representation.
- B. An employee has the right to present a grievance with representation.
 - 1. An employee has the right to be accompanied, represented, and advised by a representative of his choice at any stage of the grievance proceedings.
 - 2. An employee may change his representative, but to do so, he must notify his supervisor and the General Manager of the change in writing.
 - 3. A person chosen by the employee must be willing to represent him.

12.405 Official Time for Presentation of the Grievance

- A. An employee must be given a reasonable amount of official time to present his grievance if he is otherwise in an active duty status.
- B. An employee's representative, if he is an employee of the Government of Guam and is otherwise in an active duty status, must be given a reasonable amount of official time to present the grievance.
- C. There is no requirement that the official time for the presentation include time for investigation or preparation, or that it includes travel expense or per diem travel allowance or consultation with private attorney.

12.406 Termination of Grievance

- A. An employee who has filed a grievance may terminate the grievance at

any time.

- B. Failure on the part of the employee to proceed to a higher step of the grievance procedure within the time period specified will terminate the grievance.

12.407 Management's Responsibility for Timely Action and Settlement At the Lowest Possible Level

- A. It shall be the responsibility of management to settle grievances fairly and promptly at, or near the organizational level where the employee brought the grievance to their attention.
- B. Failure by management to render a decision to the employee within the allotted time at any step constitutes denial; the employee may then proceed to the next step of the grievance procedures.

12.500 STEP 1 – INFORMAL GRIEVANCE PROCEDURES

12.501 Management Responsibility

An employee's grievance may or may not be objectively justified. What is important is that the grievance is real to the employee. When the grievance is well founded, management official has both a duty and a need to eliminate the cause. When the grievance is not well founded, it is equally important to reach an understanding based on the full facts. Therefore, the informal procedure should assure consideration of every employee's grievance with a degree of promptness, sympathy, understanding, fairness, competence, and authority which convinces the employee that he has been treated fairly.

12.502 Settlement at the Lowest Possible Level of Management

The informal procedures should be as simple as possible consonant with bonafide consideration of grievances. It should encourage settlement of matters at the lowest possible administrative level in the shortest possible time and should not, therefore, require any written explanation from the employee. The employee may present his grievance under the informal procedures, either orally or in writing, and he should not be prevented from submitting a written explanation if he desires.

12.503 Supervisor's Responsibility

- A. Normal day-to-day discussions between employees and supervisors regarding working conditions and related employment matters are the most constructive and expeditious means of developing and enhancing favorable and effective work relationships.

- B. Each employee of the Authority has the right to present matters to his supervisor, and each supervisor has the obligation to act promptly and fairly upon them, seeking advice and assistance of others when necessary.

12.504 Employee's Responsibility

- A. Each employee is expected to make a concerted effort to achieve informal settlement of his grievance. He should promptly bring his grievance to the attention of the appropriate supervisory level.
- B. Tolling Period: In counting the number of days for each step, if the last day of the period falls on a weekend, the filing time or receipt time falls on the next working day.

12.505 Using the Informal Grievance Procedure – Step 1

A. Initiation by Employee

In keeping with the personal nature of matters covered by grievance procedures, only employees can initiate grievances, singly or jointly. They may not be initiated by employee organizations. Employee organizations may be permitted to present a grievance on behalf of an employee or a group of employees when requested to do so by the employee or employees.

B. Time Limit

1. An employee may present a grievance to his immediate supervisor concerning a continuing practice or condition at any time. Grievances concerning a particular act or occurrence must be presented within fifteen (15) calendar days of that action or occurrence.
2. The immediate supervisor shall render a decision within ten (10) calendar days of the presentation of the grievance.

C. Form of the Grievance

An employee may present a grievance under the informal procedure either orally or in writing.

D. Non-rejection Provision

A grievance may not be rejected in the informal procedure for any reason.

If the grievance is not timely or consists of a matter not covered under the grievance system, the employee should be so advised but he must be allowed to submit his grievance under the formal procedures if he insists.

E. Mandatory Use of the Informal Procedure

An employee must complete the informal procedure before the Authority may accept from him a grievance concerning the same matter under the formal procedure.

12.600 STEP 2 – FORMAL GRIEVANCE PROCEDURES – NEXT ADMINISTRATIVE LEVEL

12.601 Presentation of the Grievance – Step 2

A. An employee is entitled to present a grievance under the formal procedure if:

1. he has completed the informal procedure;
2. the grievance is not satisfactorily resolved at the informal level; and
3. the immediate supervisor failed to render a decision within ten (10) calendar days of the presentation of the grievance at the informal level.

B. The grievance presented in Step 2 must:

1. be in writing on a form prescribed by the General Manager;
2. contain sufficient detail to identify and clarify the basis for the grievance;
3. specify the remedy requested by the employee or the appropriate supervisory level; and
4. be submitted to the appropriate division manager who is the next higher supervisor than the immediate supervisor within five (5) calendar days after receipt of the answer in Step 1 or after the answer was due.

12.602 Responsibility of Next Higher Supervisor

A. The next higher supervisor must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed

through the informal procedure.

- B. The next higher supervisor shall make a positive attempt to resolve the grievance. He shall render a decision, in writing, to the employee within five (5) calendar days of receipt of the written grievance.

12.700 STEP 3 – FORMAL GRIEVANCE PROCEDURES – GENERAL MANAGER

12.701 Presentation of the Grievance – Step 3

- A. An employee is entitled to present a grievance under Step 3 if:
 - 1. he has completed Step 2 of the procedures; and
 - 2. the grievance is not satisfactorily resolved at Step 2 level; or
 - 3. specify the remedy requested by the employee; and
 - 4. be submitted to the General Manager within five (5) calendar days after receipt of the answer in Step 2 or after the answer was due.

12.702 Authority Grievance Committee

- A. Appointment of the Committee

Within three (3) calendar days of receipt of the written grievance from the employee, the General Manager shall appoint a Grievance Committee to investigate the circumstances of the grievance and to make a recommendation as to its disposition.

- B. Committee Membership

The Committee shall consist of four (4) members who are permanent government employees: two (2) members from the employee's peer group and two (2) members who are permanent employees at the managerial level.

- C. Responsibility of the Committee

The Committee must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed through the informal procedure.

D. Committee Inquiry

The Committee shall be expected to convene and initiate a grievance inquiry appropriate to the nature and scope of the issues involved in the grievance. The inquiry will typically include the securing of documentary evidence and personal interviews in an effort to fully understand the issues and obtain the maximum information available pertinent to the issues.

E. Grievance File

When the Committee begins a grievance inquiry, the Committee Chairperson (elected by the members of the Committee) shall establish an employee grievance file. This is an independent file, separate and distinct from the personnel folder. The grievance file must contain all documents pertaining to the grievance including:

1. statements of witnesses;
2. records or copies of records; and
3. Reports of personal interviews.

F. Open Record

The grievance file is an open record. It is open for review by the employee and his representative and must not contain any document that is not available to the employee. Information to which the Committee is exposed which cannot be made available to the employee in the form it was received must be included in a file in a form, which the employee can review or it must not be used.

G. Committee Report

The Committee shall complete its investigation within fifteen (15) calendar days of the date the Committee was appointed and shall submit a written report of its findings and recommendations to the General Manager within two (2) calendar days following completion of its investigation.

H. General Manager's Written Decision

The General Manager shall render a written decision to the employee within five (5) calendar days of receipt of the written report from the Committee.

12.800 STEP 4 – APPEAL TO THE COMMISSION

12.801 Presentation of the Grievance – Step 4

- A. An employee is entitled to present a grievance appeal under Step 4 if:
 - 1. he has completed Step 3 of these procedures; and
 - 2. the grievance is not satisfactorily resolved at Step 3 level; or
 - 3. the General Manager failed to render a decision within five (5) calendar days of the submission of the written report from the Authority Grievance Committee at Step 3 level; or
 - 4. there has been a violation of the Government Code or Authority Personnel Rules and Regulations; or
 - 5. the procedural rights of the employee filing the complaint as outlined have been disregarded; or
 - 6. the decision of the supervisor, Authority Grievance Committee and the General Manager has been unjust, inequitable or not in accord with the facts; or
 - 7. the General Manager fails to act on the Authority Grievance Committee's recommendations.
- B. The grievance presented in Step 4 must:
 - 1. be in writing on a form prescribed by the General Manager;
 - 2. contain sufficient details to identify and clarify the basis of the grievance;
 - 3. include copies of the grievance forms submitted in Steps 2 and 3;
 - 4. specify the remedy requested by the employee; and
 - 5. be submitted to the Commission within five (5) calendar days after receipt of the answer in Step 3 or after the answer was due.

CHAPTER 13

RESIGNATION AND TERMINATION

STATEMENT OF POLICY

The purpose of this Chapter is to provide an orderly, uniformed and fair procedures for non-disciplinary separation of employees from the Authority's service.

13.000 RESIGNATION

13.001 Coverage

This section shall apply to all classified service employees.

13.002 Notice of Resignation

An employee may resign by giving written notice of the resignation to the General Manager. The employee shall notify the General Manager in writing at least ten (10) workdays before the date of separation. When a resignation letter is directed to the General Manager, it shall by its terms, be effective immediately or on a certain date. If no effective date is indicated, it shall be effective upon delivery to the General Manager.

Upon receipt by the General Manager of any resignation letter, the General Manager may make the resignation effective immediately or sooner than the effective date in the resignation letter. Such resignation shall be effective according to its terms unless the General Manager, at his discretion, makes the resignation effective immediately or at sometime sooner than the resignation letter. Acceptance of such resignation by the General Manager is not required for the resignation to become effective.

13.003 Withdrawal of Resignation

With the consent of the General Manager, the employee may withdraw a resignation at any time prior to the effective date of the resignation.

13.004 Resignation in Good Standing

A resignation shall be deemed to be in good standing when it is made voluntarily and not as a direct result of a final adverse action or criminal conviction. With the exception of an employee serving an original probationary period, an employee who resigns in good standing shall have reemployment rights consistent with Title 4, GCA and Rules 4.706 and 4.802.

13.005 Resignation Pending Adverse Action

An employee who resigns after receipt of a notice of proposed adverse action is deemed to have resigned voluntarily and has no right to appeal to the Commission. Any employee, who resigns under this rule and is subsequently convicted of a crime based on the same facts, which forms the basis of the adverse action, shall be deemed not to resign in good standing.

13.100 TERMINATION OF EMPLOYMENT

13.101 Termination of Employment

The General Manager may terminate the services of an employee for any of, but not limited to the following reasons:

- A. The duration of the temporary period of employment is ended.
- B. The employee failed to demonstrate satisfactory work performance during the original probationary period or failed to satisfy other conditions of employment.
- C. For misconduct, in which case, the adverse action procedures shall be adhered to. (Refer to Adverse Action Procedures.)

13.200 EXIT INTERVIEW

A personal interview shall be conducted with each employee separating from the services of the Authority. The interview shall be held prior to the employee's effective date of separation. The interview shall be conducted in such manner as to obtain from the separating employee the true reason or reasons for his separation. Such interview shall be recorded on forms prescribed by the General Manager and made part of the separating employee's personnel folder. A representative of the Human Resources Division shall conduct the interview.

13.201 Clearance

Each separating employee must be cleared of all obligations within the Authority no later than the employee's last working day. Final payment of wages will be withheld pending completion of exit interview and clearance of all obligations to the Authority.

CHAPTER 14

MERIT CAREER PLAN

14.000 PURPOSE

This procedure outlines the responsibilities of the General Manager when permanent classified Authority employees apply and are being considered for career opportunities.

14.100 COVERAGE OF THE MERIT CAREER PLAN

This plan applies only to permanent classified employees.

14.200 EXAMINATION UNDER THE MERIT CAREER PLAN

The same examination will be used for all persons responding to a particular Merit Career Job Announcement.

14.300 REFERRAL OF CERTIFICATION LIST

The top five (10 for entry level labor/custodial and waterfront positions) eligibles shall be furnished to the General Manager based on rank order. However, in the event of tie scores with the fifth (10th for entry level labor/custodial and waterfront positions) eligible, all eligibles with the same score as the fifth (10th for entry level labor/custodial and waterfront positions) eligible will be referred.

14.400 SELECTION INTERVIEW

The General Manager shall establish procedures for interviewing certified eligibles.

14.500 EVALUATION OF CANDIDATES DURING THE SELECTION PROCESS

- A. Evaluation of candidates shall be based on job-related criteria, which measures the knowledge, skills, abilities and personal characteristics essential to successful performance in the position to be filled. Due consideration shall be given to formal recognition of superior performance of candidates, job-related training, and performance appraisals.
- B. Length of service, length of experience or level of formal education may be used as an evaluation factor when there is a clear and positive relationship with the requirements of the job to be performed. Length of service or experience may not be the factor given the greatest weight unless the nature of the vacant job is such that other factors cannot be

expected to identify significant qualitative differences between qualified candidates.

14.600 SELECTION DOCUMENTATION REQUIREMENTS

- A. The basis for selection must be job-related. The results of the selection process must be on file with the Personnel Division. Evaluation results are confidential and form a part of the selection process for the candidates being considered for the position. The Commission reserves the right to post audit selection documentation records.
- B. The General Manager will advise all persons certified under a Merit Career Job Announcement about the selection within ten (10) working days of the selection.
- C. Individuals who were certified and were not selected may request the General Manager to review the adequacy of the consideration they received provided that such a request is received in writing by the General Manager within five (5) working days after the non-selectee received the notice about the selection.

The minimum qualifications established for the position may not be contested by a competitor. The following information shall be made available to competitors under a Merit Career Job Announcement upon request, and the General Manager shall periodically publish the competitor's right to this information:

- 1. whether the individual was considered eligible on the basis of minimum qualification requirements for the position;
- 2. whether an individual was one of those in the group from which selection was made; and
- 3. who was selected.

14.700 HANDLING EMPLOYEE COMPLAINTS

- A. The General Manager shall respond to employee questions or complaints about the career program, or about a specific promotion action, and provide the employee with appropriate information or explanation.
- B. Issues that are not a basis for a formal complaint are:

1. failure to be selected when proper procedures are used. A complaint may not be filed for non-selection from a group of properly ranked and certified candidates; and
2. any action required to be taken under the provisions of the statute, or instructions of the Commission.

14.800 EXCEPTIONS TO THE MERIT CAREER PLAN

- A. The provisions of the Merit Career Plan are not required for career promotions which are:

1. Promotions without current competition where at an earlier date an employee was selected under a Merit Career Job Announcement for a position with known promotional potential to the position to which he is being promoted. The promotional potential must have been included in the announcement, and where appropriate, the career ladder (intervening promotion) documented in the original announcement.
2. Where the employee's position is reconstituted in a higher grade because of gradual accretion of additional duties and responsibilities and the accretion was not the result of planned management action. For example, an increase in the level of the employee's performance or change in workload, procedures, or organization that affects the grade of the positions only incidentally.

To be eligible for a career promotion when the position is upgraded under these conditions, an employee must continue to perform the same basic function and his former position must be absorbed in the new one. When an additional position is created, or when the new position is not a clear successor to the former position, career promotion is not authorized. Similarly, a career promotion may not be made from a non-supervisory position to a supervisor or manager position because these levels of position inherently have specific administrative authority which can only be delegated by management.

- B. The provisions of this Merit Career Plan are not required for the following personnel actions:

1. A transfer from a position having known promotional potential to a position having no higher promotional potential.
2. A detail appointment.

3. An action taken as a remedy for failure to receive proper consideration in a competitive promotion procedure.
4. A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification specification (standards) or the correction of a classification error.
5. Re-promotion to a class or position from which an employee was demoted without personal cause and not at his request. Acceptance of a demotion in lieu of layoff is not a demotion at the employee's request for these purposes.

The competitive procedures of the Merit Career Plan will not be used before these individuals are accorded their rights for re-promotion.

14.900 ADMINISTRATION REQUIREMENTS

- A. The General Manager shall provide for initial and periodic orientation to all employees, supervisors and managers concerning the provisions of this Merit Career Plan and the training of all division managers in their respective responsibilities for assuring the maximum publicity of Merit Career Job Announcements and for advising employees on requirements and provisions of this Merit Career Plan.
- B. The General Manager shall institute controls and audit procedures as deemed necessary to assure that all promotion actions are consistent with the provisions of the Merit Career Plan.
- C. The General Manager will assure that each current and future Division Manager is provided a copy of the Merit Career Plan and any subsequent changes to the Plan.

CHAPTER 15

DRUG FREE WORKPLACE PROGRAM POLICY

STATEMENT OF POLICY

The Authority is committed to maintaining a safe and healthy work environment free from the influence of alcohol and drugs. To that end, the Authority has adopted a Drug-Free Workplace Program. Compliance with the Authority's drug policy is a condition of employment. The Authority intends to take severe disciplinary action, up to including termination, against an employee who violates the Authority's Drug Free Workplace Program.

15.000 PREVENTION AND TREATMENT

The Authority encourages any employee with a drug or alcohol abuse problem to voluntarily seek treatment. The Authority has established an employee assistance program to provide counseling and referral services for employees with drug or alcohol abuse problems who voluntarily seek help.

15.100 PROHIBITED ACTIVITY

The Authority strictly prohibits unauthorized use, possession (including storage in a desk, locker, car or other repository), manufacture, distribution, dispensation or sale of illegal drugs, drug paraphernalia, controlled substances, or alcohol on the Authority's premises, in official vehicles, during working hours or any activity that compromises the integrity or accuracy of the Authority's drug and alcohol program, or any failure or refusal to abide by the Drug-Free Workplace Program, and conviction under any criminal drug statute.

15.200 TESTING

The Authority may require employees and applicants to be tested for drugs or alcohol upon hiring; when the Authority suspects that the employee's work performance or on-the-job behavior may have been affected in any way by drugs or alcohol; or when the Authority determines that an employee may have contributed to an accident involving fatality, serious bodily injury, or substantial damage to property. In addition, employees will be subject to random drug testing. Any positive drug or alcohol test is a violation of the Authority's Drug Free Workplace Program. Any test for drug or alcohol abuse will be conducted using reasonable procedural safeguards.

15.300 PROCEDURES

The procedures to effectively administer the Drug Free Workplace Program shall be those established by Port.

CHAPTER 16

EMPLOYEE INCENTIVE AWARDS PROGRAM

STATEMENT OF POLICY

It is the policy of the Port to develop Employee Incentive Awards program to recognize employees who by their suggestions, inventions, superior accomplishments or other personal effort contribute to the efficiency, economy or improvements of the Port operations; and perform special acts or services in the public interest in connection with or related to his official employment.

16.000 SERVICE MEDALS

16.001 Silver Medal

A silver medal for faithful service to the Government of Guam is granted to an employee and will be known as the Twenty-five (25) Year Service Medal.

This medal may be granted by the Port, to any person who has faithfully served the Government of Guam for a total for at least twenty-five (25) years. Creditable service to the Naval Government of Guam in a civil capacity, or active service in the Guam militia, shall be counted toward the time necessary to establish eligibility for this medal. Service in a federal capacity shall also be counted, provided such service has been directly in connection with the Government of Guam activities.

The Twenty-five (25) Year Service Medal will be of silver and may be worn by its recipient on occasions of ceremony.

A Five (5) Year Silver Bar may be granted by the Port for each five (5) years of service over the twenty-five (25) year basic period provided the additional service would have been eligible to count toward original award of the medal.

16.002 Gold Medal

An award for faithful service to the Government of Guam is established and shall be known as the Gold Service Medal.

This medal shall be granted by the Port to any person who has faithfully served the Government of Guam not less than thirty-five (35) years. Creditable service to the Naval Government of Guam in a civil capacity, or active service in the

Guam militia, shall be counted toward the time necessary to establish eligibility for this medal. Service in a Federal capacity shall also be counted, provided such service has been directly in connection with Government of Guam activities.

The Gold Service Medal may be worn by its recipient on occasions of ceremony.

16.100 INCENTIVE AWARDS PROGRAM

16.101 Purpose: The Port's incentive award programs should be designed to recognize competent, efficient, dedicated employees who:

- A. contributed to the services of the Port above and beyond the requirement of their position titles;
- B. rendered outstanding service to the Port to the best of their ability and knowledge in performing their assigned duties;
- C. by their outstanding accomplishments or other personal efforts contributed to the effectiveness of their division or to the mission accomplishments of the Port as a whole; or
- D. recognizes and reward employees who offer suggestions, ideas, recommendations, whose implementation would result in monetary savings or improve Port's operations.

Additionally, the program is to be used as a tool to motivate and inspire other employees of the Port for such recognition and at the same time enhance the overall work attitude.

16.102 Policies and Procedures: The General Manager shall establish policies and procedures for granting an award under the Port's Incentive Awards Program.

PERSONNEL RULES AND REGULATIONS

GLOSSARY

1. **ADVERSE ACTION:** Action taken by the General Manager or his designated representative which may suspend, demote, or dismiss a permanent employee.
2. **ADMINISTRATIVE LEAVE:** Leave with pay without charge to annual leave.
3. **ADMINISTRATIVE WORKWEEK:** Consists of 40 hours of work or paid leave per workweek.
4. **ALLOCATION/CLASSIFICATION:** The assignment of an individual position to an appropriate class in the classification plan on the basis of kind and difficulty of the duties and job requirements of work performed in the position.
5. **APPOINTING AUTHORITY:** The General Manager of the Port Authority of Guam.
6. **BOARD:** Shall mean the Port Authority of Guam Board of Directors.
7. **CERTIFICATION OF ELIGIBLES:** A document containing names from which competitive appointment is made.
8. **CLASS OF POSITION:** Includes all positions, which are sufficiently similar, as to:
 - (a) kind and subject matter of work;
 - (b) level of difficulty and responsibility; and
 - (c) the qualification requirements of the work to warrant similar treatment in personnel and pay administration.
9. **CLASS SERIES:** Consists of two or more classes that are similar as to line of work but differ as to level of responsibility and difficulty.
10. **CLASS STANDARD:** An official document which describes the general characteristics of the class, including title, nature of work summary, statement of examples of typical duties performed, a statement of minimum qualifications, and the minimum knowledge, abilities, and skills needed to perform the work which provides the criteria for placing each position in its proper class.
11. **CLASS TITLE:** The official name given to a class of positions to identify the class and all positions in the class, and shall be used for personnel, budget and fiscal purposes.

12. **CLASSIFICATION PLAN (Position Classification Plan):** A plan in which classes of positions are arranged in a logical and systematic order according to similarities and differences in duties, responsibilities, and qualifications requirements.
13. **CLASSIFIED SERVICE:** Government service of which employees have attained permanent status and cannot be removed from employment without cause.
14. **COMMISSION:** Shall mean the Guam Civil Service Commission.
15. **COMMON-LAW:** Persons who have co-habitated for at least two consecutive years and who are readily eligible to marry without emancipation under the laws of Guam.
16. **COMPARABLE POSITIONS:** Positions of equivalent or lower grade and pay in the same occupational category.
17. **COMPENSATION PLAN:** A compilation of all classes of positions in the classification plan setting forth their assignments of pay grades in accordance with Chapter 6 of Title 4 of the GCA.
18. **COMPENSATORY TIME-OFF:** Time off in lieu of overtime pay. The amount of time off shall be granted at time and one half.
19. **CREATION OF NEW CLASS OR CLASSES OF POSITIONS:** Those creations pursuant to Section 6303 of Title 4 of the GCA, because there is no existing class in the classification plan to which a position creation can be properly allocated.
20. **CREDITABLE SERVICE:** Service period for increment step increases.
21. **DEMOTION:** The change of an employee's position to a position with a lower maximum salary rate.
22. **DEMOTION (Involuntary):** Demotion of an employee for cause.
23. **DEMOTION (Voluntary):** Demotion requested by an employee in order to retain employment, when lay-off from his position is eminent, or for other reasons when the action is entirely voluntary on the part of the employee and not for cause.
24. **DETAIL:** The temporary assignment of an employee to perform a particular function other than the position to which regularly assigned. Detail shall not be for a period of more than 90 days, except where the Department of Administration has granted an extension of up to an additional 90 days per calendar year.
25. **DISCIPLINE:** Corrective action(s) taken by the General Manager, which is/are necessary to maintain the efficiency of the service.

- 26. **DISMISSAL:** Separation, discharge or removal for cause of an employee from his position.
- 27. **DIVISION HEAD:** The head of a respective division within the Port Authority of Guam.
- 28. **DUTY:** A task assigned to an employee by a responsible management authority.
- 29. **EMERGENCY:** Situations which may jeopardize human life and property or Port's operations which require immediate action.
- 30. **EMPLOYEE:** Any person employed by the Port.
- 31. **ESSENTIAL FUNCTIONS:** Those functions contained in a job specification that the General Manager believes to be important in accomplishing the purpose of the job.
- 32. **FIRST DEGREE OF CONSANGUINITY:** Blood relationship restricted to parent-child or sibling-sibling, to include adoptive and step-parents and children.
- 33. **GCA:** Shall mean the Guam Code Annotated.
- 34. **GOVERNMENT-WIDE:** Includes permanent status employees occupying classified positions within the Government of Guam departments and agencies.
- 35. **GRADUAL ACCRETION OF DUTIES AND RESPONSIBILITIES:** The acquiring of duties and responsibilities over a period of time. The employee must continue to perform the same basic function and his former position must be absorbed in the new one.
- 36. **GRIEVANCE:** Complaints, which relate to the working condition and relationship to Port policies, rules and regulations, and which cannot be resolved through informal discussions with the immediate supervisor.
- 37. **IMMEDIATE FAMILY:** With respect to leave, immediate family is defined as the employee's spouse, common-law, mother, father, grandparents, guardian, children, in-loco parentis, sister, brother, mother-in-law, and father-in-law. Step, adoptive, and spouse of adoptive parents, children, and grandchildren would also be considered "Immediate Family".
- 38. **IN-LOCO PARENTIS:** Refers to the situation of an individual who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- 39. **JOB CONTENT:** Duties and responsibilities assigned to a particular position.

- 40. **KNOWN PROMOTIONAL POTENTIAL:** Upward career mobility in a series of positions within the Port without competition and where at an earlier date an employee was selected under a competitive examination.
- 41. **LAY-OFF:** The involuntary termination of employment as a result of reorganization or lack of funds.
- 42. **LEAVE YEAR:** The period from the beginning of the first complete pay period in the fiscal year commencing October 1, to the beginning of the first complete pay period in the following fiscal year.
- 43. **LIMITED-TERM APPOINTMENT (LTA):** An appointment to positions, which are permanent in nature, not to exceed one year.
- 44. **LINE MANAGEMENT:** The line of authority from the General Manager down to the first level supervisors.
- 45. **MERIT CAREER:** Promotion within the classified service, which is covered under the Merit Career plan of these rules.
- 46. **MINIMUM QUALIFICATION:** Minimum experience and training requirements derived from the knowledge, abilities, and skills and other qualification required to perform the duties and responsibilities of the position.
- 47. **MISCONDUCT:** Any action of an employee which is of a personal nature not related to the employee's ability to perform the job, but which constitutes a violation of regulations governing expected employee conduct on the job.
- 48. **NEPOTISM:** Supervisor-subordinate relationship between and among spouses and persons within the first degree of consanguinity, or as prescribed in Title 4, Section 4204, of the GCA.
- 49. **NEXUS:** Refers to a conflicting link between a job and a criminal offense where there is a strong likelihood that employment will impair the government's ability to provide safe and efficient government services.
- 50. **NON-PERMANENT STATUS:** Those employees in the government's merit personnel system who do not have permanent status and are non-permanent employees until such time as they acquire permanent status.
- 51. **OPEN COMPETITIVE:** This is an examination, which permits the competition of persons who meets the requirements of the official announcement for the position, and is not restricted to persons currently employed in the classified service.

- 52. **ORIGINAL OR INITIAL APPOINTMENT:** First-time permanent appointment to the classified position.
- 53. **ORIGINAL PROBATIONARY PERIOD:** It is that period in which an employee initially serves to attain permanent status as a Government of Guam employee. This also applies to former employees who have not been employed in the Government of Guam service after four years of separation in good standing.
- 54. **OVERTIME:** Actual hours worked in excess of 40 hours in an administrative work week. For classified employees whose normal work week schedule does not consist of five working days and two days off in a work week, overtime shall mean only hours worked in excess of their administrative workweek.
- 55. **PASSING SCORE:** A score of 70.00 or above.
- 56. **PAY GRADE:** The designated grade of compensation, as provided in the Compensation Schedule.
- 57. **PAY GRADE REASSIGNMENT:** Change of pay grade allocation of a class as determined by Board.
- 58. **PAY GRADE SCHEDULE:** A systematic arrangement of salary grades set forth by the Chapter 6, Title 4 of GCA or as authorized in Chapter 10, Title 12 of GCA.
- 59. **PERMANENT APPOINTMENT:** An appointment made by the General Manager to a position subject to the probationary period requirements.
- 60. **PERMANENT STATUS:** Permanent status is attained once an employee completes a satisfactory original probationary period.
- 61. **PERSONNEL JACKET:** The file shall contain documents or information of the employee's classification, performance evaluation, training, past work experience, commendations, and disciplinary actions. A separate jacket shall be established to include the employee's medical documents and information, drug testing results, inclusive of health and life insurance.
- 62. **PLANNED MANAGEMENT ACTION:** Refers to the pre-determination of a position via the vehicle of management budget or classification review where the new position is not a clear successor to the former position or where a promotion is recommended from a non-supervisory position to a supervisory or manager position. The requirements for competitive examinations shall apply.

63. **POSITION:** The work consisting of duties and responsibilities assigned by the General Manager for performance by an employee whether part-time or full-time, temporary or permanent, occupied or vacant.
64. **POSITION DESCRIPTION:** A formal written record describing the essential function, scope, and principal duties and responsibilities for a position and/or employee; used as an aid in evaluation of jobs and for such other purposes as selection, development, performance appraisal, training and other similar human resource functions.
65. **PRIORITY PLACEMENT LIST:** List established for displaced permanent classified employees to be afforded first offer of employment to positions that they previously filled, or to comparable positions they are qualified for.
66. **PROBATIONARY APPOINTMENT:** The initial appointment by the General Manager of an employee to a class of position in which the employee will commence serving a probationary period.
67. **PROBATIONARY PERIOD:** A working test period and is part of the examination process following an appointment from certification list during which an employee is required to demonstrate fitness for the position to which appointed by the satisfactory performance of the duties and responsibilities of the position.
68. **PROMOTION:** The movement of a permanent employee to a position with a higher maximum salary rate.
69. **PROMOTIONAL COMPETITIVE:** Competitive recruitment under the merit system that are only open to permanent status employees of the Government of Guam.
70. **RAW SCORE:** The numerical score, which is attained by an examinant without the application of a formula.
71. **REALLOCATION (Reclassification):** The change in the allocation of position by assigning it to a higher or lower class, or another class at the same level for any of the following reasons:
- A. Significant changes in the nature or variety of work which influence the overall level of difficulty.
 - B. Re-determination of the initial classification judgment without a change in duties and responsibilities.
72. **RECRUITMENT:** The process of announcing positions in an effort to solicit candidates for appointments in the Port service.

- 73. **RE-EMPLOYMENT:** A former permanent classified employee who returns to Government service within four years of separation in good standing to the same or comparable job in the Port. The pay remains the same.
- 74. **REINSTATEMENT:** A permanent classified employee who returns to his former position as a result of Commission ruling, or as a result of military service.
- 75. **RESIGNATION:** The voluntary termination of employment by an employee without cause.
- 76. **REVIEW COMMITTEE (PERFORMANCE APPRAISAL):** An option which the General Manager may elect and which is comprised of at least five Port employees to make recommendations for a final decision regarding the performance elements and standards.
- 77. **SELECTIVE CERTIFICATION:** Certifying of eligible applicants who meet special requirements set forth and approved by the General Manager.
- 78. **SERIES OF CLASSES:** Consists of two or more classes that are similar as to kind of work, but differ as to level of responsibility and difficulty.
- 79. **SPOUSE:** Husband or wife.
- 80. **SUSPENSION:** The temporary removal of an employee from his position with loss of pay for cause.
- 81. **TEMPORARY APPOINTMENT (90 DAY APPOINTMENT):** An appointment to positions, which are permanent in nature, not to exceed 90 work days or 720 work hours, whichever comes first, within a calendar year.
- 82. **TERMINATION:** The removal of an employee from employment for authorized cause.
- 83. **TRANSFER:** The lateral movement of an employee without any change in position title or salary, or from one class of position to another class of position having similar duties and responsibilities and qualification requirements, or a movement from one department to another department.
- 84. **UNCLASSIFIED SERVICE:** Government service of which employees serve at the pleasure of the Board and do not attain permanent status.
- 85. **WEIGHTED SCORE:** A product of raw score and the appropriate formula for the particular examination.

86. **WORKDAY:** A regularly recurring period of eight consecutive hours exclusive of lunch hour.
87. **WORKWEEK:** A regularly recurring period of seven consecutive 24-hour intervals. A workweek need not coincide with a calendar week. It may be any day of the week at any hour of the day. A workweek must remain the same unless any change is intended to be permanent.

Appendix A: Listing of Maritime Positions Unique to Port Operations and Certified and Technical Positions

Accountant I	Crane Mechanic Supervisor
Accountant II	
Accountant III	Crane Operator
	Crane Operator Leader
Accounting Technician Supervisor	
	Deputy General Manager
Administrative Officer	
Administrative Services Officer	Electrician I
	Electrician II
Assistant Comptroller	Electrician Leader
	Electrician Supervisor
Assistant Harbor Master	
	Engineer I
Automotive Body Worker	Engineer II
	Engineer III
Budget Analyst	Engineer Manager
Building Maintenance Leader	Engineering Technician I
Building Maintenance Supervisor	Engineering Technician II
Building Maintenance Superintendent	
	Equipment Maintenance Superintendent
Buyer II	
Buyer Supervisor	Equipment Operator I
	Equipment Operator II
Cargo Checker	Equipment Operator III
Cargo Checker Leader	Equipment Operator Leader
Cargo Checker Supervisor	
	Financial Affairs Controller
Carpenter I	
Carpenter II	General Accounting Supervisor
Chief Planner	General Manager
Claims Officer	Harbor Master
Commercial Manager	Heavy Equipment Mechanic I
	Heavy Equipment Mechanic II
Comptroller	Heavy Equipment Mechanic Leader
	Heavy Equipment Mechanic Supervisor
Computer Operator I	
Computer Operator II	Maintenance Manager
Computer Operator III	
	Maintenance Worker I
Computer Operator Specialist	Maintenance Worker II
Corporate Services Manager	Management/Program Analyst
	Management/Program Analysis Officer
Crane Mechanic I	
Crane Mechanic II	
Crane Mechanic Leader	Manager, Equipment Support Services

Appendix A: Listing of Maritime Positions Unique to Port Operations and Certified and Technical Positions

Marine Traffic Controller	Safety Inspector I
	Safety Inspector II
Mobile Equipment Dispatcher	Safety Inspector III
	Safety Administrator
Operations Manager	
	Security Guard (Armed)
Painter I	
Painter II	Stevedore
	Stevedore Leader
Payroll Supervisor	Stevedore Supervisor I
	Stevedore Supervisor II
Personnel Specialist I	Stevedoring Superintendent
Personnel Specialist II	
Personnel Specialist III	Supply Management Administrator
Personnel Specialist IV	
Personnel Services Administrator	Supply Technician I
	Supply Technician II
Planner-Work Coordinator	Supply Supervisor
Planner I	Systems Manager
Planner II	
Planner III	Systems Programmer
Planner IV	
	Tariff Technician
Plumber I	Tariff Supervisor
Plumber II	
	Terminal Superintendent
Port Marketing Administrator	
	Transportation Supervisor
Port Police I	Transportation Superintendent
Port Police II	
Port Police Supervisor	Welder I
Assistant Port Police Chief	Welder II
Port Police Chief	Welder Leader
	Welder Supervisor
Preventive Maintenance Mechanic	
Preventive Maintenance Mechanic Leader	Winch Operator
Preventive Maintenance Mechanic Supervisor	
Program Coordinator I	
Program Coordinator II	
Program Coordinator III	
Program Coordinator IV	
Refrigeration Mechanic I	
Refrigeration Mechanic II	
Rigger	
Rigger Leader	

Appendix B: PAY SCHEDULE

[illegible]

Appendix B: PAY SCHEDULE

[illegible]

Appendix B: PAY SCHEDULE

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STATEMENT OF POLICY

The Jose D. Leon Guerrero Commercial Port is committed to a drug-free work force to protect the safety of employees and public. The Authority administers a drug-screening program with strict policies and procedures in place to ensure its accuracy and integrity.

It is the policy of the Jose D. Leon Guerrero Commercial Port that applicants given conditional offer of employment shall submit to a drug screen. In order to protect the safety of the employees and the public, no applicant whose test shows illegal drug use will have his employment considered.

It is the policy of the Jose D. Leon Guerrero Commercial Port that employees may be required to take a drug screen to show they are drug-free if there is a reasonable suspicion or illegal drug use. The Authority will give current employees an opportunity to rehabilitate and return to their jobs as productive members of the work force, whenever applicable by law. Current employees who do not rehabilitate or who have a second confirmed test which shows illegal drug use may be disciplined in accordance with Civil Service Commission Adverse Action Procedures.

It is the policy of the Jose D. Leon Guerrero Commercial Port to inform applicants and employees of the drug screening program prior to being conducted. The Authority will consider the drug screening results and the medical information provided by applicants and employees as confidential.

I. PURPOSE AND GOAL

The Jose D. Leon Guerrero, Commercial Port Authority of Guam's (hereinafter "The Port") mission is to provide full services to ocean vessels in support of loading and unloading cargo for Guam and Micronesia. The Port is the main lifeline of consumer goods into the island, and as such, recognizes its responsibility to deliver these goods in a timely and efficient manner. In support of this mission the Port also provides land and infrastructure to private interests to further develop the maritime industries on Guam.

As a public corporation, the Board of Directors of the Port is committed to fulfilling its mission by protecting the health, safety and well being of all employees, customers and the public in the workplace. In addition, the Board recognizes

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that alcohol and drug use pose a significant threat to the Port's mission and therefore must protect the Port's assets from theft and destruction, maintain the integrity of our services to all and be in compliance with the requirements of the Federal Omnibus Drug Abuse Act of 1988 and federal and local statutes and applicable regulations.

Therefore, the Board of Directors of the Port has adopted this Drug-Free Workplace Program Policy that balances our respect for individuals with the need to maintain an alcohol and drug-free environment and encourages employees with drug and alcohol problems to voluntarily seek assistance.

This policy is implemented in accordance and compliance with all applicable statutes and regulations.

II. OBJECTIVES.

The objectives of the Port's Drug Free Workplace Program are as follows:

- A. Strengthen the leadership of the Port by promoting a safe, drug-free and alcohol-free work environment free of any adverse effects on job performance caused by drug or alcohol related problems and ensure the safety of all its employees, customers and the public.
- B. Ensure service quality and integrity by protecting the Port's assets from theft and destruction and providing for effective and efficient services to the Port's customers and users.
- C. Offer an Employee Assistance Program (EAP) that is totally confidential and available to all employees. The EAP provides professional services to employees whose performance is, or may be, adversely affected by emotional difficulties, alcoholism, drug dependence, family discord, or other personal problems.
- D. Satisfy and conform to the requirements of the Federal Omnibus Drug Abuse Act of 1988 and applicable Federal and local laws and regulations.

III. SCOPE AND APPLICABILITY

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- A. **Scope:** Any individual who conducts business for the Port, applies for a position vacancy, or conducts business on the Port's property is covered by the drug-free workplace policy. Our policy includes, but is not limited to, executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants. All are expected to comply fully with the Drug Free Workplace Program Policy as a condition of future and/or continued employment.
- B. **Applicability:** The Drug-Free Workplace Policy is intended to apply anyone representing or conducting business for the Port. Therefore, this policy applies during all working hours, whenever conducting business or representing the Port, while on call, paid standby, or while on Port property and at company-sponsored events.

IV. POLICY

- A. The Port is committed to providing a safe, efficient and productive work environment for all employees. The Port recognizes that the use and/or abuse of drugs or alcohol by employees presents a serious threat to the safety and health of the public and other employees. It is the policy of the Port that any employee, regardless of their status, should be free from the influence of drugs and alcohol. Reporting to work or performing work for the Port while impaired by or under the influence of illegal drugs or alcohol is prohibited.
- B. In order to further our goal of promoting a drug and alcohol-free work environment, the Port has implemented a controlled substance testing program. Each applicant, as a condition of employment upon selection, will be required to undergo and pass a pre-employment drug screen or test. Substance abuse is a significant public health problem, which has a detrimental effect on the Port and business community in terms of productivity, absenteeism, accidents, medical costs, theft, and workers' compensation costs.
- C. The illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port

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business or stand-by duty, on Port premises and/or in its vehicles is prohibited. Employees are prohibited from being under the influence of any illegal drug or any drug not legally prescribed to them while on the job, on Port premises and/or in its vehicles. The consumption of alcoholic beverages or under the influence of alcohol while on duty and/or on Port premises is strictly prohibited at all times.

- D. Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to use appropriate personnel procedures (e.g., call in sick, use leave, request change of duty, notify supervisor, notify company doctor) to avoid unsafe workplace practices.

- E. The illegal or unauthorized use of prescription or misuse of over the counter drugs is prohibited. It is a violation of the Drug-Free Workplace Policy to intentionally misuse and/or abuse prescription or over the counter medications. Violations of this policy are subject to disciplinary action up to and including termination of employment.

- F. It is a violation of this policy for employees to inform or share with other employees, information related to the notification of drug testing for the purpose of evading, avoiding, or adulterating drug tests.

V. DRUG FREE WORKPLACE POLICY AND AMERICAN DISABILITIES ACT

A. Under the terms of the ADA:

- 1. Employers cannot fire, refuse to hire, or refuse to promote someone simply because he or she has a history of substance abuse.

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2. They also cannot fire, refuse to hire, or refuse to promote someone merely because he or she is enrolled in a drug or alcohol rehabilitation program.

- B. However, illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port business or stand-by duty, on Port premises and/or in its vehicles is subject to disciplinary including and up to termination of employment.

VI. NOTIFICATION

In accordance with Port Rules and Regulations 3.400 CRIMINAL CHARGES OR CONVICTION:

- A. **Employee's Duty to Report:** An employee in service of the Port, who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.

An employee convicted of a criminal drug violation shall report such conviction within five (5) calendar days of the date of the conviction or, the effective date of the policy if conviction occurred within one (1) year prior to the effective date.

- B. **Failure to Report:** An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee)

The Port will take appropriate action within 30 days of notification. Federal contracting agencies will be notified within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace as required by the Drug-Free Workplace Act of 1988.

VII. SEARCHES

Entering the Port's property constitutes consent to searches and inspections. If an individual is suspected of violating the Drug-Free Workplace Program Policy,

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he or she may be asked to submit to a search or inspection at any time. Searches can be conducted of pockets and clothing, lockers, wallets, purses, briefcases, lunchboxes, desks, work stations, vehicles, and equipment.

VIII. DRUG TESTING PROGRAM

The Port will institute a Drug Testing Program for its current employees as well as for newly hired employees. Upon initial implementation of this program, all employees of the Port will be required to submit to a drug test. The first drug test for all employees shall be conducted and scheduled by the General Manager (or designee) after the effective date of this policy.

To ensure the accuracy and fairness of the Port's testing program, all testing will be conducted according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and can include: a Drug Screen (On-site testing) test; a Federal DOT or Non - Federal mandated confirmatory test; review by a Medical Review Officer (MRO), including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

A. Scope of testing:

The Drug Free testing program applies to all Jose D. Leon Guerrero Commercial Port employees and newly hired employees. Each employee, as a condition of employment, will be required to participate in the following testing program. The term **employee** means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).

B. Types of Testing:

Each employee, as a condition of employment, will be required to participate in pre-employment, random, post-incident/post-accident, reasonable suspicion/cause, return-to-duty, follow-up, and periodic testing upon selection or request of management as defined below:

1. **Pre-Employment:** Pre-employment testing is conducted for the prevention of hiring individuals who illegally use drugs. This test is required after a conditional offer of employment has been made.

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All individuals will be required to submit to a drug test by urinalysis to screen for the illegal use of drugs prior to employment.

Applicants agree to be tested as a condition of employment and the effective date of employment will be upon satisfactory completion and passing the drug test. Failure to report to drug testing as scheduled will result in rescinding the job offer and the applicant's name will be removed from the list of applicants.

Note: Americans with Disabilities Act (ADA) of 1990 prohibits the use of pre-employment testing for alcohol use. We have removed alcohol testing from the pre-employment test requirement.

2. **Random:** Random testing is performed on an unannounced, unpredictable basis on employees whose identifying information (e.g., social security number or employee number) has been placed in a testing pool from which a scientifically arbitrary selection is made. This selection is usually computer generated to ensure that it is indeed random and that each person of the workforce population has an equal chance of being selected for testing, regardless of whether that person was recently tested or not.

3. **Critical Incident/Post Accident:** A circumstance which occurs while on duty for the Port, on Port property, or using Port property that includes:
 - a. an accident involving Port equipment causing damage to property or injury to person; or
 - b. behavior or activity which could cause damage to property or injury to person; or
 - c. mental or physical impairment sufficient to raise doubt that job duties can be safely or effectively performed; or
 - d. possession, sale, or use of an illegal drug or drug paraphernalia or open container of alcohol; and
 - e. reasonable suspicion that an employee's action or

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behavior are caused by alcohol or illegal drugs.

Since property damage or personal injury may result from accidents, testing following a Post- Incident/Post-accident can help determine whether drugs and/or alcohol were a factor. Any employee directly involved in an accident and/or any employee directly involved in any incident even if an accident or injury was averted, involving equipment or material damage or physical injury of any individual affected by the accident or incident shall be required to submit to a drug and/or alcohol test within two (2) hours after the incident/mishap/accident or after medical attention or emergency care is rendered if such is required.

4. Reasonable Suspicion: The Port may require, at its sole discretion, any employee to submit to controlled substance testing as a condition of employment if it determines that reasonable suspicion exists for such testing. Reasonable suspicion testing is similar to, and sometimes referred to, as "probable-cause" or "for-cause" testing and is conducted when supervisors document observable signs and symptoms based on a reasonable and articulable belief that the individual is using a prohibited drug or abusing drugs on the basis of specific contemporaneous physical, behavioral or performance indicators of probable drug use.

5. Return-to-Duty: Return-to-duty testing involves a one-time, announced test when an employee who has tested positive has completed the required treatment for substance abuse and is ready to return to the workplace. Some employers also use this type of testing for any employee who has been absent for an extended period of time.

6. Follow-up testing or post-rehabilitation testing is conducted periodically after an employee returns to the workplace upon completing rehabilitation for a drug or alcohol problem. It is administered on an unannounced, unpredictable basis for a period of one (1) year.

7. Periodic: Periodic testing is usually scheduled in advance and uniformly administered. The Port may choose to conduct Periodic testing on an annual basis.

C. Frequency: The frequency of testing for random testing and follow up testing is specified in the Standard Operating Procedures (SOP). The

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Port reserves the right to increase or decrease the frequency of testing based on the needs of Port, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace.

- D. Substances to be Tested:** The Port will test for the following drugs:
- 1) Marijuana Metabolites/THC , (*i.e. weed, grass, Mary Jane*)
 - 2) Cocaine metabolites (*i.e. coke, snow, crack*)
 - 3) Phencyclidine (*i.e. Angel dust, PCP*),
 - 4) Amphetamines, Methamphetamine and ethylenedioxymethamphetamine (*i.e. MDMA, Ecstasy*)
 - 5) Opiate metabolites (*i.e. Tylenol with Codeine, Morphine and Heroin*)
 - 6) Barbiturates (*i.e. downers, Nembutal, yellowjackets*)
- E. Standardized Procedures for Cut-Off Levels for Drugs:** The Port will conform with established standardized procedures and cut-off levels for these drugs by the Substance Abuse and Mental Health Services Administration (SAMHSA).
- F. How Drug Testing Will Be Performed**
1. Testing for the presence of alcohol will be conducted by analysis of saliva and/or breath.
 2. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine.

VIX. SHARED RESPONSIBILITIES FOR A DRUG FREE WORKPLACE:

A safe and productive drug-free workplace is achieved through cooperation and shared responsibility. Both employees and management have important roles to play.

A. EMPLOYEE RESPONSIBILITIES:

Be concerned about working in a safe environment and continue to observe public trust and confidence by personal support and compliance appropriate to the intent and provisions of the Port's Drug Free Workplace Program.

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An employee shall:

1. Notify an appropriate supervisor before reporting to duty, before using Port equipment, or before or immediately upon entering Port property:
 - a. When taking any medication or drug, either prescription or non-prescription, which might impair the effectiveness or safety of job performance;
 - b. When having taken alcohol which might impair the effectiveness of safety or job performance a minimum of four (4) hours prior to reporting for duty.
2. Report dangerous behavior to their supervisor.
3. Consider volunteering for and completing an education, rehabilitation or treatment program if the employee has an addiction to alcohol or drugs which compromises safety on the job and might impair their effectiveness of job performance; or consider participating in an education, rehabilitation or treatment program when directed by the General Manager(or designee).
4. Support fellow workers in seeking help. Encourage other employees, who use a drug or alcohol which compromises safety and might impair the effectiveness of job performance, to volunteer for and complete an education, rehabilitation or treatment program.
5. The employee must pay all costs, resulting from participation in education, rehabilitation or treatment program, which may not be paid by the employee's insurance carrier or other available community resources.
6. The employee must acknowledge that he has received and read the Drug Free Workplace Policy and understands its purpose, objectives and employee responsibilities.

B. SUPERVISORS RESPONSIBILITIES:

It is the supervisor's responsibility to:

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1. Attend all Port sponsored training on drug and alcohol awareness and prevention.
2. Ensure that each of his subordinate employees receives a copy of the Drug Free Workplace Program Policy and be available to explain the purpose, objectives and responsibilities under the Drug Free Workplace Program Policy to each employee he supervises.
3. Observe employee performance.
 - a. Counsel employees as to expected performance improvement and
 - b. document negatives changes and problems in performance.
4. Ensure employees selected for testing are sent immediately to the collection site without delay and advise employees of the confidentiality of notification so as not to disseminate such information to anyone.
5. Clearly state consequences of policy violations.
6. If "reasonable suspicion" exists that an employee's work performance is affected by a drug or alcohol problem, initiate procedures for reasonable suspicion.
7. If a "critical incident/post accident occurs, have the responsibility to:
 - a. Summon law enforcement personnel; and/or
 - b. Summon medical assistance; and/or
 - c. Refer employee for drug testing.
 - d. Notify the Division Head, the DER and/or the General Manager (or designee) of the incident and to confer if further action is necessary prior to allowing the employee to report back for duty if drug screen results non-negative.

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- e. Take necessary action based on agreed steps to be taken.
8. Submit recommendation to the General Manager (or designee) whether or not an employee should be directed to participate in an education, rehabilitation or treatment program or should be disciplined upon receipt of a confirmed positive test result.
9. Report all critical incidents immediately with seventy two (72) hours in writing to the General Manager (or designee). If a witness or witnesses are involved, make sure that the written reports are signed by such witness or witnesses.
10. Maintain the confidentiality, on a need-to-know basis of:
 - a. The advice or recommendations given to the General Manager (or designee).
 - b. Any education, rehabilitation or treatment program activity resultant from such advice or recommendation.
11. Promote the Port's Drug Free Workplace Program Policy.

C. DESIGNATED EMPLOYER REPRESENTATIVE/ PERSONNEL ADMINISTRATOR (DER/ADMINISTRATOR)

The DER/Administrator should have knowledge of and authority to make decisions about the testing process and answer questions about it.

1. The DER/Administrator or designee DER shall be responsible for implementing, directing, administering, and managing the Port's drug free program. The DER shall serve as the principal contact for collection activities in assuring the effective operation of the testing portion of the program.
 - a. The DER/Administrator shall appoint more than one DER: to ensure adequate coverage on all shifts and at all locations; to assist the DER/Administrator; to enforce the Port's Drug Free Workplace program; and to coordinate the entire program with consistency among DERs.
2. Ensure that all employees receive a copy of the Port's Drug Free Workplace Program Policy prior to implementation of the program,

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and that employees return a signed acknowledgment of receipt form;

3. Provide training and educational materials and training to managers, supervisors, and employees and oversee training and education on the Port's Drug Free Workplace.
 - a. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
4. Coordinate DER duties wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.
5. Arrange for all testing authorized under this order;
6. Receive all drug test results.
7. In the interest of safety, the primary job of the DER/Administrator is to receive drug and alcohol test results and take immediate action to remove employees from their duties when they violate drug and alcohol testing rules, i.e. test positive or refuse to test.
 - a. The DER/Administrator shall immediately inform the Division Head and General Manager (or designee) who shall make until the final determination on the formal action to be taken thereafter.
8. Coordinate with the General Manager (or designee), the Medical Review Officer (MRO), Collectors and supervisors, as appropriate;
9. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
10. Refer employees to Employees Assistance Program, private EAP and or Substance Abuse Professionals (SAP).
11. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in

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accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, and as updated from time to time;

12. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs.
13. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.
14. Be consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the appropriate official, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;

D. DIVISION HEAD RESPONSIBILITIES:

In addition to the employee and supervisor responsibilities, the Division Head shall:

- 1.. Have the responsibility to implement the Drug Free Workplace Program Policy and Standard Operating Procedures within the operating unit and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.
2. Maintain a process so that an employee can advise the General Manager (or designee), either orally or in writing, of any violation of the Drug Free Workplace Program Policy.
3. Maintain a process so that a supervisor can contact the General Manager (or designee) as soon as possible after a "critical incident" to receive recommendations pursuant to the supervisory procedures.
4. Have the discretion to direct employee to participate in an education, rehabilitation or treatment program in consultation with the General Manager (or designee).

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5. Maintain the confidentiality, on a need-to-know basis, of:
 - a. Such advice or recommendation received from an employee or supervisor.
 - b. Any recommendation or advice by the Administrator/DER.
 - c. Any recommendation or advice by the General Manager (or designee).
6. Take reasonable steps to ensure that no employee is intimidated or coerced or retaliated against for acting in compliance with or enforcement of the provisions of this policy.
7. Enforce the provision of the procedure.

E. EMPLOYEE ASSISTANT PROGRAM (EAP) COORDINATOR RESPONSIBILITIES:

The EAP Coordinator shall implement and operate the EAP for the Port. The exception would be the use of a private EAP provider or SAP (Substance Abuse Provider) as specified in DOT 49CFR part 40. The EAPC of the Port will be responsible for the following duties:

1. Provide assistance to counseling and treatment services to all employees referred to the EAP by their supervisors, by self-referral, or the Administrator/DER and otherwise offer employees the opportunity for counseling and rehabilitation.
2. Coordinate with the General Manager (or designee), the Medical Review Officer and supervisors as appropriate.
3. Provide educational materials and training to management, supervisors and employees on illegal drugs in the workplace.
4. Monitor the progress of referred employees during and after the rehabilitation period and provide feedback to DER/ Administrator in accordance with the Drug Free Workplace Program Policy for return to work purposes.

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5. Be consistent with confidentiality requirements of this policy and take steps to ensure that an employee's involvement in a drug/alcohol related EAP is kept in the strictest confidence and that information is released on a need to know basis only, or as regulated by federal or local statutes.

X. CONSEQUENCES FOR VIOLATION OF DRUG FREE WORKPLACE PROGRAM POLICY:

One of the goals of the Port's Drug-Free Workplace Program is to encourage employees with alcohol and/drug problems to voluntarily seek help. If, however, an individual violates the policy, the consequences are serious. Any employee violating the Drug Free Workplace Program Policy is subject to disciplinary action up to and including termination from employment for the first offense.

- A. In the case of applicants, if he or she violates the Drug-Free Workplace Program policy, or is found to test "non-negative" or positive in a pre-employment drug screen or test, the offer of employment will be withdrawn. The applicant may reapply after eighteen months and must provide a certification of successful completion of an approved rehabilitation or treatment program or submit a "negative" result for the presence of controlled substance(s).
- B. If an employee violates the policy, he or she will be subject to disciplinary action and may be required to enter rehabilitation as a condition of continued employment. An employee who is required to enter rehabilitation, who fails to successfully complete the rehabilitation program, and/or repeats the violation of this policy, will be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems. **Be aware that:**
 1. Involvement in illegal activity pertaining to the illegal use, sale, purchase, offer, or possession of a controlled substance while on duty or while on Port property, or while using Port equipment shall be reported to the appropriate law enforcement agencies.
 2. Being under the influence of a drug or alcohol while on duty or while on Port property, or while using Port equipment may result in being reported to appropriate law enforcement agencies and/or ordered off Port property and placed on immediate suspension.

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3. Violation of the Drug Free Workplace Program Policy may result in:

- a. Direction to participate in an education, rehabilitation or treatment program by the General Manager (or designee), which may include direction to participate and complete a drug or alcohol analysis testing process, and/or
 - b. A disciplinary action, up to including, termination.(Section 4203 of Title 4, Guam Code Annotated) will be implemented without exception.
 - c. Participation in an education, rehabilitation or treatment program without any indication(s) of work problems shall not be used in a performance evaluation report or disciplinary action.
 - d. The General Manager (or designee) should be advised either within seventy two (72) hours orally on in writing, of any violation of the Drug Free Workplace Program Policy.
- C. Selling of Controlled Substances or attempts to sell a controlled substance and/or the sale of paraphernalia for a controlled substance at the Port's workplace shall not be allowed to participate in a rehabilitation program and be immediately discharged from employment. In addition, any employee who engages in such conduct and is discharged for the same, shall not be eligible for re-employment by the Port.
- D. Any employee who, on the basis of an event, e.g. the occurrence of an accident that requires a post accident, the findings of reasonable suspicion that lead to a reasonable suspicion test, will immediately be removed from duty and must submit to drug testing.
- E. Upon receipt of a confirmed positive test from an Medical Review Officer (MRO), the employee will be; removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, and be subject to ongoing, unannounced, follow-up

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testing for a period of one (1) year and terminated immediately if he/she tests positive this second time or violates the Return-to-Work Agreement.

- F. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) the specimen, substitutes the specimen with that from another person, sends an imposter in their place, or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- G. A Positive test is in violation of this policy and is considered conduct detrimental to the Port's mission; to protect the health, safety, well being of its employees and patrons, and its services. This violation may result in disciplinary action, up to and including termination from employment, in accordance with the Port's Personnel Rules and Regulations.
- H. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination from employment for the first offense.
- I. Any employee convicted of violating a criminal drug statute including (but not limited to) Chapter 67 of Title 9, Guam Code Annotated, must inform the General Manager (or designee) of such conviction within five (5) working days of the conviction, or the effective date of this Drug Free Workplace Program Policy, if the conviction occurred within one (1) year prior to the effective date of the policy.
 - 1. Failure to so inform the General Manager (or designee) subjects the employee to disciplinary action, up to and including termination from employment for the first offense.

XI. RETURN TO WORK AGREEMENTS

Following a violation of the drug-free workplace policy, an employee may be offered an opportunity to participate in a rehabilitation program. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement, sometimes known as "Last Chance Agreement", as a condition of continued employment. Any leave associated with participation in a

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rehabilitation program shall fall under the appropriate leave category in the Port's Personnel Rules and Regulations. Cases where an employee may be offered an opportunity to participate in rehabilitation program are as follows:

- A. Any employee who, on the basis of an event (e.g. the occurrence of an accident that requires a post accident test as defined by DOT), or the finding of reasonable suspicion that leads to a reasonable suspicion test, will immediately be removed from duty and submit to drug testing.
- B. Upon receipt of a confirmed positive test from an MRO, the employee will be, removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, subject to ongoing, unannounced, follow-up testing for a period of one (1) year and terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.
- C. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- D. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing information confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination, for the first offense.
- E. All port employees listed in GCA 10 Chapter 75, ss 75100 (Port Security, Police and Police Chief), and under ss 75107, are not eligible for continued employment under a Return-to-work Agreement.

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XII. COMMUNICATION

Communicating the Port's drug-free workplace policy to both supervisors and employees is critical to the success of the Drug Free Workplace Program Policy. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- All employees will receive a written copy of the policy.
- The policy will be reviewed and issued in orientation sessions with new employees.
- The policy and assistance programs will be reviewed at safety meetings.
- Employee education about the dangers of alcohol and drug use and the availability of help will be made accessible to all employees.
- Every supervisor will receive training to help him/her recognize and manage employees with alcohol and other drug problems, as well as recognizing and documenting observations that constitute reasonable cause/suspicion recommendations for testing.

XIII. EDUCATION AND AWARENESS PROGRAM

To complement and achieve a drug-free work force, the Port shall establish and implement a Drug Education and Awareness Program to help employees understand and avoid the perils of drug and alcohol abuse. The Port will use the program in an ongoing educational effort to prevent and eliminate substance abuse that may affect the Port's workforce and its operations.

A. The Drug Education and Awareness Program will include the following:

1. Dissemination of information to employees regarding the dangers of alcohol and drug abuse;
2. A copy of the Port's Drug Free Workplace Program Policy .
3. Availability of treatment and counseling information for employees who voluntarily seek such assistance; employee assistance programs (EAP's) and other community services that are available to those who have a drug and/or alcohol problem.
4. Sanctions the Port will impose for violations of its Drug Free Workplace Policy.

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- B. The Drug Free Workplace Program policy applies to all Jose D. Leon Guerrero Commercial Port employees. The term employee means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).
- C. Top management and supervisory employees will be trained to assist in identifying and addressing the matter of unlawful use of alcohol and/or a controlled substances by employees, including the making of referrals to appropriate agencies.
- D. In connection with the above, employees will be encouraged to seek counseling and other assistance on a self-referral basis if they feel they have a need for it. An employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to any violation of any provision of this policy will not be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered a violation of this policy and will subject the employee to disciplinary action up to and including termination.
- E. The Port shall also provide proper training for the Administrator/DER, DER's, Employee Assistance Program Coordinators (EAPC), and Management/Supervisors; on properly documenting and initiating drug/alcohol testing and screening, on applicable laws and regulations to comply with, and the duties their specific position requires of them in the enforcement of this Drug Free Work Place Program Policy.

XIV. PROCEDURES

- A. As part of the Port's drug-free workplace program, controlled substance testing will be conducted and shall involve urinalysis for the following Disposition of Drugs Tested for: Marijuana, Cocaine, Opiates (Heroin), Amphetamines/ Methamphetamines, Phencyclidine (PCP), and Barbiturates and any other drugs should Federal or Local statutes require the Port to do so. The Port reserves the right to test for alcohol and/or other illegal drugs for reasonable suspicion. Employees and job applicants subject to controlled substance testing pursuant to this policy shall be requested to provide urine, saliva and/or breath specimens at the collection site.

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- B. The Port recognizes that from time to time, statistics change regarding the popularity of drugs of abuse. The Port reserves the right to amend the Disposition of Drugs Tested for in its testing process or upon adoption of a new Drug Free Workplace Program Policy (or amendment), in efforts to be proactive in the prevention of abuse. Upon such a change from the Port's Board of Directors, the new testing disposition will take effect immediately or as specified in the new policy's guidelines. Employees may be given advanced notice of such a proposed change, but advanced notice is not required if not specified under current personnel rules and regulations or local statutes.. The following exemptions to the Disposition of Drugs Tested for are as follows:
1. When Federal Regulations and Governing Authorities require a specific panel of drugs to be tested for employees covered under their jurisdiction (ie. Dept. of Transportation or DOT 49 CFR Part 40) and no other disposition is allowed.
 2. The drug is not listed in Chapter 67 of Title 9 GCA or schedule I thru V of the Controlled Substances Act.
- C. Employees and candidates formally offered a position shall be required to sign a form consenting to submit to controlled substance testing, to provide urine, saliva and/or breath specimens as part of the testing process, and to release the test result to the institution and/or its MRO. All specimens identified as positive for illegal drugs on an initial drug screening shall be confirmed with a test using gas chromatography/mass spectrometry (GC/MS) techniques or other future acceptable techniques approved by the Dept. of Health and Human Services (HHS) and/or the Dept. of Transportation (DOT).
- D. All positive results of controlled substance testing shall be reviewed and verified by the MRO to ensure accuracy of results and consistency of testing methods and procedures. All questions regarding the accuracy or validity of positive test results must be directed only to the Company's Medical Review Officer. If you call the Company's Medical Review Officer, please identify yourself as an employee of The Port Authority of Guam. In the event a confirmatory validity test is advised between the MRO and employee, all costs associated with such a test shall be the responsibility of the individual and not covered by the Port Authority of Guam.

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D. All controlled substance testing conducted pursuant to this policy shall comply with applicable federal and local laws and regulations.

E. Refusal to Submit to Test

Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test result to the Port shall :

1. Be construed as a positive test result.
2. Constitute an act of insubordination and misconduct. This act shall be just and proper cause for termination. Employee may be placed on excuses absence specified in Port's Personnel Rules & Regulations chpt. 9, sec 9.414 if it is determined by the DER/Administrator to do so to ensure a safe working environment.

F. Tampering with the Drug Testing Process

Any applicant or employee who intentionally tampers with a sample provided for drug screening, who willfully adulterates a sample provided for drug screening, violates the chain of custody or identification procedures, or falsifies test results, shall have the offer of employment or appointment withdrawn and such actions shall be grounds of disqualification for the position and/or subject for discharge.

1. **Current Employee:** Any current employee who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall be subject to discharge according to the Port's established Personnel Rules & Regulations.
2. **Applicant:** Any applicant who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall have the job offer rescinded according to the Port's established Personnel Rules & Regulations.

XV. EMPLOYEE ASSISTANCE AND REHABILITATION

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- A. The Port supports education and treatment for substance abuse. Employees with a substance abuse problem are encouraged to seek professional help or contact the Department of Mental Health and Substance Abuse for information and confidential assistance in entering a treatment and/or rehabilitation program.
- B. Any employee with a substance abuse problem who voluntarily seeks assistance prior to being found in violation of any provision of this policy or to being required to submit to the Port's mandated substance abuse test shall be permitted a one-time opportunity to seek rehabilitation for their problem. Such employee shall not be disciplined under this policy unless the employee's action or conduct otherwise violates this policy or any other Port policy or guideline.
- C. Employees who seek rehabilitation shall be responsible for related expenses.
- D. Upon successful completion of a rehabilitation program, an employee shall ensure that the Port's Designated Employer Representative (DER) receives a written certification of his or her successful completion of the rehabilitation program from a Substance Abuse Professional and a negative drug test result for use of alcohol and illegal drugs. Upon receipt of such certification and test result by the institution, the employee shall be returned to active employment status. Wherever possible, the employee shall be allowed to return to his or her former position, if available. The Port however, shall not guarantee that the employee's former position or salary will be available.
- E. Rehabilitation and its costs are the sole responsibility of the employee. Employees who are enrolled in the Port's medical insurance plan and who seek or are directed to obtain rehabilitation for substance abuse may be entitled to benefits as provided by the plan. Such employee should consult their medical insurance plan regarding coverage.

XVI. CONFIDENTIALITY

The Port shall implement and administer this policy and its substance abuse testing procedures as privately as practicable and as allowed under federal and local statutes and laws. All information received by the Port through the drug-free workplace program is confidential communication. Access to this information is

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limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

XVII. DEFINITIONS

The following are definitions used in the Port's Drug Free Workplace Program Policy or are used by the DER/Administrator, DERs', Supervisors, Managers, Division Heads, Human Resources Administrator, Employee Assistants Program Coordinator in the process of administering testing and compliance of this policy:

- A. **Alcohol or Alcoholic Beverage.** Any beverage with an alcohol content.
- B. **DER/Administrator.** The Personnel Services Administrator shall be the employee authorized by the Port to take immediate action(s) to remove employees from duties or cause employees to be removed from these covered duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of the Drugfree Workplace Policy of the Port. The DER/Administrator has the authority to designate other DER's. See Chpt. IX Section 1, subsection a, of the Policy
- C. **Adulterated Specimen.** A urine specimen containing a substance that is not a normal constituent for that type of specimen or containing an endogenous substance at a concentration that is not a normal physiological concentration or one that has been made an impure specimen by a masking agent (adulterants).
- D. **Adulterants.** A substance, which should not be contained within other substances for legal or illegal reasons, which may be added to other substances. For the purpose of this policy, adulterants will be defined as substances added to drug testing sample, such as urine, for the purpose of masking drug(s) usage, illegal or otherwise.
- E. **Applicant.** An individual offered employment in or being promoted, demoted or transferred to any position within the Port. For the purposes of this policy, an employee on probationary status is considered an applicant.

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- F. **Controlled Substance.** Any drug, narcotic or immediate precursor which is specified or referenced in Chapter 67 of Title 9, Guam Code Annotated, Uniform Controlled Dangerous Substance Act, which may subject a person to criminal penalties. Alternatively, any controlled substance which is listed in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812).
- G. **Conviction.** A finding of guilt by any judicial body charged with the responsibility to determine violations of the Federal or local government criminal statutes.
- H. **Disposition of Drugs Tested.** For the purpose of Port, these are :
 Marijuana (i.e. weed, MJ, Mary Jane)
 Cocaine (i.e. coke)
 Opiates (i.e. crack)
 Amphetamines/ Methamphetamines
 Phencyclidine (i.e. PCP, angel dust)
 Barbiturates (i.e. downers, nembutal)
 any or any other disposition as set forth under section B. part XII of the Port Authority of Guam's Drug Free Workplace Program Policy.
- I. **Division Head.** The head of a respective division of the port authority of Guam.
- J. **Drug-Free Workplace Program Operating Procedures (DFWPOP).** All parts of this Drug Free Work Place Policy, of the Jose D. Leon Guerrero Commercial Port Authority of Guam, as referenced in the Personnel Rules and Regulations for Maritime Positions Unique to Port Operations and Certified Technical & Professional Positions.
- K. **Employee Assistance Program (EAP).** The Port's counseling program that offers assessment, short term counseling, and referral services to employees for a wide range of drug, alcohol and mental treatment.
- L. **Employee Assistance Program Coordinator (EAPC).** The individual responsible for implementing and operating the EAP within the Port, by providing counseling, referral, and education services to employees and supervisors regarding the Port's EAP.
- M. **General Manager.** General Manager of the Jose D. Leon Guerrero Commercial Port. This position is empowered to appoint and exercise

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the power to discipline or discharge employees pursuant to Sections 4406 and 10112 of Title 4 and Section 10107 of Title 12, Guam Code Annotated.

- N. **Illegal Drug.** Any drug or controlled substance of which the sale, possession, or consumption is illegal. This includes, but is not limited to, marijuana, cocaine, opiates, amphetamines, methamphetamines, phencyclidine (PCP), and barbiturates.
- O. **Drug Paraphernalia.** Containers or other objects used, intended for use, or designed for use in storing or concealing illegal drugs, and objects, used, intended for use, or designed for use in consuming, inhaling or otherwise introducing any illegal drug into the human body.
- P. **Under the Influence.** Being in a physical or mental condition which affects work in any way; creates a possible risk to the safety and well-being of the individual, co-workers, the general public, and/or Company property; and/or having any detectable level of any illegal drug in the body; and/or having a blood-alcohol level that is considered to be under the influence pursuant to the local statutes.
- Q. **Vehicle.** Any motor vehicle, including but not limited to cars, vans and trucks.
- R. **Reasonable Suspicion.** A good faith belief, even if incorrect, that the actions and/or appearance and/or conduct of an employee are indicative of the use or under the influence of an alcoholic beverage and/or illegal drug. Factors to be considered when determining a reasonable suspicion include, but are not limited to, the following:
 - 1. Unsafe work habits or practices that endanger the employee himself/herself and/or other employees;
 - 2. Abnormal work performance;
 - 3. Physical conditions and/or symptoms such as unstable balance, alcohol on breath, glassy or reddened eyes;
 - 4. Frequent or unexplained absences from the workplace or jobsite during the employee's shifts;

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5. Abnormal personal behavior and/or poor inter-personal relations on the job;
6. Discovery of controlled substances, alcohol or controlled substance paraphernalia at the work area or on the jobsite, in the possession of or in the immediate proximity of an employee; and/or,
7. Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by a federal or local enforcement agency.

S. **Positive Drug Test.** The results of a urine sample which is positive.

XVIII. DEFINITIONS TO DETERMINE WHICH EMPLOYEES FALL UNDER DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) REQUIREMENTS

A. To determine which employees fall under HHS requirements, base identification on the following determinations.:

1. **Employee (Contract).** An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

2. **Employee (Grant).** Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are not included.

XIX. PERSONNEL RULES AND REGULATIONS SHOWING REFERENCE TO THE DRUG FREE WORKPLACE PROGRAM POLICY

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PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3, L.: Employees shall refrain from unlawful use of drugs and alcohol. Drugs shall mean those identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).

PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3.4.

CRIMINAL CHARGES OR CONVICTION

- A. **Employee's Duty to Report.** An employee in the classified service who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.
- B. **Failure to Report.** An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, Section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee) as required in Rule 3.400.A.

PERSONEL RULES & REGULATIONS CHPT 4, SEC 4.302:

Drug Testing. Applicants selected for and offered employment with the Port shall undergo and pass a mandatory drug test before being employed. Failure to submit to, or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

Employees selected for any position within the Authority will be tested as provided in the Drug Free Workplace Program Operating Procedures (DFWPOP).

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PERSONEL RULES & REGULATIONS CHPT 9, SEC 9.414:

Absence Pending Formal Investigation. An employee, who is under formal investigation by the Port for misconduct, or violation of a rule or statute, may be placed on excused absence from duty without charge to leave, not to exceed twenty (20) work days when the employee's absence from the work location is essential to the investigation.

PERSONEL RULES & REGULATIONS CHPT 9, SEC9.6:

Leave Without Pay (LWOP). A temporary, unpaid absence from work granted at the employees' request.

Employees must request LWOP and have it approved in advance, except in the case of emergencies. Supervisors may grant up to a **30 day period** of LWOP **for any justifiable reason**. LWOP in excess of 30 continuous days is regarded as **extended** LWOP and is subject to the following provisions:

a form SF-52, Request for Personnel Action, must be completed in order to request, authorize, and process extended LWOP;

Initial grants of extended LWOP (and any subsequent extensions) are limited to one calendar year; supervisors must be reasonably sure that any employees taking extended LWOP will return to duty once the LWOP has expired (except in the case of disabled veterans and employees applying for disability compensation or retirement); and extended LWOP may be granted **only** if such leave will benefit the Port and advance the welfare of the employees.

PERSONEL RULES & REGULATIONS CHPT 10, SEC 10.104:

Termination of Employment. The General Manager (or designee) shall terminate the employment of those employees who become disabled as a result of an injury, accident or illness that is not a result of misconduct or found to be medically non-qualified for their present position only for the following reasons:

- A. If no suitable placement can be made or if the employee refuses placement in a suitable position.

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- B. If the employee refuses or is ineligible for retirement
- C. If the General Manager (or designee) has evidence that the employee is permanently disabled from performing the job, or will be disabled for a long time that termination is necessary in light of demonstrated business realities.
- D. Such termination shall be consistent with the Adverse Action Procedures, Chapter 11.

PERSONEL RULES & REGULATIONS CHPT 11:

Adverse Action Procedures. The General Manager derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the GCA. The General Manager has the responsibility to remove suspend, or demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal, suspension or demotion will promote the efficiency of government service.

The General Manager may delegate responsibility for administration of day to-day discipline to his line-management, to include such progressive discipline, as oral admonitions, letters of warning, letters of reprimands, and recommendation of adverse actions.

Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act Covers federal government agencies, federal contractors with contracts or purchase orders totaling \$25,000 or more, recipients of federal grants, and any individuals awarded federal contracts.

Definitions:

Employee(Contract) - An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

Employee(Grant) - Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct

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charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are exempted.

Substance Abuse and Mental Health Services Administration (SAMHSA)

DEPARTMENT OF HEALTH AND HUMAN SERVICES Mandatory Guidelines for

Federal Workplace Drug Testing Programs Effective 10/1/2010

Division of Workplace Program

SAMHSA and the Center for Substance Abuse Prevention urge employers to clearly encourage prevention, early intervention, and treatment rather than waiting for problems to escalate to the point where they require discipline or termination.

Under the Act, employers must (a) establish an employee drug awareness and education program, (b) publish and provide workers with an antidrug policy statement, and (c) meet other requirements. The DOT's Drug Testing Rules cover employers in the air, rail, trucking, and mass transit industries and employers with operations otherwise covered by DOT. Those rules require the testing of employees in safety-sensitive positions for alcohol and illegal drug use.

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Return to Work Agreement Form (Last Chance Policy Agreement)

In lieu of terminating employment of an employee who tests positive for illegal substances, the Port Authority of Guam provides the employee a final opportunity to agree to comply with all the Port's policies and practices.

[] and the Port Authority of Guam agree to the
(Name of Employee)

following:

The employee tested positive for an illegal substance, a serious violation of the Port's policy. Instead of immediately terminating employment, [] (Name of Employee) will be suspended from work without pay for five (5) work days.

The employee agrees to abstain from the use of illegal substances. The employee has received another copy of the employers drug and alcohol policy and agrees to comply with all provisions of this policy.

The employee will actively participate in the company's employee assistance program (EAP). The employee will schedule [his/her] first EAP appointment no later than one week from the date of this Agreement.

If instructed by the EAP counselor to seek medical advice or a Substance Abuse Provider, the employee will seek this assistance regarding [his/her] use of illegal substances and will comply with all of the medical professionals recommendations. Employee further agrees to sign the appropriate Medical Release Authorization to allow [Jose D. Leon Guerrero Commercial Port Authority of Guam] to receive information from the medical professional or Substance Abuse Provider.

The employee agrees that all costs of medical consultation and treatment will be the responsibility of the employee and [his/her] medical insurance (as applicable).

If absence from work is necessary as part of the treatment or rehabilitation, the employer will designate the absence as Family and Medical Leave (FMLA) as long as all FMLA requirements under the Port's policy, including medical certification, are met. Available accrued sick leave, vacation and personal leave will be used as part of the FMLA leave.

The employee agrees to unannounced periodic follow-up drug testing for a period of one (1) year from the date of this agreement.

Jose D. Leon Guerrero Commercial Port



Presentation to the Hon. Telen Cruz Nelson, Chairperson and members of the
Committee on Education & Infrastructural Advancement, Border
Protection & Maritime Transportation, Guåhan Preservation
& Self-Determination, & Federal & Foreign Relations
I Mina'trentai Sais na Liheslaturan Guåhan | 36th Guam Legislature

January 25, 2021

Agenda

- I. Significant Milestones (January, 2019 to present)**
- II. Overview – Port Modernization Program**
- III. 2020 Masterplan Update & Key Timelines**
- IV. Status of Revenue Bond, Tiger Grant and OEA Funded Projects**
- V. Status of Grants and Grant Opportunities**
- VI. Results of Climate Survey**

Significant Milestones (January, 2019 to present)

- **Averting the Loss of Port Insurance:** Averted the potential cancellation action by the insurance carriers to cancel the Port's insurance coverage if payment of premiums were not made.
- **Averting the Loss of \$10M TIGER Grant on the Rehabilitation of Hotel Wharf:** Submitted the environmental plan of action to MARAD and prevented the risk of Port losing the \$10 million TIGER grant.
- **Revenue Bond Legislation and Projects:** Amended prior legislation to increase the Port's share of TIGER grant; construct an annex building, repair of the waterfront facilities, install a connectivity fuel line connecting Golf Pier and F-1 and upgrade the Port's information technology system and integrate the terminal operating and financial management systems. A&E design and consulting services were awarded in 2020 for the first four projects: 1) structural repairs for Golf Pier, 2) repair and expansion of EQMR Building, 3) repair of Warehouse 1, and 4) replacement and relocation of waterlines in terminal facilities.
- **Negotiated Union Contract within 100 Days:** The union contract was approved by the Board on July 30, 2019 after being stalled by previous management in 2013.

Significant Milestones (January, 2019 to present)

- **Stabilizing Operations & Maintenance Employee Work Schedule:** Implemented a new work schedule of 8 hours for employees in day and night shifts—resulting in 14.6% decrease in overtime costs.
- **Procurement Delegation:** After 14 years of losing its procurement delegation, the Chief Procurement Officer restored the full delegation of procurement authority in May 2020.
- **2020 Port Master Plan Update:** Collaborative efforts between the Port and the Governor's Office resulted in the award of \$1.6 million from the Office of Economic Adjustment (OEA) to update the Port's 2013 Master Plan.
- **Guam Customs Inspection Facility:** Area within Cabras Island agreed upon to construct a customs inspection facility. This happened in the first 30 days.
- **Golf Pier Management Agreement and Area A:** Amended the management agreement to remove Area A under the operation of the Manager.

Significant Milestones (January, 2019 to present)

- **Training:** Port ensured that employees possess the necessary certifications as mandated by federal OSHA, U.S. Department of Transportation and U.S. Coast Guard after years of such certifications being expired.
- **Port Finances:** Turned around the finances from a loss of \$103,000 in Fiscal Year 2018 to earning nearly \$7.5 million for Fiscal Year 2019. Despite the pandemic, the Port posted a projected income of \$4.1 million for Fiscal Year 2020.
- **Income Statement & Fiscal Year 2018 Budget:** In 2019, through austerity measures, the Port realized a positive net income of \$3.5 million irrespective despite the fact the FY 2018 Budget did not include the cost of the 2018 compensation plan, expenditures incurred during the preparation and post operations of Typhoons Yutu and Wutip and OSHA certification inspections, and past liabilities.
- **Removal of Port's Inoperable Assets:** Since 2016, the Port has attempted to remove inoperable assets from its facilities to accommodate the military build-up peak but to no avail. We expect an award to occur this first quarter of this year to remove the assets.

Significant Milestones (January, 2019 to present)

- **Organizational Structure:** Rescinded the May 30, 2018 prior Board action reverting Finance Division to its original structure and reflecting the Financial Affairs Controller as the head of the division.
- **Crane Surcharge Reserve Account:** Established a crane surcharge reserve interest bearing account which allowed the Port to obtain an estimated increase in earnings of about \$60,000.
- **Facility Maintenance Fee Investment Account:** Opened an interest bearing account which revenues deposited will accrue a higher interest income similar to the crane surcharge reserve account.
- **Policies:** Added onto the approved list of holidays for no vessel operations—Labor Day—to recognize the value of employees and their contributions they made to the strength, prosperity and well-being to the island. Reinstated the Board's policy on salary increment sub-steps for educational achievements, training certifications and licenses which was arbitrarily stopped by prior management.

Significant Milestones (January, 2019 to present)

- **Interpersonal Relationships:** Established a mutual trust and understanding with Port customers, federal and local stakeholders and employees, which resulted in cargo operation productivity increasing and regular participative discussions affecting the Port and its users being held.
- **Legal Services:** Entered into a memorandum of understanding with the Attorney General on assigning an attorney to the Port to review the procurement solicitation packages. In December, an attorney accepted the Port's offer for employment as its in-house counsel, who will be reviewing business development matters that have been on hold for the last 10 years and assisting in the review of procurement related issues.
- **Port's Compensation and Classification Plan:** Developed and implemented the Key performance indicators and work performance appraisal system, which were held in abeyance since 2013 by former management. The new evaluation system will be used for Fiscal Year 2021.

Significant Milestones (January, 2019 to present)

ONGOING PROJECTS

- **Port/PUGG/Customs collaboration on systems integration.** This project is to define the need for improved data and information sharing/reporting between all stakeholders involved in the cargo supply chain at the Port.
- **Tariff Simplification:** The goal is to simplify the tariff to make the Port's informational technology systems—terminal operating and financial management systems—to communicate better and streamline the invoicing.
- **Gantry Crane Purchase:** To replace two of the POLA cranes, a grant application will be submitted to U.S. Economic Development Administration for consideration. U.S. Department of Agriculture has also been engaged about the possibility of a potential loan to procure 1 gantry crane in the event the grant application is not approved.
- **Micronesian Cruise Ship Development:** A working group has been established to determine the benefits of homeporting a small cruise ship and using Hotel Wharf as the primary receiving area for visiting cruise ships.
- **Recycling Enterprise Zone:** Identifying an area that would be ideal for a recycling facility on Cabras Island.
- **Leases:** Reviewing GEDA master leases that were conveyed to the Port in 1988 and determine if the Supreme Court decision on Guam YTK had an impact on the renewal of the leases.

Port Modernization Program

Overview

- Funded by a grant from the Office of Economic Adjustment (OEA) under the Department of Defense (DoD), the Port Authority of Guam (PAG) commissioned Parsons Brinckerhoff to update its 1999 Master Plan of the Jose D. Leon Guerrero Commercial Port in 2007; the Master Plan's Port Improvement Program (PIP) was later updated in 2013 to reflect DoD's reset plans to reduce the number of Marines to be transferred to Guam;
- The 2013 Master Plan (MP) Update summarized the evolution of change in the PAG's modernization program and provided a "roadmap" to guide the modernization and future development strategy for the Port of Guam over the next 20 years; and
- However, in January of 2019, the PAG Board and Management determined that based on the Leon Guerrero/Tenorio's Transition Report, outlining the goals and objectives for the Port of Guam in preparation for the military buildup and organic growth, a 2020 Master Plan Update was required, and sought \$1.6M in OEA funding for such undertaking.

Port 2020 Masterplan Update

Purpose

The purpose of the 2020 Port of Guam Master Plan is to assist the PAG define 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 the rate payers of Guam.

Port 2020 Masterplan Update

Goals

- Provide a comprehensive overview of the Port's current conditions including governance, financial, operational, and physical attributes;
- Assess the current and projected cargo opportunities based on Guam's market drivers, which consist of military expansion, tourism, transshipment and organic growth;
- Determine near-term improvements and operational adjustments to accommodate the peak of the military build-up and future deployments of military assets;
- Estimate the Port's capacity and ability to meet the projected demand and tenant requirements;
- Identify long-term modernization efforts targeted towards continuing operational and economic sustainability;
- Establish optimal requirements for operations, maintenance and repair, and capital improvement projects;
- Validate the efficient and effective use of the Port's resources and assets;
- Present commercial strategies for PAG to diversify its revenue base and enhance its financial self-sufficiency including a comprehensive tariff assessment and its economic impact thereof;
- Assess the impact of the recommended strategies on Guam's economic conditions; and
- Prepare an implementation program to support a coordinated approach of continuous Port improvement balanced with sustainability.

Port 2020 Masterplan Update

Specific Planning Initiatives

- Agat and Hagåtña Marinas
- Area A Feasibility
- Cargo Terminal
- Guam Customs Inspection Facility
- Harbor of Refuge
- Proposed LNG Facility
- PUGG Initiative for System Integration
- Solar Panel Initiative Feasibility Study

Port 2020 Masterplan Update

Specific Planning Initiatives

- 20-year infrastructure and land use plan will be developed for each demand scenario
- Review of on-going commercial and non-commercial development
- Review of impact of other developments, such as:
 - Improved Guam Customs facility
 - Improved PAG/PUGG communication processes
 - STS crane fleet upgrades
 - Future PMC support
 - Improved facilities (H-Wharf, EQMR, Admin Bldg., Golf Pier, F-1, etc.)
 - New/expanded opportunities (Container yard, LNG, Expanded tank farm, etc.)
 - Integration of relevant stakeholder inputs on scenario analysis
- Near-term and Long-term CIP development program

Port 2020 Masterplan Update

Financial & Economic Analysis

- Update PAG financial model since 2018 bond issuance
 - FY 2019 & 2020 financial and operating results
- Forecasts for 20-year master plan time horizon
 - Cargo throughput
 - Operating and maintenance expenses Capital development plan
 - Revenues
- Financial Feasibility Assessment
 - Existing debt service coverage
 - Funds for port operations & maintenance
 - Capital plan and crane replacement
 - Consider PUGG and military input
- Scenario analysis
- Consider tariff changes if necessary

Port 2020 Masterplan Update

Key Timelines/Schedule

Deliverables

- KickOff Meeting
- Data Collection
- Stakeholder Outreach
- Draft Findings Presentation
- Special Studies Presentation
- Market Analysis and Cargo Forecast
- Capacity and Needs Analysis
- Draft Report – Customs Feasibility Study
- Economic Analysis Summary

Schedule

June 2020

July 2020 - Current

July 2020 – Current

October 2020

November 2020

November 2020

November 2020

December 2020

January 2021

Port 2020 Masterplan Update

Key Timelines - Continued

Deliverables

- Draft Master Plan Report
- Final Recommendations Presentation
- Final Draft Master Plan Report #1
- Final Draft Report #2
- Public Hearing Announcement
- Public Hearing Minutes/Comments Review
- Final 2020 Master Plan
- BSP Review and Forward to Governor
- Governor's Review
- Legislative Submission/Review/Approval

Schedule

April 2021

May 2021

June 2021

August 2021

September 2021

September 2021

October 2021

October 2021

October 2021

December 2021

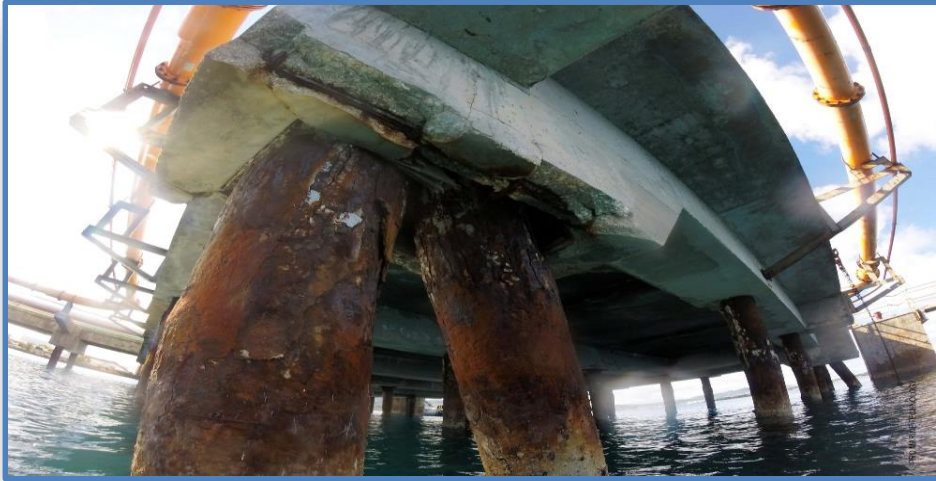
Ongoing Projects (2019 - 2020)

- 2018 Port Revenue Bond Capital Improvement Projects - \$47.5M
 - Hotel Wharf Upgrade & Access Road Repair
 - Golf Pier Repair
 - Waterlines Repair
 - Warehouse 1 Bldg. Repair
 - EQMR Building Repair
 - EnterpriseOne Financial Management System
 - Admin Annex Bldg Construction & Old Bldg Renovation
- Terminal Booth & CMU Wall Repainting & Barb Wire Replacement
- Container Yard Striping
- Load Center Rehabilitation and Upgrade
- CCTV and Access Control System Upgrades
- Agat Marina Dock B Demolition & Repair
- Harbor of Refuge Repair
- Gantry Cranes 2 & 3 Demolition
- Tariff Simplification Project
- Environmental, Health, & Safety Program Development

Hotel Wharf Upgrade & Access Road Repair

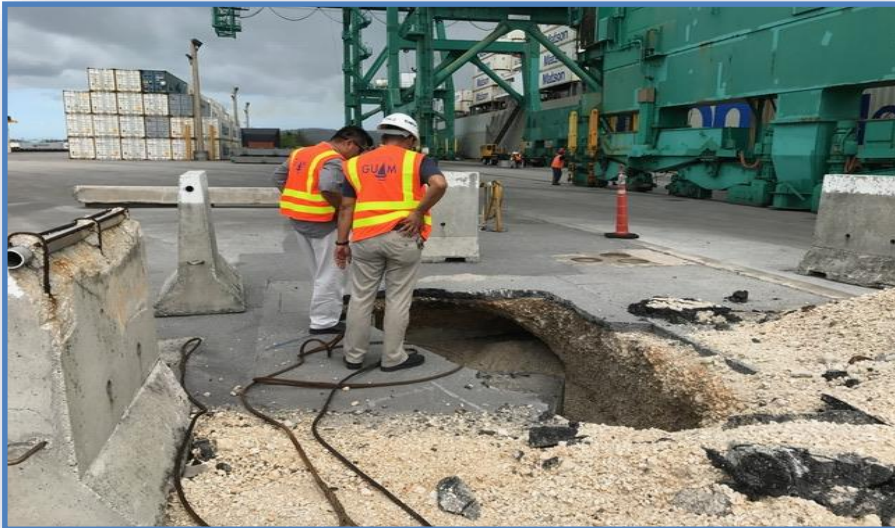
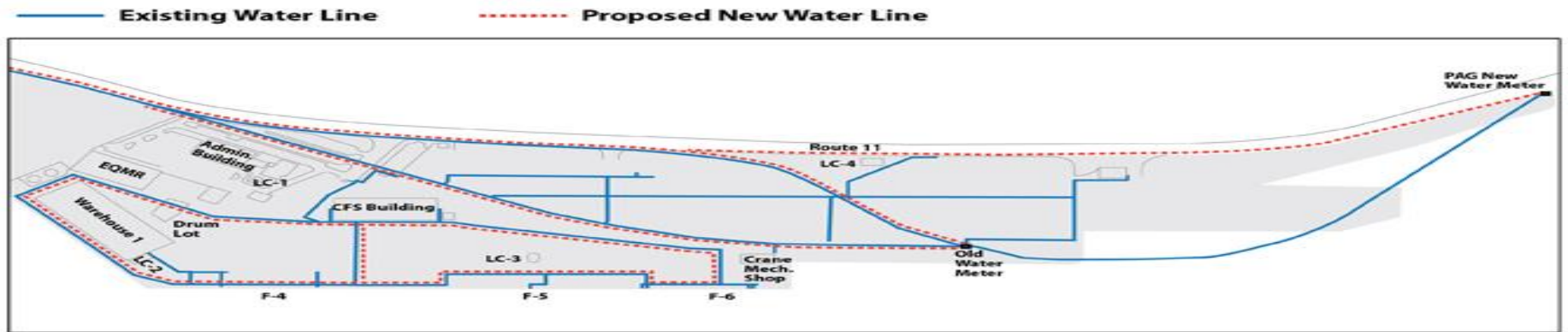


Golf Pier Repair



Waterline Repair Project

Port Diagram



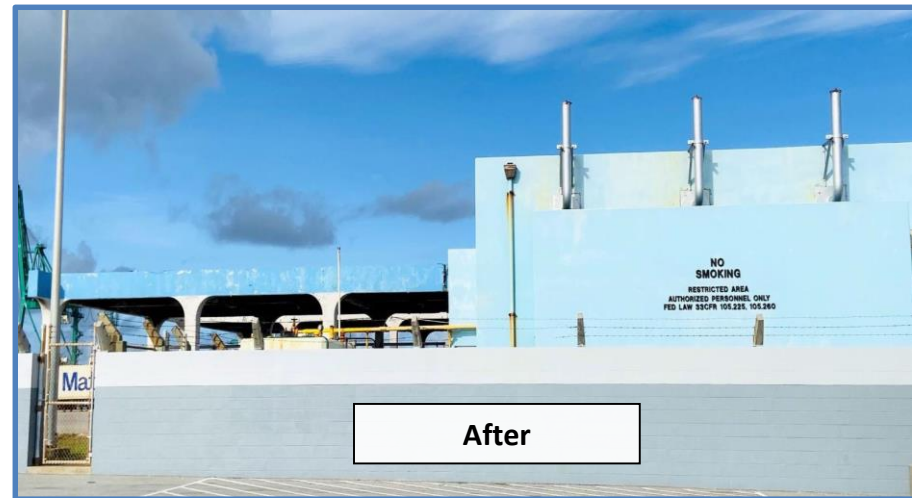
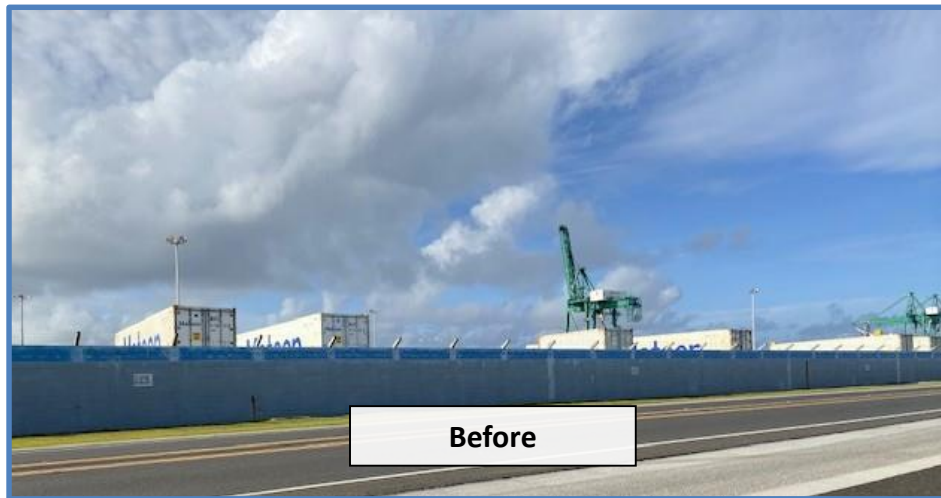
Warehouse 1 Building Repair



EQMR Building Repair



Terminal Booth & CMU Wall Repainting and Barb Wire Replacement



Container Yard Striping



Load Center Rehabilitation & Upgrade



Agat Marina Dock B Demolition & Repair



Harbor of Refuge Repair



Gantry Cranes 2 & 3 Demolition



The Way Forward (2019 – and beyond)

Planned Modernization Initiatives

- 2020 PAG Master Plan Update
- New Crane Acquisition Program
- JDE World Migration to JDE EnterpriseOne (E1) Financial Management System
- Port Wharves Assessment & Upgrade
- Customs Inspection Feasibility Study
- Tariff Simplification
- Solar Power Energy Feasibility Study
- Fuel Connectivity Pipeline System for F1 Pier & Golf Pier
- Administration Building and Annex

New Crane Acquisition Program

Objective – Develop grant application to be submitted to EDA for the acquisition of two (2) new Ship-to-Shore Gantry Cranes



JDE World Migration to JDE EnterpriseOne Financial Mgmt. System

Objective – Upgrade the Port’s 20 year old Oracle JDE World financial mgmt. system to a more robust and technologically updated Oracle JDE EnterpriseOne System

JD Edwards EnterpriseOne

Asset Lifecycle
Management

Customer Relationship
Management

Human Capital
Management

Project Management

Financial Management

Supply Chain
Management

JD Edwards EnterpriseOne Tools and Technology

Port Wharves Assessment & Upgrade

The Port and WSP has been aggressively assessing critically important CIP projects and working towards completing F1 – F6 comprehensive assessments towards Scopes of Work development.



Customs Inspection Feasibility Study

Update: Custom's agreed to the proposed facility design on a 4-acre parcel of land adjacent to the main terminal gate. This design aims is two-fold—allow privacy of the operations inside the facility and the mandatory use of the Department of Public Works' weight station. The draft Customs Inspection Feasibility is done and Custom's now has a plan to pursue grant opportunities.



Tariff Simplification

The Guiding Principles provide the following purposes:

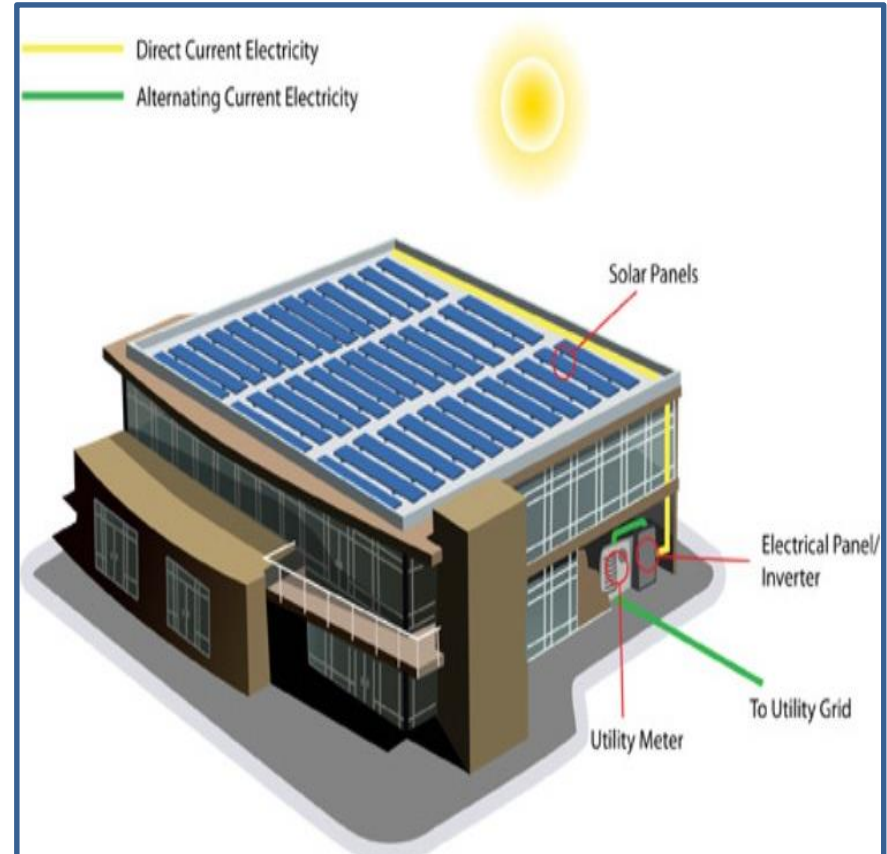
- **Revenue neutral** - Ensure the revisions will result in neither a material increase nor decrease in Port revenues.
- **User-friendly** - Present schedule of rates table in front of tariff to allow customers to quickly and easily calculate fees.
- **Transparent** - Itemize details, rules, and regulations associated with combined rates via a hyperlink in latter sections of tariff.
- **Streamlined** - Consolidate charges to align with all-inclusive port services and performance reports.
- **Modernized** - Support the integration of the Port's NAVIS Terminal Operating System and JDE Financial System.
- **Time-saving** - Minimize/eliminate manual data entry of charges and provide invoices to users expeditiously.
- **Cost-effective** - Reduce administrative costs, manual entry errors, disputes, and delayed payments.

RSM Project

- **PORT/PUGG/Customs collaboration on systems integration.** This is an initiative to define the need for improved data and information sharing/reporting between all stakeholders involved in the cargo supply chain at the Port.
- **Port's Objective:** Improved efficiencies in operations, billing, collections, going paperless, and meeting the Port Users' operational needs.
- **Port User's Objective:** Going paperless, pre-clearing of cargo containers, improving operational efficiencies, digital sharing of the manifest.
- **Custom's Objective:** Automation, going paperless, advance clearing of cargo containers, significantly reduce front-facing clearances, searchable bill of lading, digitized manifest, interdiction of drugs, bio securities, terrorism, and improved collections of the use tax.

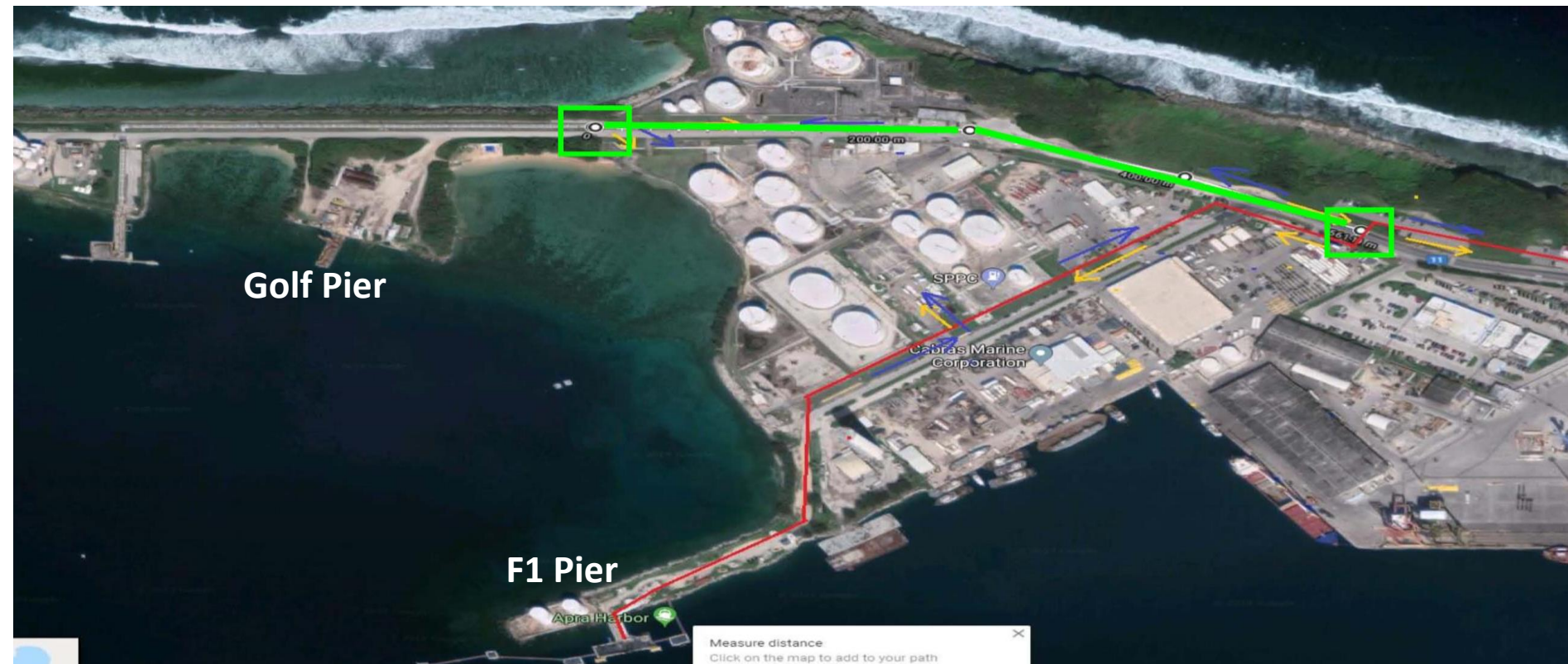
Solar Power Energy Feasibility Study

Objective – perform a feasibility study on the installation of photovoltaic panel system on the rooftop of several Port buildings



F1 & Golf Pier Fuel Connectivity Pipeline

Objective – Installation of pipeline between two critical Port piers to ensure fuel distribution remains uninterrupted into the island in the event of a major incident impacting either pier.



New Administration Annex Building

Objective – Construction of new Admin. Annex building and renovation of adjacent old Admin. building



Deep Draft Wharf Improvement Project Feasibility Study

Objective – to conduct a feasibility study on: 1) the construction of a new 1,500 linear foot deep-draft wharf, and 2) fill approximately 17 acres of reclaimed land in three 3 shallow embayments within Apra Harbor.



Status of Grants and Grant Opportunities

EDA Grant for Fuel Pipeline Connectivity Project

Guam Acting SHPO Carlotta Leon Guerrero issued Section 106 Concurrence for the Port's fuel pipeline connectivity project, paving the way for EDA to move to the next step in finalizing the Port's grant award. Total project amount \$3.016M; EDA Share - \$2.41 M (80% Cost Share). PAG Share - \$603K (20% Cost Share).

Next Steps – EDA is moving forward with its legal review towards grant award issuance.

Department of Agriculture Grant

A \$500,000 grant awarded to PAG for Dock B repairs at the Agat Marina and Moorage repairs at the Harbor of Refuge. A draft MOU is with the Department of Agriculture.

Gantry Crane Acquisition

- **USDA Direct Loan for one STS Gantry Crane.**
- **EDA Grant for two STS Gantry Cranes**
 - The estimated cost for two (2) cranes is \$30M, with the PAG's share at \$15M.

FEMA Hazard Mitigation Grant Program - FY2020 Building Resilient Infrastructure & Communities (BRIC) Grant Application

- PAG Wharves Service Life Extension – Hardening of F1 to F6
- Project Cost Estimate - \$22,391,342.00

MARAD America's Marine Highway Program (AMHP) – Marine Route Designation Application

- AMHP promotes the increased use of navigable waterways to serve as extensions to surface transportation systems in an effort to provide landside congestion relief and new transportation options
- The PAG partnered with the CNMI Commonwealth Ports Authority (CPA) for a joint route designation and projects designation



Climate Survey Participation



Total Employees	Total Responses
356	317

Total Participation

89%

Definitions

- Positive/Neutral – a combination of Strongly Agree, Agree, Unsure, Excellent, Good, and Average depending on the options available for each question
- Negative – a combination of Strongly Disagree and Disagree or Poor depending on the options available for each question
- 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

Job Satisfaction Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
I receive the information that I need to do my job.	44%	44%	5%	93%	3%	2%	5%	2%	0%
I get a sense of personal accomplishment from my work.	52%	42%	2%	96%	1%	1%	2%	2%	0%
I am proud to work for the Port Authority of Guam.	79%	19%	1%	99%	0%	1%	1%	0%	0%
The Port Authority of Guam is a great place to work.	72%	22%	4%	98%	0%	1%	1%	1%	0%
Employee morale at the Port Authority of Guam is good.	32%	46%	12%	90%	7%	1%	8%	2%	0%



Job Performance Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
My supervisor communicates to me on how I can improve my job performance.	49%	40%	5%	94%	4%	2%	6%	1%	0%
My supervisor knows his/her job well.	53%	36%	5%	94%	3%	2%	5%	1%	0%
Management knows his/her job well.	41%	41%	14%	96%	2%	1%	3%	1%	0%
Management recognizes Port Authority of Guam Employees for their good work performance.	41%	35%	15%	91%	5%	3%	8%	1%	0%
My supervisor recognizes me for my good work performance.	47%	39%	6%	92%	4%	2%	6%	2%	0%

Pandemic Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
Management makes my work environment a safe place to be during the COVID-19 Pandemic.	43%	42%	9%	94%	3%	1%	4%	2%	0%
Management ensures that I am well informed during the COVID-19 Pandemic.	50%	40%	6%	96%	1%	1%	2%	2%	0%
Management provides me with all of the resources I need to safely do my job during the COVID-19 Pandemic.	45%	40%	8%	93%	3%	2%	5%	2%	0%
Management made it clear to me that they cared about my safety and well being during the COVID-19 Pandemic.	46%	39%	9%	94%	3%	2%	5%	1%	0%



Career Development Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
Training Opportunities at the Port Authority of Guam are offered to everyone?	23%	37%	21%	81%	9%	9%	18%	1%	0%
My superiors share their knowledge and skills on how to handle situations and how to become more effective and efficient.	40%	43%	8%	91%	5%	2%	7%	2%	0%
I believe that I will have promotional opportunities at the Port Authority of Guam.	32%	38%	19%	89%	5%	3%	8%	3%	0%



Communication Results Pt. 1

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
My supervisors provide clarification and guidance on the job to help me carry out my work?	43%	41%	7%	91%	4%	1%	5%	3%	1%
Management provides me with regular updates on current events and advisories?	36%	49%	8%	93%	3%	1%	4%	3%	0%
My supervisor communicates frequently and honestly about issues that may affect me.	41%	39%	8%	88%	6%	2%	8%	4%	0%
Management supports two-way communication between managers and employees?	33%	39%	16%	88%	4%	3%	7%	5%	0%

Communication Results Pt. 2

Most effective communication method:

Type	Total
Face-to-face	123
WhatsApp	100
Email	98
Written Memo	84
Telephone	69
No Answer	28
Social Media	9

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

Source	Chosen
Supervisor	55%
Co-Workers	18%
MGMT	11%
Human Resources	10%
No Answer	4%
Union Steward	2%

Both questions had multiple answers chosen on several surveys.

Employee Relations Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
I believe that Port Authority employees have a good relationship with each other?	26%	52%	12%	90%	5%	1%	6%	3%	1%
I am able to go to my supervisor if I have a problem?	50%	37%	6%	93%	2%	1%	3%	4%	0%
I am able to go to Management if I have a problem?	35%	41%	15%	91%	4%	1%	5%	4%	0%
My co-workers are always willing to help each other?	36%	48%	8%	92%	3%	1%	4%	3%	1%



Teamwork Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
I make an effort to be a part of the team?	67%	29%	1%	97%	1%	0%	1%	2%	0%
In my department/division, we work as a team?	47%	39%	5%	91%	3%	2%	5%	3%	1%
I support Gov. Lou Leon Guerrero and the Port's Board of Directors' vision for the Port.	38%	38%	16%	92%	1%	3%	4%	4%	0%



Organizational Culture Results

Question	Strongly Agree	Agree	Unsure	Positive/ Neutral	Disagree	Strongly Disagree	Negative	No Answer	Invalid
I show fairness and respect in my interactions with fellow employees.	60%	35%	2%	97%	1%	0%	0%	3%	0%
I can adjust quickly to new situations?	64%	33%	1%	98%	1%	0%	1%	1%	0%
Management has an open-door policy.	47%	35%	16%	98%	1%	0%	1%	1%	0%
Management is accessible and approachable.	44%	39%	14%	97%	1%	0%	1%	1%	1%



General Survey Results

Question	Excellent	Good	Average	Positive/ Neutral	Poor	No Answer	Invalid
How would you rate your overall work experience at the Port?	56%	38%	4%	98%	1%	1%	0%
How would you rate your overall morale at the Port Authority?	36%	39%	19%	94%	4%	2%	0%
How would you rate Management in the area of fairness?	31%	38%	22%	91%	7%	2%	0%
How would you rate Management in the area of transparency?	34%	37%	22%	93%	6%	1%	0%
How would you rate Management in the area of accountability?	35%	40%	17%	92%	6%	2%	0%



Port Authority of Guam

Questions & Answers

Rory J. Respicio
General Manager
rjrespicio@portofguam.com





THE OFFICE OF SENATOR TELENA CRUZ NELSON

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN | 36th GUAM LEGISLATURE

COMMITTEE ON

EDUCATION AND
INFRASTRUCTURAL
ADVANCEMENT

BORDER
PROTECTION AND
MARITIME
TRANSPORTATION

GUÅHAN
PRESERVATION AND
SELF-DETERMINATION

FEDERAL AND
FOREIGN RELATIONS

COMMITTEE REPORT DIGEST

I. OVERVIEW

The Committee on Education, Self-Determination, and Historic Preservation, Infrastructure, Border Safety, Federal and Foreign Affairs, and Maritime Transportation convened a Virtual Informational Hearing on Port Authority of Guam on Monday, January 25, 2021 at 3:00 PM in *I Liheslatura's* Zoom Conference platform to discuss drug-free-workplace-program-policy: drug test protocols, disciplinary action, and employee assistance program; COVID-19: safety guidelines and testing; Port finances: revenues and cargo throughput. The Committee reconvened for a second Virtual Informational Hearing on Tuesday, February 2, 2021 at 9:00 AM to discuss Recruitment Practices, Hiring Procedures and Human Resources Management: 2016 to Present.

Public Notice Requirements

Public notices were disseminated via email to all senators, stakeholders, and all main media broadcasting outlets on Tuesday, January 15, 2021 (5-Day Notice), and again on Friday, January 20, 2021 (48-Hour Notice). Notice was also provided on the Guam Legislature website.

Public notices for hearing on February 2, 2021 were sent out via email to all senators, stakeholders, and all main media broadcasting outlets on Monday, January 25, 2021 and the second notice on Thursday, January 28, 2021. Notice of today's hearing was also available on the Guam Legislature's website.

Senators Present during January 25, 2021 Hearing

Senator Telena Cruz Nelson, Chairperson
Senator Mary Camacho Torres, Vice Chairperson
Senator Jose "Pedro" Terlaje, Co-Vice Chairperson
Senator Telo T. Taitague, Committee Member
Speaker Therese M. Terlaje
Vice Speaker Tina Rose Muña Barnes
Senator Amanda L. Shelton
Senator Joe S. San Agustin
Senator Joanne M. Brown
Senator James C. Moylan
Senator Vicente "Tony" Ada
Senator Chris M. Duenas

Senators Present during February 2, 2021 Hearing

Senator Telen Cruz Nelson, Chairperson
Senator Mary Camacho Torres, Vice Chairperson
Speaker Therese M. Terlaje
Vice Speaker Tina Rose Muña Barnes
Senator Amanda L. Shelton
Senator Telo Taitague
Senator Joanne M. Brown
Senator James C. Moylan
Senator Vicente “Tony” Ada
Senator Chris M. Duenas
Senator Frank Blas, Jr.

Appearing before the Committee during January 25, 2021 Hearing

Rory Respicio, General Manager, Port Authority of Guam
Dominic Muna, Deputy General Manager, Operations
Luiz Baza, Deputy General Manager, Admin & Finance
Francisco Santos, Chairman, Port Authority of Guam, Board of Directors

Appearing before the Committee during February 2, 2021 Hearing

Rory Respicio, General Manager, Port Authority of Guam
Dominic Muna, Deputy General Manager, Operations
Luiz Baza, Deputy General Manager, Admin & Finance
Francisco Santos, Chairman, Port Authority of Guam, Board of Directors
Sean Cepeda, Human Resources Division, Port Authority of Guam
Carmen Nededog, Human Resources Division, Port Authority of Guam

II. SUMMARY OF TESTIMONY & DISCUSSION

The Virtual Informational Hearing was Called-to-Order at 3:07 P.M.

Chairperson Senator Telen Cruz Nelson: *Buenas yan Håfa adai*, thank you all for being here. The Committee on Education, Infrastructural Advancement, Border Protection and Maritime Transportation, Guåhan Preservation and Self-Determination, and Federal and Foreign Relations will now convene this virtual information hearing. Today is Monday, January 25th, 2021 and it is currently 15:07, 3:07PM. For the record and in accordance with the open government law, public notices were sent out via email to all senators, stakeholders, and all main media

GUAM CONGRESS BLDG. 163 CHALAN SANTO PAPA HAGÅTÑA, GUAM 96910

Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

broadcasting outlets on Friday, January 15, 2021 and the second notice on Wednesday, January 20th, 2021. Notice of today's virtual information hearing was also available on the Guam Legislature's website. Joining us today for this virtual information hearing is Senator Mary Camacho Torres, Speaker Therese Terlaje, Senator Amanda Shelton, Senator Pedro Terlaje, Senator Telo Taitague, Senator Tony Ada, Senator Joanne Brown- oh Senator Joe San Agustin last but not least. Thank you, Senators, for being here today and everyone for tuning in via YouTube and on TV.

Before we proceed with the virtual information hearing, the legislature has general rules of conduct that must be followed. All must abide by the rules of conduct and quality assurance standards. Please keep video on at all times and ensure you are in a room with little interruptions and adequate lighting, specifically to make sure the participants face is visible at all times. The host of this hearing will mute participants until called upon by the chair. When called to speak, please ensure that you are unmuted and that you are speaking into your microphone. Members of the committee wishing to speak may indicate via the in-app feature chat box. Individuals testifying first will be recognized by the chair before speaking and shall state their name for record-keeping purposes.

Okay...questions and testimonies shall be confined to the substance or nature of the agenda. Personal inference as to the character or the motive of any senator or any individual testifying is not permitted. [Pause] Any violations of this general rule of conduct will result in removal from the public hearing by the host. As we begin this informational hearing, I've called for the hearing to provide our community any update with the Port Authority of Guam. I hope everyone at home is listening and will be able to better understand the Port of- Port Authority of Guam's plans and measures, providing a safe and drug free work- workplace to their personnel and support staff. The committee will also discuss continued safety guidelines for COVID19 and the ports finances, specifically revenues and cargo- and cargo throughput. [Pause] I'd like to begin with the port authority of Guam, and I would like [to] acknowledge the general manager of the port authority of Guam, um... Mr. Rory Respicio...oh there you are. Hi Rory.

Rory Respicio, General Manager, Port Authority of Guam: Alright thank you very much...madam chair, chair- vice chair, ...members of this legislature. ...With us...is our chairman of the board Mr. Frank Santos and also our two...deputy general managers are also in attendance for this...oversight hearing that you called.

Chairperson Senator Telen Cruz Nelson: Thank you Mr. Respicio. So now that we have acknowledged those who will be participating in this information-informational hearing, this is not an oversight hearing it's an informational hearing, and...but you do have an oversight hearing scheduled next week, and that's on another topic, but we would like to proceed- I believe the port has a presentation that you would like to present for the body and for the people of Guam, and so I'll let you go ahead and take the lead on that.

Rory Respicio, General Manager, Port Authority of Guam: Madam chair we- we provided this...pdf of this PowerPoint...to your office, I'm sure that you've given a copy to all the members so they could follow along, but if I could begin by sharing this screen. [Pause, shares screen]

Chairperson Senator Telen Cruz Nelson: Mr. Respicio forgive me, may I interrupt real quick. I'd also [like to] acknowledge Senator Barnes-Vice Speaker Barnes and the Committee on Rules Chair who's also present with us today. Thank you Vice Speaker.

Rory Respicio, General Manager, Port Authority of Guam: So, we present- prepared this PowerPoint presentation, and I'll go through it...as quickly and...best I can and I will be available to answer any questions that...you may have.

[Presentation begins, start Agenda slide].

In this presentation we will talk about the significant milestones from January 2019 to present, we will provide an overview of the Port Modernization Program, the 2020 Masterplan update and the key timelines, we will provide the- the status of Revenue Bond, TIGER Grant and Office of Economic Adjustment funded projects, the status of grants and grant opportunities, and we would conclude with...presenting the results of the climate survey.

[Start Significant Milestones 1 slide]

In the beginning of...our administration...what we needed to do most immediately – to avert the loss of port insurance...on January 8 – was to ask the board – in addition to hiring...myself and the two deputy general managers Dominic and Connie Shinohara at the time – I was to ask the board authorization to pay...the balances of the port insurance which...technically would have lapsed on December 15. ...It did not lapse, and the board was able to address this...early on. We also averted the loss of a \$10 million dollar TIGER Grant on the rehabilitation of Hotel

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

Wharf. ...We worked with Governor Leon Guerrero and our board...to approach the legislature on the Revenue Bond Legislation and projects. Early on...we had determined that the Revenue Bond proceeds...recognized \$17.5 million for the...the demolition of this administration building and to build a new administration building somewhere offsite, ...and in recognizing...2010 Masterplan recommendation, ...the consultants at the time recommended...instead of demolishing the building to build an annex, have a bridge to connect the two buildings so the administration will become...ADA accessible...and- and by reducing it...by \$7 million...to identify the much needed repairs needed for the waterfront facilities, the insulation of a connectivity fill line connecting Golf Pier and F1, as well as the...financial management and terminal operating...systems.

So, the A&E design and consulting services were awarded in 2020 for the first four projects: the structural repairs for Golf Pier, repair and expansion of the EQMR Building, repair of Warehouse 1, and the replacement and relocation of waterlines in the terminal facilities. Also, within the first 100 days – on the 100th day to be exact – ...we negotiated the board union contract, ...which was approved by the board on July 30th, 2019, ...and... this was forward up to the Governor and AG for their concurrence.

[Start Significant Milestones 2 slide]

...We stabilized the operation and maintenance employee work schedule. ...What we found was that the employees – while there was a two-week...schedule issued – an employee who's supposed to be off on...on...[cough] Wednesday for example- or to work on a Wednesday will be told to...be off, and then for those- that same employee...he would be told on a Friday that we have to work on a Saturday just to make up the ...40 [pause] 40-hour work week, and that was happening at the port for decade or so. And so, we issued a two-week schedule, we stuck by that, and after...scheduling the employees 8 hours of employment from Monday through Friday it resulted in a 14 perc- perc- 14.6% decrease in overtime costs. We are happy to report that after 14 years of losing its procurement delegation, ...we did receive...procurement delegation by the Chief Recruitment Officer, restoring the full delegation of the procurement authority in May of 2020. And... we also...embarked on a 2020 Port Masterplan update. ...The Governor and Lieutenant Governor...were able to secure a \$1.6 million dollar grant from the Office of Economic Adjustment to update the ports 2013 Masterplan. ...If you recall, the- the Governor was very concerned about the ports working relationship with...customs early on, ...and so she instructed us that within the first 30 days...we are to identify a suitable property in line with the legislation that...became law that left it to the

port to identify this area, and so this was done in the first 30 days in the area that...we've identified in working with customs is the area right before the weight station. The...Golf Pier management agreed in Area A, we amended the management agreement and removed Area A. This is those tankers in that area [cough] ...to be under the...o-operatio- ...operation of the General Manager.

[Start Significant Milestones 3 slide]

The Port ensured the employees are trained through the necessary certifications mandated by federal OSHA, the US Department of Transportation and the Coast Guard...after years of such certifications being expired. The port finances- we turned the finances around, from a loss of \$103,000 in fiscal year 2018 to earning nearly \$7-and-a-half million for fiscal year 2019, and despite...this pandemic...Madam Chair and Vice Chair and Senators, ...the port posted a projected income of \$4.1 million for fiscal year...2020. Our income statement and fiscal year 2018 budget: ...In 2019, through austerity measures, the port realized a positive net income of \$3.5 million irrespective of the fact that the FY2018 budget did not include the cost of the 2018 compensation plan, expenditures incurred during the preparation and post operations of typhoons Yutu and Wutip and OSHA certification inspections and past liabilities. ...We are moving on the need to...dec-de- ...take down the Port's inoperable assets. ...And this is the two gantry cranes, the two RTG's, ...and possibly the...sunken vessel in F6. ...This was published on December 31st of last year and we expect an award to occur in the first quarter of this year to remove these inoperable assets.

[Start Significant Milestones 4 slide]

...Organizational structure. ...The Board rescinded the May 30, 2018 prior Board action, reverting the finance division to its original structure, and reflecting Financial Affairs Controller as the head of the division. Our crane surcharge reserve account. ...through the boards...authorization we established a crane surcharge reserve interest bearing account, which allowed the board to obtain an estimated increase in earnings of about \$60,000 dollars. The facility maintenance fee investment account. Again, with the board's approval, we opened an interest-bearing account which revenues deposited will accrue at a higher interest income similar to the crane surcharge reverse [reserve] account. ...Some of our policies. The...board...through resolution, added...on the approved list of holidays for no vessel operations – Labor Day – ...to recognize the value of employees and their contributions made to the strength, prosperity, and well-being of the island. They reinstated the Board's policy on salary increment sub-steps for educational

achievements, training certifications, licenses which was arbitrarily stopped...in the past...administration.

[Start significant milestones 5 slide]

Interpersonal relationships. We established a mutual trust and understanding with the Port customers, our federal [and] local stakeholders and employees which resulted in cargo operation productivity increasing, and regular participative discussions affecting the Port and its users being held. Our legal services. We entered into a memorandum of understanding with the Attorney General on assigning an attorney to the Port to review the procurement solicitation package. ...And... since November we've had the pleasure and... blessing to be guided by...Assistant Attorney General Tom Keeler ...who's been with us since to handle all of our...procurement...projects. And in December an attorney accepted the Port's offer for employment as its in-house counsel, and this is Attorney Christine Claveria who is reviewing- currently reviewing the business development matters that have been on hold for the last ten years and assisting in the re- procurement related issues. The Port's Compensation and Classification Plan. We developed...through our human resources division and through the help of Mr. Luis Baza...the implementation of the Key performance indicators and work performance appraisal system, which were held in abeyance since 2013, and that this new evaluation system will be used for fiscal year 2021.

[Start Significant Milestones 6 slide]

...Our ongoing projects. ...We have the...system integration, the IT...system integration the- with collaboration between the Port, PUGG, and Customs, and this project is to define the need for improved data and information sharing reporting between the stakeholders involved and the cargo supply chain at the Port. ...Also, the tariff simplification, and the goal is to simplify the tariff to make the Port's informational technology system – the terminal operating and financial management systems – to communicate better and streamline the invoices. The gantry crane purchase. To replace two of the pull-up cranes, a grant application will be submitted to the US Economic Development Administration for consideration, and when we get further into the slide, I'll explain...exactly how we submitted a grant...to MARAD... but we were denied because of the Buy American Provision, so we're...socializing this through...Office of Economic Development Authority. The Micronesian cruise ship development. The Governor has established a group...consisting of Guam Economic Development Authority, GVB, and the Port, ...to determine the benefits of homeporting a small cruise ship and using Hotel Wharf as a primary receiving area...for the visiting cruise ships.

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

Recycling Enterprise Zone. It's the first law that I passed...my first term in the legislature, and we're identifying an area that would be ideal for recycling facility on Cabras Island. The Leases. ...The Attorney is currently reviewing the GEDA masters leases that were conveyed to the Port in 1988 and to determine if the Supreme Court's decision on Guam YTK had an impact on the renewal of the leases.

[Start Post Modernization Program slide]

... In the...overview of the Port...mas-...Modernization Program, this is funded by the Grant from Office of Economic Adjustment under the Department of Defense and the Port Authority commissioned Parsons Brinckerhoff to update the 1999 Masterplan for the Jose D. Leon Guerrero Commercial Port in 2007, and the Masterplans Support Improvement Program was later updated in 2013 to reflect DoD's reset plans to reduce the number of marines to be transferred to Guam. And then on two- and then 2013 this Masterplan was further updated to summarize the evolution of change in the Port Authority of Guam's Modernization Program and provide a roadmap to guide the modernization and future development strategy for the Port of Guam over the next 20 years. And then, in January 2019, the Port Authority Board and Management determined that based on the Leon Guerrero/Tenorio's Transition Report, outlining the goals and objectives for the Port Authority of Guam in preparation for the military build-up and organic growth, a 2020 Masterplan update was required and sought the \$1.6 million in- in funding through OEA to take for- such- ...undertaking.

[Start Port 2020 Masterplan Update – Purpose slide]

And the...purpose of the Masterplan is to assist...the Port to define its near-term and long-term approach...to modernization, maintain fiscally sustainable operations, and to promote increased awareness and consensus on its approach...for all affected stakeholders and the rate payers of Guam.

[Start Port 2020 Masterplan Update – Goals slide]

I want to talk about the goals of this...Masterplan update, so you have a really good understanding of Port...101; and what we're doing here is to provide a comprehensive overview of the Port's current conditions, including governance, financial, operational, and physical attributes; to assess the current and projected cargo opportunities based on market drivers which consist of the military expansion, tourism, transshipment, and organic growth; to determine the near-term improvements and operational adjustments to accommodate the peak of the military buildup and future deployments of military assets; to estimate the port's

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

capacity and ability to meet the projected demand and tenant requirements; to identify long-term modernization efforts targeted towards continuing operations on economic sustainability; to establish optimal requirements for operations, maintenance and repair, and capital improvement projects; to validate the efficient and effective use of the port's resources and assets; to present commercial strategies for Port Authority of Guam to diversify its revenue base and enhance its financial self-sufficiency including a comprehensive tariff assessment and its economic impact thereof; to assess the impact of the recommended strategies on Guam economic conditions; and to prepare an implementation program to support a coordinated approach of continuous port improvement...balanced with sustainability.

[Start Port 2020 Masterplan Update – Specific Planning Initiatives slide]

...These specific...planning initiatives are the Agat and Hagåtña Marinas, Area A Feasibility, Cargo Terminal, Guam Customs Inspection Facility, the Harbor of Refuge, the Proposed LNG Facility, PUGG Initiative for System Integration, and the Solar Panel Initiative Feasibility Study.

[Start Port 2020 Masterplan Update – Specific Planning Initiatives slide]

And... these specific planning initiatives, we'll take a look at the 20-year infrastructure and land use plan to develop...for each- to be developed for each demand scenario- scenario to review ongoing commercial- commercial and non-commercial development, to review the impact of other developments such as the improved Guam Customs Facility, the improved Port Authority-Port Users Group communication process, the STS crane fleet upgrades, the future PMC support, the improved facilities that are Revenue Bond funded and TIGER Grant funded, the integration of relevant stakeholder inputs on scenario analysis, and the near-term and long-term CIP development program.

[Start Port 2020 Masterplan Update – Financial & Economic Analysis slide]

And the financial and economical analysis will update the Port Authority financial model since 2018's bond issuance: FY2019 and 2020 financial and operating results. The forecast for 20-year Masterplan time horizon: the cargo throughput, operating and maintenance expenses capital development plan, the revenues. The Financial Feasibility Assessment: to determine the existing debt service coverage the funds for port operations and maintenance, the capital plan and crane replacement, to consider Port Users Groups and the military's input. The Scenario analysis: and to consider the tariff changes if necessary.

[Start Port 2020 Masterplan Update – Key Timelines/Schedule slide]

...The key timelines and the schedule with the Masterplan update. ...We kicked off this meeting... uh in June 2020 with the Governor and the Lieutenant Governor and the Board. The- the WSP collected the data from July 2020 all the way to current. Also, from July 2020 all the way to current they're doing stakeholder-stakeholder outreach. ...In October 2020 we've had the... draft findings presentation. Again, another meeting with the Governor, Lieutenant Governor, and the Board. Special studies presentation: November 2020. Market analysis and cargo forecast: ...November 2020. Capacity and needs analysis: November 2020. The draft report on the customs feasibility study was submitted December of last year, and why it's still in... draft form is because this is a component of the entire... 2020 Masterplan update which w-will still have to be approved by the Legislature, the Governor, and the Port and the Public Utilities Commission, but we wanted to give customs an opportunity to start going with this draft report to try to source some... federal grants, and also to work with their local and federal partners to see if... they want to be a part of this building so they can securitize that rent and- and help fund it. And then the economic analysis summary: ...January of... this year. We're expecting that.

[Start Port 2020 Masterplan Update – Key Timelines – Continued slide]

The timelines... continue so the draft Masterplan report: we expect it... to be completed April 2021, with the final recommendations presentation: May 2021. The final draft master plan report one will be June of this year. Then the draft report will be August of this year. Then the public hearing announcement after this has been transmitted by the Board and then the Governor and then... down to the... Legislature so- no I'm sorry this is the... the AAA process. Then September 2021 then the public hearing minutes comments review, for- from our part is September 2021. And then the final 2020 Masterplan: October of this year 2021. And then the BSP to review this and to forward to the Governor: October 2021. The Governor will review this... that same month, and... if it meets... her agreement and concurrence then it will be submitted to the Legislature for- for the Legislature to review and- and- and to make changes and to hopefully, eventually approve it.

[Start Ongoing Projects (2019-2020) slide]

We have... ongoing projects; the Hotel Wharf Project... this is the construction management for Hotel Wharf it's... on the board's agenda for this Thursday, and... should the Board agree to awarding the CM services and the PUC concurs... this- the cm contractor will work with the port construction to do the construction procurement for this, and the anticipated completion for this project is... August

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

of 2023. And in this... Hotel Wharf there's a \$10 million dollar TIGER Grant that's going to fund the below work... pier work... \$3.8 million dollars for the above pier work: the- the security fencing, the lighting. And then \$10 million dollars to the access road and the... infrastructure... work that's required. ...This area has not only been identified for the- the cruise ship, but also to be a multi-use... wharf to handle the roll-on roll-off, and... the taking off of... cargo... brake bulk that doesn't require a crane to do that.

[Start Golf Pier Repair slide]

The--- Golf Pier. The construction... specifications and scope of work has been a requisition, and... this is something that Attorney Keeler is working on. And the CM construction RFP will be issued thereafter and the anticipated completion date is September of 2022.

[Start Waterline Repair Project slide]

The Waterline project. The A&E design... has been completed. The construction management scope of work has been completed by the engineering division. The procurement package is being developed, and the anticipated completion is... December of 2022.

[Start Warehouse 1 Building Repair slide]

The Warehouse 1 Building repair. The A&E design is completed. The construction management scope of work has been completed by the engineering division, and same the procurement package is being developed and its anticipation completion date is December of 2022.

[Start EQMR Building Repair slide]

The EQMR... Building Repair. ...A&E design has been completed. ...Same the construction management scope of work by engineering and the procurement packages are being developed, and the anticipation completion date is December of 2022.

[Start Terminal Booth & CMU Wall Repainting and Barb Wire Replacement slide]

The Terminal Booth and CMU wall replacement and barbed wire replacement. This is a MARAD funded project under the Port Authority MARAD Grant Cooperative Agreement. ...Phase one was the interior and exterior of the CMU wall and it's 100% complete, and phase two is a repainting of various Port buildings within the yard... and the anticipated completion date is May of this year.

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

[Start Container Yard Striping slide]

The container yard stripping. MARAD funded project under the same cooperative... agreement, and the completion date is... was November of... 2019 last year.

[Start Load Center Rehabilitation & Upgrade slide]

The Load Center rehabilitation and upgrade. ...This houses the generators. This is a FEMA 2017 Port Security Grant Program, and the complete upgrade of all Port load centers and the completion date... January 2021.

[Start Agat Marina Dock B Demolition & Repair]

The Agat Marina. ...Through our planning division... we're able to secure a \$512,000 Grant, ...and this is... pending. This MOU is pending the AG's review... and it was initially submitted by the Department of Agriculture, ...and we're-we're currently tracking this so that this MOU can be signed so we can... begin this project.

[Start Harbor of Refuge Repair slide]

The Harbor of... Refuge repair. ...Department of Agriculture funded... phase two to five; the estimated project cost is \$606,000 and the current status is that MOU is also with the AG for review, ...and we're... working with the Attorney General's office to get this for lease. But also in the harbor refuge repair, I'm sure you heard that the Governor-Lieutenant Governor did a boat tour with the EPA to look at all the... derelict vessels in the harbor, in the area by Cabras, and also... Port property, and there's fourteen... sunken vessels and GPA has about nine of these vessels... in- within their property and they've committed to... funding... whatever is required to remove that, the Port will have to fund whatever is required to remove the boats on Port property... but that- the EPA already has... \$500,000 to put in towards this effort.

[Start Gantry Cranes 2 & 3 Demolition slide]

The gantry cranes... two and three demolition. As we meant- as I mentioned... this was- procurement was published on December 31st ...It's a Port funded project... and we had a pre-bid conference and site visit that was performed... just this morning.

[Start The Way Forward (2019 – and beyond) - Planned Modernization Initiatives slide]

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

And so on the planned modernization initiatives... we have the 2020 Port Authority Masterplan Update, the New Crane Acquisition Program, the JDE World Migration to the JD EnterpriseOne Financial Management System... this is one of the projects that was funded by the revenue bond where we took the \$17-and-a-half million... and the Legislature reduced it... because the Board asked, and we asked... to... to reduce it to \$10-and-a-half the \$7 million... this is one of the projects that was funded... the Port wharves assessment and upgrade, the Customs Inspection Feasibility Study, the tariff simplification, Solar Power Energy Feasibility Study, the Fuel Connectivity Pipeline System for F1 Pier and Golf Pier, and the Administration Building and Annex.

[Start New Crane Acquisition Program slide]

So in the new crane acquisition... we did submit a \$30 million grant... to MARAD... and how-however the grant was not approved on the bases that... of the Buy American Act: they don't manufacture these cranes domestically... and so having... having said that... we were denied, we knew that all along and we submitted a waiver anyway... a very robust project asking for a waiver of consideration from the Buy American Act... because of the special... circumstances... and- but we- but the good news is – Senators, Madam Chair – we still have that entire... grant project... that we're getting ready to submit... through the Office of... Economic... Development Authority, and we're also working with USDA to finance... the purchase of one gantry crane so the award we're asking for is 50% matching grant award which makes this... very competitive for- for us.

[Start JDE World Migration to JDE EnterpriseOne Financial Mgmt. System]

We did... upgrade from the Port's 20-year-old Oracle JDE World Financial Management... to the Oracle JDE EnterpriseOne and this... going to actually even help us drop cost... what it would cost to discharge- what it cost to discharge a vessel versus all the... revenues that all the billings that were able to get back per the tariff.

[Start Port Wharves Assessment & Upgrade]

The... the Port and WSB is aggressively assessing the critical important CIP projects working towards the completing F1 to F6 comprehensive assessment... toward the scope of the development we've asked our consult- consultants to make this... scope of work a shovel ready project and... we've did submit our interest to FEMA to secure a \$22 million dollar grant to do the hardening of... all the wharves from F1 to F6 and so we can finance this through that... FEMA Grant then we don't have to use the revenue bond to go and harden the wharves and

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

that money can be used for... same projects but to hand any construction overruns that we will experience.

[Start Customs Inspection Feasibility Study slide]

The... Customs and Container Inspection Facility. Like I said the- the four acre property was identified by the weight station... we have included this as one of the... Masterplan updates. Our consultants... Dominic Muña of operations, we've been working closely with... Chief Peredo and the team... the consultants... submitted the draft... report on this facility, but only after customs... bought into it and- and all their ideas and their plans and what they like to see... and what- what we've juxtaposed to Port operations to make it so that there's no bottleneck... we're all- all those ideas are contained in this draft feasibility study and I heard the other day that customs was able to... work with the Lieutenant Governor's federal clearinghouse to identify monies to at least begin the A&E.

[Start Tariff Simplification slide]

With the tariff simplification process... We've asked that it be revenue neutral, that we ensure the revisions will not result in either material increase nor decrease in port revenues; we ask that it be user friendly to present a schedule of rates table in front of the tariff to lock customers to quickly and easily calculate fees; we ask that it be transparent itemized details, rules and regulations and combined rates; we asked it to be streamlined; we asked it to be modernized, time saving, and cost-effective. So these are the guiding principles which guide this tariff simplification process and so WSP has been meeting with our stakeholders, with the carriers, with the agents, making them understand that all of the charges that the tariff provide will be put in the front end, so that we're not having any... hidden costs and- and we run the risk too of not really charging or billing for tariff if we're going to have to go and pick up those... check mark those additional boxes with all the other... special services requests.

[Start RSM Project slide]

The Port Users Group brought forward to us, the Port, ...a- an idea to collaborate on the system integration ...They want to have the- an IT where the Port and the Customs and the Port Users Group can access... and to have this improved data and the information sharing reporting... be up between these three entities; and so the board's objective, Madam Chair, in doing this is improving efficiencies in operating billing collections, going paperless, and meeting the Port Users operational needs. The Port User's objective is to going paperless, pre-clearing of cargo containers, improving operational efficiencies, digital sharing of the

manifest... Customs objective is automation; going paperless; advanced clearing of cargo containers; significantly reduced front-facing clearance; searchable bill of lading; digitized manifests; interdiction of drugs, bio-securities, terrorism; and improved collections of the use tax.

[Start Solar Power Energy Feasibility Study slide]

The Solar Panel Initiative... The objective is to perform this feasibility study to determine if it's cost effective to put panel systems on the Port buildings.

[Start F1 & Golf Pier Fuel Connectivity Pipeline]

Golf Pier... We want to create a redundancy... in between... Golf Pier and F1, and so in order to do that we have to have this fuel connectivity line and so in the event that we're repairing... Golf Pier for example, with this fuel connectivity line we wouldn't have to shut down, we could totally shut down Golf Pier and redirect all the petroleum products to be in F1 but because we don't have this... this fuel connectivity line we'd to keep Gold Pier open at least five days out of the 30 days in order for the products to come- come through.

[Start New Administration Annex Building slide]

Like I said the construction of a new administration annex building and renovation of the adjacent old admin building. Where our engineering division is really looking to see if it's cost effective to harden this building to include the electrical work and if we can instead... take a look at the design for the annex building and see if we can replicate that operation, but that report is... being finalized.

[Start Deep Draft Wharf Improvement Project Feasibility Study slide]

And this is a long long-term project probably 50-plus years... It's always been on the books it's the feasibility study to con- to conduct the- the deep-water draft.

[Begin Status of Grants and Grant Opportunities slide]

And- and Madam Chair I also want to point out with the EDA Grant, the status of grant and grant opportunities, the economic development authority... we did submit for the fuel pipeline, we are looking at the- this costing \$3 million, with the EDA share to be \$2.41 million, and the Port share to be \$603,000, and... I did... want to recognize... former Senator and Guam Acting SHPO Carlotta Leon Guerrero, who issued a Section 106 concurrence for the Port's pipeline connectivity, paving the way for this project proposal to move into the next step, and the next step is EDA moving forward with its legal review towards grand award issuance. The

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

Department of Agriculture Grant... the repair of the Agat Marina and Moorage repairs of Harbor of Safe Refuge... as I mentioned that draft is- MOU is still with AG's office and the Department of Agriculture.

I explained the gantry train acquisition and the estimated cost for the two cranes is \$30 million, and the Port's share is at \$15 million... these prices are- if we have to... [pause] we would have to do a 50%... cost share. The FEMA Hazard Mitigation Grant Program; the 2020 Building Resilient Infrastructure and Communities, the BRIC Grant... we just submitted it- we had just submitted an application for the PAG Wharves Service Life Extension hardening F1 to F6, and the project... cost estimate is \$22.3 million. Most recently, we're working with...MARAD on the MARAD of America's Marine Highway Program, the Marine Route Designation Application... We did have a meeting with... CNMI Port officials, and we asked them if we could submit one... application... to MARAD designating... the CNMI Commonwealth... Ports authority and the Port Authority of Guam for a joint route designation and- and once we get this designation, what it means is for all those ports that have a Marine Highway Route designation, they would have access to up to \$3 million dollars a year... that we can apply for... top lifters... heavy equipment... And so they- they're saying that that's- that's kind of like the, the- the sweet spot for those kinds of... grants... \$3 million...

[Start Climate Survey Participation slide]

Okay... Madam Chair I can continue with the climate survey and then we can close out the presentation if that's okay.

Chairperson Senator Telena Cruz Nelson Yes please proceed, thank you.

Rory Respicio, General Manager, Port Authority of Guam: Thank you. And so, we recently conducted a climate survey. We wanted to ask the employees some questions directly to them, their experience at the Port... and some feedback that management can have so we can better improve ourselves and so there's a total of 356 employees that were- that submitted survey responses- that were given surveys and 317 responses, providing a participation rate of 89%. It was completely... anonymous and it wasn't mandatory and...

[Start Definitions slide]

And- and they were asked... several questions... and in putting the data together, you can as- you- you would see the positive/neutrals - a combination of strongly agree, agree, unsure, excellent, good, and average depending on the options

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

available; the negative column is a combination of strongly disagree and disagree; and poor depending on the options available for each question; no answers were recorded when a survey did not have a response for a question; and it was invalid if they're recorded when they were conflicting answers, meaning they chose agree and strongly disagree for a question.

[Start Job Satisfaction Results slide]

On job satisfaction results: on "I received information that I need to do my job", ...we got a 93% response rate, that's if you take the strongly agree, agree, and the unsure categories. "I get a sense of personal accomplishment from my work": 96%, "I am proud to work for the Port Authority of Guam": 99%, "The Port Authority of Guam is a great place to work": 98%, "Employee morale at the Port Authority of Guam is good": 90%...

[Start Job Performance Results slide]

"My supervisor communicates to me on how I can improve my job performance": 94%, "My supervisor knows his/her job well": 94%, "Management knows his/her job well": 96%, "Management recognizes Port Authority of Guam Employees for their good work performance": 91%, "My supervisor recognizes me for my good work performance": 92%...

[Start Pandemic Results slide]

In the... area of the pandemic the question was: "Management makes my work environment a safe place to be during the COVID-19 pandemic": it's 94%, "Management ensures that I am well informed during the COVID-19 pandemic": 96%, "Management provides me with all the resources I need to safely do my job during the COVID-19 pandemic": 93%, "Management made it clear to me that they cared about my safety and well-being during the COVID-19 Pandemic": on 94%...

[Start Career Development Results slide]

In the area of career development: "Training Opportunities at the Port Authority of Guam are offered to everyone?": had a 81% response, "My supervisors share their knowledge and skills on how to handle situations and how to become more effective and efficient": 91%, "I believe that I will have promotional opportunities at the Port Authority of Guam": 89%...

[Start Communication Results Pt. 1 slide]

On the area of communication: “My supervisors provide clarification and guidance on the job to help me carry out my work?”: 91%, “Management provides me with regular updates on current events and advisories?”: 93%, “My supervisor communicates frequently and honestly about issues that may affect me”: 88%, “Management supports two-way communication between managers and employees?”: 88%...

[Start Communication Results Pt. 2 slide]

And so the employees were asked what’s the most effective method... to communicate with them: 103 said face-to-face, 100 said via WhatsApp – we do have a... Port Authority wide WhatsApp chat, 98 responded email, 84 written memo, 69... responded a telephone, 28 didn’t answer, and 9 said the preferred method of communication for them is through social media. And when asked: “Who do you seek to help resolve problems that prevent you from doing your work?”, 55% said they go their supervisor, 18% say they go to co-workers, 11% goes to management, 10% goes to human resources, 4% didn’t answer, and 2% go their... their Union stewards.

[Start Employee Relations Results]

On employee relation results: “I believe the Port Authority employees have a good relationship with each other?”: 90%, “I’m able to go to my supervisor if I have a problem?”: 93%, “I’m able to go to management if I have a problem?”: 91%, “My co-workers are always willing to help each other?”: 92%...

[Start Teamwork Results slide]

On teamwork: “I make an effort to be a part of the team?”: 97%, “In my department/division, we work as a team?”: 91%, “I support Governor Lou Leon Guerrero and the Port’s Board of Directors’ vision for the Port”: 92%...

[Start Organizational Culture Results slide]

“I show fairness-” on organization culture: “I show fairness and respect in my interactions with fellow employees”: 97%, “I can adjust quickly to new situations?”: 98%, “I can adjust quickly to new situations”: 98%, “Management has an open-door policy”: 98%, “Management is accessible and approachable”: 97%...

[Start General Survey Results slide]

On a general survey, questions “How would you rate your overall work experience at the Port?”: 98% positive/neutral, “How would you rate your overall morale at the Port?”: 94%, “How would you rate management in the area of

fairness?": 91%, "How would you rate management in the area of transparency?": 93%, How would you rate management in the area of accountability and 92%.

[End of Presentation]

Chairperson Senator Telen Cruz Nelson: Okay. [Pause] All right, thank you Mr. Respicio does that conclude your presentation?

Rory Respicio, General Manager, Port Authority of Guam: Yes, yes it does Madam Chair thank you.

Chairperson Senator Telen Cruz Nelson: Okay, thank you. And so... first of all I'd like to acknowledge the... your climate survey participation and granted that you had 356 employees and 317 of those employees responded with all those positive remarks... you do have a low B: the 81%, so that's an area you need to improve upon right? If you're getting A's and everything else- but no congratulations to that I think it's very important that we have a very positive environment... within our government agencies. And... knowing that this survey was... an anonymous survey so anyone could- was free to submit... their- their true... concerns and feelings about the port organization, and to see the- the... the positive remarks that came back so I'd like to congratulate you and all the supervisors there and the leadership there at the Port for the work that you are doing to keep the personnel safe and also the morale high.

I would- I will open it up to- I'll open the panel, open- I will open up any questions for the panel that they may have and then I'll follow with my own set of questions. Okay let's start with Senator Torres; do you have any questions at this time?

Senator Mary Camacho Torres: ...Yes... First of all, thank you very much... Rory for that very thorough update... and congratulations to- to the staff and to the board of directors for your successes... so far. I- I noted that there was no mention- and I recall... a news release in December, where the Port actually received... a national award from the National Association of Government Accountants for cert- for their excellence in citizen-centric reporting... I- I think that, that- that is significant because that was one area of transparency that wasn't... available for many years and... so I just want to note that that wasn't in the... the report but I think that it's, it's a significant... recognition especially from a national body... so early into your term, I understand it was for fiscal year... 2019.

The question that I- I had for you though is in... As you made your report on COVID, can you just tell the body... what was the job experience for the Port employees- was everybody required to show up physically to the Port to continue working from March onward at the start of the Pandemic or- or worse, was there... was there also other arrangements made for employees, because I understand that there were a lot of measures made to keep them safe but what was the nature of the work environment at the port during COVID?

Rory Respicio, General Manager, Port Authority of Guam: Well, the... the Port remained 100% operation, simply because of the supply chain and so we're following the CDC guidelines for a critical infrastructure worker, and it was pretty challenging because on one hand you had the joint information center and public health advisories saying that if you're exposed to... not even confirmed positive, you're- if you're exposed to a potential exposure, that you have to quarantine for 14 days. In the Ports case, for as long as the employee was not having symptoms or- or fevers or tested positive themselves, they came to work. And early on, in February, even before the Governor's declaration of emergency... I recall Dominic, Luis, and I... having to go into the employee lounge area where about 30 Port workers were very concerned: we had a vessel coming in with the crew member that was sick. And, of course, at the time we- up to now there's so many- COVID is always evolving and so we told them that we're going to take the precautionary measures necessary, we're going to give them the gloves, the- the PPEs and the hand sanitizers. I issued a directive for the protocol for the vessel operation saying that the employees are not to share common areas or not to use the restrooms on board the vessel, and this protocol was actually- was actually shared throughout the other ports in Micronesia and then when the COVID- when the Governor declared... COVID Declaration of Health Emergency in March, we were struggling in a sense where the port was 100% operational, yet the employees here at the Port were seeing that though most of the government was shut down. And so, we did very effective communication: we went to... each division... we told them the importance of wearing masks... social distancing, washing of the hands, we setup hand sanitizing [cough] hand washing stations throughout the Port, almost immediately the Governor authorized the Port Clinic, where it's run by public health... surrounded by public health, the nurses are DOE nurses... and also healthcare professionals and... year to date, we have 44,171 visits to the Port Clinic. We've opened this up to our tenants here at the Port Customs... through to APL to mail lines, also the truckers when they come in, sometimes we see the truckers pull to the side of the road, run in, have their temperature checked- I mean it just provides us- provided a sense of calm for the employees to check in every day

with the- with the healthcare professional to answer any questions or concerns that they may have. Having all these... precautionary measures in place... as you all know we had 20 positives and we lost a member of the Port family, Mr. Henry San Nicholas.

But even then at that it's just, their mind is so determined that their jobs are so critical that they have to come to work despite how afraid they are because of the uncertainty. But then, as management has demonstrated in providing Port advisories, any questions the Port employees have we address it, any support that we need we get from the Board, we get it from the- the Governor, and so in this environment... I'm able to report... 100% operational... and that we didn't miss a beat. We also told the employees that... when we get through this pandemic, which we always will, we want to make sure that the Port continued on this operational... trend of... taking care of some of the more critical projects: they were actually able to do a coral relocation project at Hotel Wharf, and that was one of the environmental mitigation that we committed to doing in order for the \$10 million TIGER Grant to be released, so everything that you're seeing over the last nine months on top of operations, things didn't suffer in terms of operations, and we kept our employees as safe as we can.

We also stood up our own contact tracing team where we asked Public Health if we- and I- and there were six of us and myself included, we went on the CDC website to be a nationally certified contact tracer, so we didn't want to be a burden on Public Health.

And every time we had a exposure we already knew what to do following those CDC guidelines and protocols, and all we had to do, Madam Chair, Vice Chair, and Senators, is simply tell Public Health how many employees we needed to be tested. And so, we gave the number, they coordinated, we coordinated the testing, and so we had that seamless... process in relationship. We didn't rely on them at all, we- we wanted to take care of everything we can... to the best that we can.

Senator Mary Camacho Torres: Yes, excellent. Thank you. More than anything, you know- thank you very much for keeping the... supply lines and distribute- you know, the ability to- to move product into Guam... flowing so smoothly during that critical time when anxieties were very high for our island, and please extend my love and... concern for the Port family who I will always hold very dear to my heart. *Si Yu'os ma'åse.*

Rory Respicio, General Manager, Port Authority of Guam: Thank you- thank you Madam Vice Chair.

Chairperson Senator Telen Cruz Nelson: Thank you Senator Torres. I'd like to now call on Speaker Terlaje, do you have any questions at this time?

Speaker Therese M. Terlaje: Thank you Ma'am Chair... thank you to the General Manager and the Deputy Managers and of course to the Chairman of the Port. *Håfa adai*, I just have two questions, one is... you describe the customs facility and how you- you are moving on- on that, but I wanted to know if there has been any... interdiction of drugs at the Port or on the ships or at the dock, if that has improved during your tenure or if there's any problem that you foresee that will not be solved by having a customs facility down the road, in other words not- not immediately available at the docks.

Rory Respicio, General Manager, Port Authority of Guam: Yeah, thank you Madam Speaker. What I- what I will report is that the Port Authority and Customs have a very good relationship that, early on I'd mentioned to... Director Peredo, that he has an all-access pass to go everywhere and anywhere necessary to do whatever is necessary to inspect the containers. There's only two entities as we know that can inspect a container or even open- open up a container: it's the Captain of the Port, who's Captain Chase, and also Customs. ...And so, in, in- in letting customs know that they... have the- the authority to go in- within the yard, it all stems back to the Governor asking us to look at the Port Authority and our broader responsibilities to the community. So, it's not just discharging a vessel, putting on a chassis, and putting the container out. It's- it's getting Customs to inspect these containers and supporting them to con- to inspect the containers and that's what we've been doing. They- they do have their... their operations..., we do have... FBI, DEA- I mean the investigations are always going to be active, and we're going to always support whatever is necessary in the areas of drug and addiction.

Speaker Therese M. Terlaje: All right thank you and I know you- you went through a long list of projects but I- there's one that... you could just clarify. So, it's called the tariff simplification... but it's supposed to be revenue neutral. So, you're just... is this- might this have impacts to the tariffs themselves- I mean on the consumers?

Rory Respicio, General Manager, Port Authority of Guam: No, so- so we're in our last... 1% tariff for this fiscal year and the financial feasibility study is going to determine if the Port would have to seek a tariff increase. That's one- one area. The other area with the tariff simplification is we want to make sure that it's- it's just- it's just about repackaging and redesigning how the charges are made, and so that when estimates are given, the upfront costs are going to be the true cost. In the case of the Port, we have what you call special services requests and so you have main charges, and then you have all these over a-hundred some category of charges. And... the concern there is if you don't have the tariff staff check marking those boxes... we could see... the- you know, revenue that we're not collecting. And- and early on I told the carriers that we're going to build per the tariff, ...and- and we've been making those... adjustments to include- ...I had rescinded a memo by a former General Manager Pedro Leon Guerrero that did the guaranteed work modified gangs- guaranteed gang schedule, and so if the vessel operators and the agents determine that it's going to take 18 hours to discharge that vessel, for the tariff they have to charge 18 hours. If they finish it in 16 hours they still charge 8-18 hours and if they finish in 20 hours they charge in 20 hours. So, by one fell swoop of a pen, and to rescind that... that- that order... we're actually billing per the tariff. ...We believe that it's been a step forward in increasing our revenues here and it also helps us capture some- some benefit of having increases in productivity. What it once took 36 hours to discharge a vessel, and we're finishing that in about 18 hours. In the past, they were billed at 18 hours whereas they should have always been billing at those guarantees that they make early on. So that's all part of the tariff simplification process.

Speaker Therese M. Terlaje: All right, thank you, yeah I hope we don't see... an increase too much because when the bond... came through the legislature [I] remember being assured that it wouldn't require increase.

Rory Respicio, General Manager, Port Authority of Guam: Yeah, Madam Speaker, we share your sentiments; so does the Board and the Governor and the Port Users Group- you know they're seeing that we had a net income of three-and-a-half million and then for last fiscal year projected net income of \$4.1 million, they're already asking about rebates. But we're saying let us get through all of these... revenue bond funded projects, let's continue the work of former General Manager Brown and former General Manager Torres and others who sat in these seat, and let's... figure out what, what- what's needed, and then we can talk about rebating if we're still going down this course.

Speaker Therese M. Terlaje: Thank you- thank you all for all your work. Thank you Madam Chair.

Chairperson Senator Telen Cruz Nelson: Thank you Madam Speaker. Senator Pedro do you have any questions at this time?

Senator Jose “Pedro” Terlaje: Thank you very much Madam- Madam Chair. I- I just wanted to point out, you know, that... I just wanted to ask the General Manager how often do they share narcotics information with Custom? And the reason why I asked that Rory, because according to- to what we’ve learned there’s only... 7% of all the containers that are coming into the... the Port Authority has been- being inspected by Custom, and I just wonder why.

Rory Respcio, General Manager, Port Authority of Guam: We... Senator thank you for the question... As I said there’s two entities that are mandated to do the inspections and that’s Customs and the Captain of the Port. However, we do share a responsibility in providing that these... containers are inspected. For instance, ...the Port... previously purchased the mobile x-ray machine... And then coming up to a Port Security Grant, and then we assisted in providing the maintenance to get that mobile extra machine... operational... We’re also working with our consultants to do the container inspection facility. We’ve identified, actually, very prime property within the for- Port’s footprint... to- to build that... facility... Well, I, I- I do get... requests... every now and again from Customs to- on containers that are flagged and then we provide those specific instances where the top loader has to go in, pull that container out, bring it into the warehouse and then do the inspection. But, I’ll say though that with the Governor wanting to have a searchable bill of lading, that’s going to be a- go a long way to move forward on the drug interdiction efforts because then you can- you could see what’s supposed to be in the container versus how much the container weighs, and you can start flagging those discrepancies.

Senator Jose “Pedro” Toves Terlaje: And I just want to add that, you know, in the late 1960s and early 70s you know, when I was in charge of narcotics I worked very closely with the, with Commercial Port and also with Custom. And you know, we eradicated heroin at the time and we also eradicated the- the importation of cocaine. So, I’m just going to... maybe we- we can move up the- the 7% to at least 10% or 20%, that- that would surely help. Thank you very much.

Chairperson Senator Telena Cruz Nelson: Thank you Senator Pedro, Senator Joe do you have any questions?

Senator Jose S. San Agustin: Thank you... Madam Chair... Senator Rory General Manager thank you for your presentation... and to the Chairman... Bishop Santos I thank you sir. ...I'd like to- I just like to extend to the... the folks at the Port Authority: stay strong. Just be safe, and- and now my office will be contacting your office to communicate on certain issues that we would like to address, but not at this point. Thank you Madam Chair.

Chairperson Senator Telena Cruz Nelson: Thank you Senator San Agustin. Senator Taitague do you have any questions at this time?

Senator Telo T. Taitague: *Si yu 'us ma'åse* Madam Chair. ...Madam Chair according to your- your agenda it- it says- is this the part we talk about you know, the drug work- ...Let me pull that up again. ...On your agenda... [One moment] please. Okay this is the time we can ask the questions? It's not just-

Chairperson Senator Telena Cruz Nelson: Well, I know that there's a presentation but I wanted to get this part done first, because we have limited time and then if we have to recess... we can recess and come back or, we do have another oversight hearing that's going to take place; we'll include that in the agenda if we miss it, but I wanted to- I hope we'll have enough time, but I think we will.

Senator Telo T. Taitague: Okay. Thank you, then I'll just stay on point with regards to the presentation then.

Chairperson Senator Telena Cruz Nelson: Okay.

Senator Telo T. Taitague: ...So *Håfa adai* Rory, good to see you... Again, thank you... for being here and presenting a very thorough... presentation, as well as Mr. Chairman it's so good to see you, and... the Deputy General Managers that are here as well, that's in the background- can't really see your faces back there but... we know you're here and- and thank you so much... Rory... you mentioned- okay about the insurance: who is your current insurance carrier at the Port?

Rory Respicio, General Manager, Port Authority of Guam: Our current insurance carrier's always been the insurance carrier for as long as I can remember: it's AM Insurance.

Senator Telo T. Taitague: A-AM Insurance?

Rory Respicio, General Manager, Port Authority of Guam: Correct.

Senator Telo T. Taitague: Okay, and they- they were there before you- you came on too?

Rory Respicio, General Manager, Port Authority of Guam: And many years before that.

Senator Telo T. Taitague: Okay, AM Insurance. I guess they're giving the port the best deal then to keep them on. That's good to hear. If they are- they are, aren't they? [Rory responds by nodding] Okay.

Rory Respicio, General Manager, Port Authority of Guam: They are.

Senator Telo T. Taitague: Okay, the second one is- you know, what role does the Port play with regards to Customs and capturing used taxes... Can you explain that please?

Rory Respicio, General Manager, Port Authority of Guam: Yeah that's really a good question and the RSM Project, where we want to bring in the Customs, the Port, and the Port Users. And, I talked about the benefit for Customs in doing that IT integration, is also to recognize the used taxes. The Public Auditor did a report saying that we have, I think, ballpark of \$200 million dollars in used tax that the government's not collecting because of the- a kind of inadequate infrastructure that's in place to be able to collect those used taxes. So, so in that RSM Project... they're coming up with the- the Port has the capacity... IT wise... they just have to come up the- the consultants are coming up with what kind of system... the carriers have to get in order to create this community portal. And there are-

Chairperson Senator Telena Cruz Nelson: ...Forgive me, I'm sorry for interrupting but I think we're offline on YouTube so can we just pause real quick and verify with AV and make sure that we're still connected?

Rory Respicio, General Manager, Port Authority of Guam: Okay.

Chairperson Senator Telena Cruz Nelson: Thank you.

[Recess occurs]

Chairperson Senator Telen Cruz Nelson: Thank you everyone for being patient, we are having some technical difficulties here at the Legislature, but we are back online. At this time, I'd like to give my sincerest apologies to Senator Dueñas, he was... present since the beginning of this hearing, forgive me for not recognizing you. I guess we're having difficulties here on my end as well. So, we left off with Senator Taitague and her question to... the GM Respicio so Senator Taitague please proceed. Thank you.

Senator Telo T. Taitague: Thank you Madam Chair... Just for the sake of time, you know, I did ask the first question; the Port Authority is continuing to use AM Insurance Company for the Port, and my question was: what role does the Port play with assisting Customs and capturing the used taxes?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, thank- thank you... Senator Taitague for that question. I- I was explaining that... the RSM Project that'll bring the Port Authority, the Port Users Group, and Customs together... to establish a community portal. The Port does have the IT capacity, and so this RSM Project is to come up with- with what the carriers need to do to tap into the Port's IT infrastructure, and then what Customs need to do to tap into this community portal – where you can have a big step forward – would be the searchable bill of lading to not only help with the- with the collection of used taxes; there was a public auditor report that talked about as much as \$200 million dollars not being collected only because... Customs does not have the IT infrastructure to do that and possibly some other reasons. And so, the Port is working closely with customs, they received a \$300,000 dollar grant from the- from BSP Bureau Statistics and Plans, and we're kind of saying that wherever RSM leaves off, that's where Customs should continue... So, we're not having a case of two steps forward, ten steps backwards, and we're really going to have to integrate. So, while the Port does not play a role... just like I said the Port... does not have the responsibility of drug interdiction but we do have the responsibility of the broader community, so we're supporting Customs every step of the way and... in the RSM Project, that's one way to support Customs- I, I talked about the Port's objective, improved efficiencies and operations, billing collections, going paperless, and meeting the Port Users operation needs. The Port Users objective is to go paperless, pre-clearing of cargo containers, improving operational efficiencies, digital sharing of the manifest; and Customs objective with this RSM Project is automation; going

paperless; advanced clearing of cargo containers; significantly reduced front-facing clearances; searchable bill of lading; digitized manifest; interdiction of drugs, bio-securities, terrorism; and improve collections of the used tax.

Senator Telo T. Taitague: ...Thank you... Director... Respicio and I hope your timelines is just as aggressive as what you're doing at the Port right now because of the loss of revenue, especially- I'm sure you're keeping an eye on the revenue coming into the Government of Guam right now. So, greatly appreciate that and- and for the sake of time, Madam Speaker, I'll save my other questions till later, thank you.

Chairperson Senator Telenia Cruz Nelson: Thank you Senator Taitague, Senator Moylan do you have any questions at this time?

Senator James C. Moylan: Thank you Madam Chair, thank you to the panel... Just one question for Director... regarding with the COVID situation: can you let us- give us an idea about the amount of cargo that you have seen coming into- the Port has been greatly affected, the amount of containers unloading and- and so forth- how's that- COVID has affected that place? That's my only question.

Rory Respicio, General Manager, Port Authority of Guam: Thank you, thank you Senator, great question... So, we're- we're tracking, obviously, month-to-month, and... to no surprise we ended up... 1% more in cargo container throughput... Last fiscal year- or 2% rather... year-to-date... during the... pandemic, and as of November we were like 6% behind- in December where we made it up. We're- we're 1% ahead... early on in this pandemic... We had to take a meeting with... Standard and Poor's, who put the Port on credit watch because they're tying the Port to JVB's general fund and, also the airport... So we've been on credit watch, we hopefully are able to make an argument that despite the pandemic and the severe financial shortfalls that those other entities are experiencing, we're actually posturing to have a net- projected net income of \$4.1 million for last fiscal year. And, I- I was also asked to give an update which is in line with your question on the financial update as of December 31st and so the revenues and cargo throughput: year-to-date, the Port's total year-to-date operating revenue for December 20 is \$14.9 million, which is 7% or \$943,000 higher compared to year-to-date FY21 budget projection of 13.9 million. The total number of containers handled as of December 2020 is 21,753, which is 1% higher or 162 more containers compared to last December 2019 total of 21,591. Our operating expenses, overall spending year-to-date, is actual... budget... versus actual budget of FY2020 of \$12.9

million is 1% lower than the budget of December of \$13 million so we're- our revenues are going slightly up, our expenses are down. Our overtime expense and direct labor revenue: over time year-to-date for divisions involving operations is \$271,863, which is 16[%] lower than year-to-date budget of \$322,023 dollars. The overtime for budget resulted in a decrease of 23% or \$23,000, as compared to November from \$99,205 in November to \$75,995 in November. Our direct labor reimbursement is \$848,000 which is 4% or \$34,000 higher than FY21 budget of \$815,000.

And so, what we've also did is- I mean the Governor and the community and the Board and Senators ask a lot of the report and- and so in this pandemic... for the- for the tariff... you have five days to- to get your container out of the Port. And because... when Governor first declared the public health emergency you had containers that are- were already on the ship and so in working with the Port Users Group, what we're doing is we're extending the number of free days... up until we get back to PCOR4, but what it means is that these businesses can still bring their containers in, they can stockpile at the Port, and whenever they need to get those containers – as those businesses start opening it up – they will work with the agents and the Port to get those containers out... It doesn't cost us money to have these containers at the Port, and... -but what I did want to make sure is that we're charging on the special services request so, every time a top... lifter or a forklift has to go and dig a container out, we're tracking all those expenses which is possibly why the direct labor reimbursement is 4%... higher, and in last fiscal year the direct labor reimbursement was almost a million more than what we... what we projected. And the way the board projected the revenues for this year is, we wanted to see what the actual collection experience is during this pandemic.

So, the board had asked us to take April... to July, extrapolate that over 12 months... -in the last... two fiscal years we have a monthly allotment of \$4.9 million dollars, we wanted for this coming fiscal year to keep that monthly allotment to do the exercise to see if – on a reduced revenue with the increased debt service – we would be able to maintain the \$4.9 million. Also, given the statutory requirements for the personnel categories for the increments we, we- we are still living within the \$4.9 million-dollar monthly allotment and we're still- even with... lower revenues, even with the reduced budget... we're still... we're- we're going up and going down where we need... to realize a positive net income. And that's what the, that's what the Board is required of us. [Pause, Senator Moylan gives General Manager Respicio a thumbs-up and the O.K. sign] I just gave a financial update and that's what the Senator asked- that your Chair asked me to do anyway so I

think, I think that satisfies that component. Oh, and by the way the year-to-date operating revenue minus year-to-date expenses... We have a projected net income: [it] is 56% lower than year-to-date... However, the net income budget is... \$1 million. So, we're still realizing a positive net income [pause] year-to-date. [pause]

Chairperson Senator Telen Cruz Nelson: Senator Moylan? [Senator Moylan gives a thumbs-up and the O.K. sign] Okay. Senator... Dueñas do you have any questions?

Senator Christopher Dueñas: Thank you Madam Chair... for recognizing me and... to the Senator Respicio, ...the Chairman, and also Chairman Santos and other Board members, as well as members of the Port team. I only have one question for the General Manager: I noticed in the presentation on Customs and the... the plan going forward on the construction of the inspection station...going forward. As you know, Senator, we worked on this together under the Guam Invasive Species Council and the requirements... that department have- a two-part question: is the Department of Agriculture currently active as per that requirement as being a co-front-liner with the Customs to be aggressively inspecting cargo coming in for invasive species? And also, are they coordinating as well with Agriculture- I mean with our Customs on the design, build, and construction... components of the upcoming Customs inspection? And I- I thank you- your team for all their work and that's my only question Mr.- er, Madam Chairwoman.

Rory Respicio, General Manager, Port Authority of Guam: Yeah- yeah, thank you Senator, I had a feeling you're going to ask about the bio-securities. Good question, because the Customs is looking at all the revenue streams pursuant to their mandates, and the Bio-Security Fund – which you've established – is one of them. And they're also reaching out to other local and federal partners to see if they can be housed in that container inspection facility, and they'll just pay the portion of the rent that's required. I- I, I'm not sure... in regards to your first question, I could follow up with the Bio-Securities Council or Customs or- and Agriculture to see if there's some issues there. But with respect to your concern about how we can consolidate that operation into the container inspection facility, those have been factored as part of that equation.

Chairperson Senator Telen Cruz Nelson: Thank you. Senator Dueñas, is- that's all? Or do you have any more questions? [Senator Dueñas waves and mouths "I'm good"] Okay... Senator Ada do you have any questions at this time?

Senator V. Anthony Ada: ...Yes, thank you Madam Chair... General Manager Respicio and Mr. Chairman- Mr. Santos, how [are] you guys doing? [General Manager Respicio gives a thumbs-up, Chairman Santos waves] ...thank you for the... the presentation, I think... you know, give us a- a good breakdown of how things are going at the Port; you know, I didn't have any issues with... getting any of our containers out of the Port during the pandemic, I think the- the Port people have really... put their best foot forward and continue to service the people of Guam... in- in times of... you know, uncertainty. And, I think that's what's important- is that we continue to move forward with... the good of... flowing in and out of the island... On your- on your... presentation on page 40 you were talking about the Fuel Pipeline Connectivity Project. And, I think- if I'm incorrect, you know, if I recall correctly there was a- an issue with a fuel pipeline running right through the- the Port Authority, right?- the, in a secured area. Does this take care of that- that... issue that they had in the past?

Rory Respicio, General Manager, Port Authority of Guam: ...Yeah, that- that's a[n] issue that we have been talking about in the Legislature and there's some legal issues with respect to easements and, it's one of the things that the new council has been tasked to look at.

Senator V. Anthony Ada: So- but does this grant cover that... particular... -or is this just a different project for the grant that is... applied here?

Rory Respicio, General Manager, Port Authority of Guam: Correct, it's a totally different project to connect Golf Pier and F1, and to create that redundancy. But-

Senator V. Anthony Ada: Okay so then, [pause, General Manager Respicio mentions "separate"] then that- that is still a separate issue that still needs to be addressed.

Rory Respicio, General Manager, Port Authority of Guam: Yes.

Senator V. Anthony Ada: Okay. Thank you, that's all I have Madam Chair, thank you.

Chairperson Senator Telen Cruz Nelson: Thank you Senator Ada, Senator Brown do you have any questions at this time?

Senator Joanne M. Brown: Thank you very much Madam Chair and certainly... to Chairman Santos, I know we haven't been able to hear from you but I just want to extend my hello, and certainly to GM Respicio I did have several questions, I'll ask them quickly I know that time is of- of essence here. But with regards to your Bond Projects, now that's it's been over two years and you did mention the timelines of completion, what projects have you broken ground on already for construction?

Rory Respicio, General Manager, Port Authority of Guam: Well then- well while we wanted... to break ground immediately, what we found is we've had to do certain things administratively, for example, the TIGER Grant. Early on in- in the term, we're given three weeks to figure out... how come it took three years to get that thing off the ground... Chairman Santos and I flew to [Washington] DC with Joe Javellana to meet with MARAD, to explain to them the challenges, and this cookie-cutter thinking that one size fits all wasn't the case in Guam. I explained to them, Senator Brown, that the reason for the delay is because, for as far as I can tell, that the Port was waiting to see what would happen with the Bond Project in order to move forward with the TIGER Grant application, because there was a matching grant requirement. So, we- we got through that, we- we're working on the A&Es right now, and the biggest thing too is with the revenue bond legislation and how it's structured. You've- we've identified the project and the amounts, ...and those amounts were estimated at 200... 2014, so we're anticipating coming back to the Legislature, having to re-tweak those numbers. We, we are issued the A&E, as I mentioned, for four projects but with these timelines, with Attorney Keeler... on board, with Attorney Christine Claveria... we're very confident that we're going to meet these... revised deadlines with MARAD and Barrett has approved all of these revised... timelines given the COVID pandemic situation as well.

Senator Joanne M. Brown: No, I appreciate that I know MARAD is very well aware from the beginning to the end with regards to the TIGER Grant funding and our efforts to pursue the Bond, but out of those projects that are identified, you- do you have any order of what you are going to be able to execute sooner? -because I know we are a bit anxious; it's been a couple years of course since the funding was acquired. I'm sure our bondholders want to see those projects in construction so, do you have a- to have a schedule on which one you'll be able to do first, second or third I- I know you elaborated on the TIGER Grant with- with Hotel Wharf but, the waterlines and other critical infrastructure... Which will you break first?

Rory Respicio, General Manager, Port Authority of Guam: Yeah it looks like Hotel Wharf... coming out of the gate. On the agenda for this Thursday's board meeting is the approval of the CM – the construction management – for Golf Pier. We also have... the preliminary A&E design for the waterline, for the warehouse, EQMR building; everything is going to just come down... almost all at the same time, and we're just going to have to manage it. But we're just as excited as you are – and the community is – to see these Port Modernization Programs and Revenue Bond funded projects go through.

Senator Joanne M. Brown: So we'll hear soon that you'll have those projects that forbid to- contractors to be able to bid on those projects in the next how many months do you think?

Rory Respicio, General Manager, Port Authority of Guam: ...We think that... we're going to award the CM with Gold Pier, in the first quarter of this year, and that's after getting the PUC approval. Because, as you know, any Revenue Bond funded project must go to the PUC, and more over if it's \$1 million dollars or above but, but on a- on a personal level, I would be looking forward to your support in particular when we have to come back and ask that those amounts and caps per project- I'll give you an example: Golf Pier was capped at \$2 million; we already know it's not going to be \$2 million dollars – as well as the other projects – and I'm going to have to first have this very tough discussion with your Chair and your Vice Chair, but the Board and Governor, and then we'll come down as a team to figure out how best to approach this.

Senator Joanne M. Brown: One other question I, I didn't see elaborated on your presentation, has to deal with your equipment status: if you don't have that readily available, that's something you could provide to the Legislature – what your current operational equipment status is? -and then also what any additional equipment you've acquired in the last couple of years just so we can track... the equipment that's been acquired. And then I also want to enquire: is the maintenance still being maintained with regards to... your washdown facility? ...Is the equipment in the yard still being properly washed down, is your washdown facility operational, and is that maintenance being addressed?

Rory Respicio, General Manager, Port Authority of Guam: It is, and, in fact we also brought Customs back to be able to wash down their official vehicles in the yard.

Senator Joanne M. Brown: Okay, so can you provide that to us and the committee and certainly to my office, I'd be curious obviously to keep track. It's very critical to make sure that equipment's maintained. One last question and then – I know Senator Peter Terlaje brought it up – that, have you had any... joint inspections- not just with Customs or with the Coast Guard because that's pretty standard, but with regards to DEA and any other local and federal entities- Guam Police, that's not uncommon for those type of inspections to happen in the yard... As you know we have a growing drug problem on the island and there's no doubt in the past there's evidence that that has come through the Port of Guam and that's still coming through the Port of Guam and other ports of entry... Have you had any type of joint... inspections unannounced, inspections of that type of the Port during your tenure?

Rory Respicio, General Manager, Port Authority of Guam: Well, I appreciate your question, and I'm sure you can appreciate my situation where I can't discuss any active and ongoing investigations. But as I said-

Senator Joanne M. Brown: But you- could you discuss this- at least you can elaborate- have any type of inspections of that nature occurred?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, I will... I would not respond to that, only for the fact that there are active investigations going on at the Port. But as I mentioned though, we are very accommodating... with Customs, as well as other federal law enforcement- enforcement entities.

Senator Joanne M. Brown: Okay, well I think it'd be good for the public to know that- that... hopefully, maybe at some point we'll hear of those type of inspections have occurred, because I think- I think with all the growing issues of drugs in our community I'm sure our people want to have some sense of comfort... that any actions of activity going through the Port... are being, you know, followed up on, so that we can reduce that... the import of- of these type of dangerous drugs into our community... with that, thank you very much Madam Chair for the opportunity to provide some questions. Thank you.

Senator Mary Camacho Torres: Thank you... Rory Respicio we'd like to ask you now to... if you can continue with the agenda... I believe you have a brief presentation on the drug free workplace program policy for the Port.

Rory Respicio, General Manager, Port Authority of Guam: Yeah, I think- yeah, I do... only to say that we do have the drug free workplace... program, and we do have the SOP that guides us; I believe that the- the Chair... announced that there's going to be a separate oversight hearing to discuss that... hiring's at the Port, and certainly we welcome that. But I did- I did want that- yeah, I did want to take the opportunity to- to just sum up by, way of a video presentation, on the Port in the pandemic if I could do that real quick, it's a couple minutes. Let me play it. [Pause, General Manager Respicio proceeds to ready the video presentation]

Senator Mary Camacho Torres: I also want to note going forward that, for the next one, that there is also the- the program policy available... on your website for anybody who wants to review it ahead of time; I know that it's... it's about a 33-page document as I recall.

Rory Respicio, General Manager, Port Authority of Guam: Okay. And, let me just continue this, thank you.

[General Manager Respicio plays "The Port in the Pandemic" video presentation]

[Video presentation concludes]

Rory Respicio, General Manager, Port Authority of Guam: Okay.

Chairperson Senator Telenia Cruz Nelson: Thank you... I'm sorry to interrupt again but I believe that we are offline on the YouTube, and we do have people that are watching on YouTube live so, can we just take another quick break so AV can verify.

[Recess occurs]

Chairperson Senator Telenia Cruz Nelson: Okay thank you everyone for being patient we're back online again... Mr. Respicio can you please move forward with the- [pause] thank you for showing the video it's very informative and I'd like to thank all the Port employees for the hard work that they've been doing, especially during this pandemic. Really being a part of the front line and ensuring that we get all of our good imported and our food resources imported so that we may be able to sustain ourselves during this time. Can you please move forward and do the presentation for the drug free workplace?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, thank you very much... Madam Chair. Madam Chair so, in the area of drug-free workplace we are guided by the Drug-Free Workplace Policy and the standard operating procedure for the implementation of the Drug-Free Policy. All of the positions at the Port with the- to include the law enforcement positions as well as the- my position, the Deputy General Managers, every single employee here at the Port is in a test-designated position. And so... coming into the Port, of course there's all that chatter that the Port employees are on drugs, that the drugs are coming into the Port. We have been testing consistently on workplace accidents. We have not had any positive cases showing up until early December of last year. We had an incident on the yard... an accident... we tested the employee, he tested positive... And so, in the employee... -in the implementation of the drug-free workplace... how we approached it is that the employee did everything right: he recognized the problem that he has, we had set him up to go to the Guam Behavioral Health. There's a provision in the Personnel Rules and Regulations that call for suspension in lieu of termination, and the maximum infractions provided therein... And then- so I issued a notice of proposed adverse action and then there's ten days to... to issue the final adverse action. Within that time, I had the employee... tested and the employee tested negative, so that's a good demonstration to us that- that employee is on the right path. We also checked in with his drug rehabilitation counselor, saying that he's doing everything right.

And so, because he was deemed positive as a result of a drug test, there was some adverse action taken against him. He's... went through the program and so far so good and, part of this program requires us to drug test at any time, and if any time he tested positive once... he would be terminated. And then so mid-December we had a situation, there was a hole in the wall... three employees tested; two employees tested positive for methamphetamine. The same scenario: both employees- we had them go to Guam Behavioral Health to do an intake. Several days later I ordered... drug tests on both of them; one employee came back negative and then the other employee came back positive, this time for two additional... substances. And so, ...we had to wait for a confirmatory to- to come back to us before we can proceed with the adverse action process. So certainly, if employees are in that situation and they're testing positive even one more time then their fate has been determined by them. We had a- so Dominic, Luis, and I and the team, we talked about doing a random drug test which can be done on reasonable suspicion on workplace accidents or just... random- where you do lottery of the positions and those positions come out. So, on December 31st, I wrote a memo to all the employees reminding them of the drug-free workplace,

reminding them of drug testing based on these conditions, and then- so we did the drug testing on a particular division based on reasonable suspicion. 24 employees tested, 24 employees came back negative, ...two employees evaded and for whatever reason they evaded they – that same day – they resigned. And so, in looking at those two employees that evaded, I determined that there was two leaders: there was a supervisor and a superintendent that were close to these employees in the leadership capacity. I'd issued a notice of proposed adverse action to each of them... because I told them that if I determined that there's an employee is positive as a result of a drug test, ...they're also going to be held accountable. It's going to take all of us to come together, circle the- the workers here, and identify those who need to come in to get the help.

If they come in before they're determined positive as a result of the drug test, then certainly we would help them to be rehabilitated, but once they determined to be positive as a result of the drug test, then those administrative consequences will occur to include termination. And then there was another employee – the morning of the drug test – that was messaging in the employee divisional chat not to bring any illegal things to the Port because the Port is conducting random property searches. And so, I talked to the employee as well, and so there was five notice of proposed adverse actions that I issued, and that's the most to which I can talk about them because they're an ongoing personal matter, and then we have yet to conclude what the final disciplinary action will be for those cases. And so, I hope you're seeing... our approach, it's not... it's not selective prosecution or it's not letting those who are close to us skate, letting those who are not close to us resign or be terminated; we're saying we hope to demonstrate that at the Port, again, we recognize our broader responsibility to the community, and in the area of drug rehabilitation, on the area of our employee assisted program, the things that I'm doing are not new to the Port Administration, they are policies that exist and we're following those policies.

And so, which- which Senator Torres pointed out, your Vice Chair, that these policies are on- on the Port's website... for the public... to review. But 24 tested, 24 came back negative, and we're going to continue to... do these kinds of... drug testing. Is there any specific questions, Madam Chair, that you have that's just not an overview-

Chairperson Senator Telen Cruz Nelson: Yes thank you, Thank you Rory... Also, you mention that there was adverse action taken for those individuals that tested positive, and so, which- and so I'm thinking that this is the time where your-

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

your personnel matter- the one that you mentioned in the beginning- the beginning, the group that you mentioned- the beginning. You don't have a drug... what is it, a zero-tolerance workplace where, once you test positive for any type of controlled substance, that you are terminated; you allow them a second chance. Is that your process? Can you explain that?

Rory Respicio, General Manager, Port Authority of Guam: Well, we don't... Yeah, we don't have safe harbor at the Port because law enforcement and test designated positions, but what we have in the policy is... suspension in lieu of termination. And, I believe that if the policy calls for an infraction to be matched by a certain consequence, I believe that if I go beyond what that consequence is, then you have a civil service case. What I'm doing as General Manager, and as treating this drug... in- instances as though we- how we treat our own family issues... we're- we're getting the help for those employees who need the help. But again, ...the records there, the processes are there for any audit... to be looked at... if the employee wants to better themselves- I even reached out to Theresa Arriola – the Director of the Guam Behavioral Health – asking her what is her capacity at Guam Behavioral Health, because if employees do come in... to get the help prior to being identified as a result of a drug test, I cannot just say “come see me, we'll work with HR” and then they go to Behavioral Health and there's no- no space for them. So, Therese Arriola- Director Arriola, has committed that they have the capacity, and they've been helping us with these instances. So, in the last... 24 months that I've been here, we've had three instances where three employees tested positive.

Chairperson Senator Telen Cruz Nelson: Okay, and then you're able to- you're able to go through the rehabilitative process... through some measures of suspension in lieu of termination, but they still keep their job, they just don't receive their paychecks for that time and then they're still in some sort of program that is offered through Behavioral Health?

Rory Respicio, General Manager, Port Authority of Guam: Correct Madam Chair, and when they're going through this drug rehabilitation program, they have to sign leave on their own dime. They sign – annually – sick leave, or they have leave without pay or even leave sharing, because their focus has to be on their own drug rehabilitation and they cannot be coming to work at the same time they're going through that problem.

So, it's- it's not slapping someone on the wrist, it's not giving them a pass- they have to do the hard work. And believe it or not, this one employee in that division that tested positive, and then tested negative, and going through this drug rehabilitation program, we have his front-line supervisors who have just circled him: they're checking on him, they had a conversation with him and his family; I don't- I'm just amazed how the Port Authority employees, as a authority, had just come together and picked those who are down and out, and figure out a way to pick them up. And it's that same spirit that we presented during the COVID-19 Pandemic: to ask employees to be contact tracers, to ask them to do the functions of public health; there's no que- whatever you ask them they'll do, but just get them the guidance, get them the tools, get them the resources and- and the[y] will go above and beyond, and you might not think it's... Port Operations to be involved in drug rehabilitation but, I've had conversations with the Governor and she said "Rory, you have to treat the Port and understand the Port's broader responsibility to the community."

To just fire people and then put them out in the community, it becomes a community problem. And I want to assure you, your members of your committee, and the Legislature, that we're not soft on drugs, I'm not soft on drugs, I'm not soft on crime. I'm not afraid to terminate people and I have, but I'm also always going to make sure the employees have due process. And this is part of the due process.

Chairperson Senator Telen Cruz Nelson: Thank you. Senator Torres do you have any questions at this time?

Senator Mary Camacho Torres: ...I don't have any questions but, I think it's important though – just coming off of what the General Manager talked about – to read very briefly the statement of policy, of the- the Port's Drug-Free Workplace Policy- Program Policy. It states that: "The Commercial Port is committed to a drug-free workforce to protect safety of employees in the public. The Authority administers a drug screening program with strict policies and procedures in place, to ensure its accuracy and integrity. It is the policy of the Jose D. Leon Guerrero Commercial Port that applicants, given conditional offer of employment, shall submit to a drug screen. In order to protect the safety of the employees and the public, no applicant whose test shows illegal drug use will have employment considered." - So, you have to pass the drug test off the bat - "It is the Policy of Jose D. Leon Guerrero Commercial Port that employees may be required to take a drug screen to show they are drug free. If there is reasonable suspicion or illegal drug use, the Authority will give current employees an opportunity to rehabilitate

and return to their jobs as productive members of the workforce whenever applicable by law. Current employees who do not rehabilitate or who have a second confirmed test, which shows illegal drug use, may be disciplined in accordance with Civil Service Commission adverse action procedures. It is the Policy of Jose D. Leon Guerrero Commercial Port to inform applicants and employees of the drug screening program prior to being conducted. The authority will consider the drug screening results and the medical information provided by applicants and employees as confidential.”

I- I think it's very important that, anybody that is interested in any discussion about drug-free workplace policies, consult with the... the document so that they understand the full play of what is being considered here and how the policies are... very strict and adhere to. Even myself, in the first couple months that I was employed there, ... [I] was made to take a random drug test, along with many employees; there's no- there's no discrimination... about who gets tested and who is required to adhere to the Policy. So, I just want to- to read the statement of policy because I think it- it, it brings... into circle what the General Manager was describing in terms of some of the more recent developments. Thank you Madam Chair.

Chairperson Senator Telena Cruz Nelson: Thank you Senator Torres, Senator Taitague do you have any questions at this time?

Senator Telo T. Taitague: All right *si Yu'os ma'ãse* Madam Chair... Rory, during...Director Respicio – I have to remember where we are right now when I talk to you. [GM Respicio: Rory is fine.] Okay... Director of- well you know, just for the sake... you talked about... safe harbor that you don't have- safe harbor [GM Respicio nods], or you do? [GM Respicio shakes his head] You don't have safe harbor?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, my reading of it is we don't have safe harbor, and many people think safe harbor is when you're told to take a drug test, you declare that you're using drugs. That's not safe harbor. Safe harbors- you have to come in ahead of time, but we do have the Employee Assistance Program that outlines exactly what I'm doing: call out the employees, call out the leaders, to bring them in to set them up with Guam Behavioral Health to get them the work that- the help that they need.

Senator Telo T. Taitague: You just mentioned too about earlier in your conversation about an individual who was able to, like, alert the employees that they're going to be doing a check and... how do you think that individual knew about this check that was going to happen?

Rory Respicio, General Manager, Port Authority of Guam: So- so thank you for the question Senator. So, it wasn't... tipping on a random drug test, it was tipping on a routine search of property that Port Police does routinely. And so, when- as part of the disciplinary process, I met with the supervisor and the Deputy General Manager and the employees, and the employee really explained that he- his message was not anything near "Don't bring drugs to the Port", he affirmed that he's against drug use, he's in favor of drug testing in a drug-free workplace; It was something else that was nothing related to drugs and it wasn't any harm at all, and so he was just- because you know they have family members, so the fast way to get information through is through that divisional chat... And so, I'm still having to decide... you know, what we're going to do with that employee, but I could- I could assure you that he- he did not mean any... malice by saying "don't bring" ... "drugs to into the Port, don't even bring illegal stuff into the Port." ...

Senator Telo T. Taitague: And, you've mentioned Rory – earlier – that because there was going to be some checking that, you know- you didn't answer my question, my question was how he was able to get that information that the Port was going to do a check, and- and regardless, Rory, whether it's, you know, material stuff or you know, ...that you were talking about. I mean this is- this is how they, they're able to do the same thing with drugs, you know, whether it's, you know... a cockfight knife- you know, the knife they use for cockfighting, you know, that's obvious[ly] illegal, and then... versus drugs. I mean, it could be the same thing so again, my question is – that individual you spoke to when he gave out that information on the WhatsApp chat – have you looked into finding out where- how he was able to get that information? Where do you get it from- and the same goes with- I'm alluding to the same thing when to random drug testing... And, you know, it's put out there that tomorrow, "Hey everybody" you know, "someone show up sick" you know, because we're going to have a random drug testing. So that's- that's my-

Rory Respicio, General Manager, Port Authority of Guam: So- so, so I believe I answered your question: what he was tipping them was a search of the vehicle.

Senator Telo T. Taitague: No, nobody was tipping, I was asking how do you think he got that information that there was going to be a check?

Rory Respicio, General Manager, Port Authority of Guam: Well, because he was searched; he came early, like at 6:00am, and his vehicle was searched randomly and then, so he just put on the chat right away “Hey they’re searching” ... “doing random search for property”. And- and that was my concern too because I'd only informed one person the day before in HR that we’re going to do this drug testing, and then- I had the same reaction that you did is: how did the employee know before coming to work that there was a search, but it wasn’t... drug testing, it was search of the... private property, the vehicle. And he came early.

Senator Telo T. Taitague: That’s- okay, thank you for that, that is what I was asking. And, what about... with regards to drug testing? How many people know – firsthand – when that’s going to happen?

Rory Respicio, General Manager, Port Authority of Guam: Just the- just HR person... the PHR is our vendor, and myself.

Senator Telo T. Taitague: Okay, so it’s very individual. Okay.

Rory Respicio, General Manager, Port Authority of Guam: And, so- so remember, when- that division was identified, ...24 people were tested- all the 24 people on site were tested, the two evaded, and... what I- but what we did is we had HR contact them and said “Because you were physically at the Port” ... “you have to submit a specimen. If you don’t, then you’re presumptive positive.

Senator Telo T. Taitague: Before coming to the Port, Rory, as a General Manager and even when you were as a Senator, that there were, you know, people were bringing up concerns about the Port and how drugs are coming in through the Port- also the airport, you know, area- point of entries, you know, it’s- I’m not just pegging them I mean it’s coming in. And... did you- did you feel that there was an issue with... this back then?

Rory Respicio, General Manager, Port Authority of Guam: Well we- we always hear the chatter and- even during the Leon Guerrero-Tenorio transition, I was the subcommittee chair for the Port, and that’s the chatter that we hear. But since being at the Port, we have not had any evidence of any drugs that were in any containers or whether there were drugs on any of those vessels; what we did want to make

sure is that we're going to facilitate as much as we can to support Customs... to do these inspections and so, you might ask them specifically: how come they're not inspecting to- the percentage that... Senator Pedro and others- all of us want, but from... from operational perspective... we don't see that Customs is in the way of Port operations and we have to do this simultaneously, and- and so because, -and then we're also hearing the chatter of the drug use here at this place. Like I said, from our drug testing based on workplace accidents, we- we didn't start having any positives until December of last year. And then from December of last year, we had those two cases; then we wanted to start the new year and as Senator Torres pointed out, we have to inform the employees over and over that we can test based on random drug testing, reasonable suspicion, workplace incident- that's what the policy provides, and so when we have three already, -So then that's when we started going out and, the data shows 24 were tested, 24 came back negative. So, all this chatter of the Port-

Senator Telo T. Taitague: Wait, three ran away- or, two ran away?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, two ran away, but for those-

Senator Telo T. Taitague: Not a... you know, it's not 100% clearance, you know, you keep bring the 24 up but you're forgetting the other two that ran away.

Rory Respicio, General Manager, Port Authority of Guam: Well- and also we don't really know why they resign, we can suspect- we can kind of come to conclusions of why they resign, and we don't know why they evaded but, let's say 26 were tested and two come back... I mean, I know one is one too many but I- I think it's, it's- it's not responsible for us to feed into the Port employees, or on drugs- I mean they, they come to work having to deal with COVID, having to deal with the very tough job, they have- blue collar worker environment is very hard. Very hard, and I appreciate the work that they do and, the last thing we want to do is beat up on them by feeding into the stigma. Now if I tested 24 people and 24 people came back positive, I wouldn't put that under the rug either, I'll say "We're going to see which of the 24 want to get help, which don't want to get help- they don't deserve or belong here at the Port, and we just have to go forward.

Senator Telo T. Taitague: Rory, I don't think anybody here is trying to beat up on the Port, we're just trying to keep our community safe, you know. And I really appreciate the- this... the Chair, who's provided us all the information on every

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Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

newspaper article that came out with regards to this concern and I greatly appreciate that Madam Chair, for you putting up so that we can go back and review some of the issues that were brought up. And one of the greatest concerns in our community is that this is an area that has to have trust. Major trust, you know, it's- it's like, are there- they're held at a higher standard like our police department, our fire department, they're all held at a higher standard. And an area like this, there's got to be some trust – I understand – but, we're- we also have to make sure that we put individuals into these positions that gain our trust and not have lost our trust. Now my last question, Madam Chair so I can allow- to move on is, who creates these rules and regulations, I- I'm looking here that was provided to us – regarding your Drug-Free Workplace Program Policy – is this created through a triple-A process? Is it something that's created by the board or- how was this created and when's the last time it was updated?

Rory Respicio, General Manager, Port Authority of Guam: Well, the Personnel Rules and Regs are created by statute. The Drug-Free Workplace Policy are Board policies, and the standard operating procedure – which implements the Drug-Free Workplace Policy – was created in 2010. But if you look at the Port's Standard Operating Procedure and Department [of] Administration's Standard Operating Procedures, they're almost synonymous and, and you recall, Senator, you're in the Legislature with me when Senator ADA introduced a bill to adopt the Personnel Rules and Regs for the Port, which governs... which governs our policy.

Senator Telo T. Taitague: So, the last time it was updated, this... Drug-Free Workplace Program, last time it was updated was 2010 Rory? Is that what you're-

Rory Respicio, General Manager, Port Authority of Guam: 2010, yeah. 2010.

Senator Telo T. Taitague: Okay, it's 2020-21 so, I hope the Port, and Madam Chair, that they- they too look at- at change- times have changed, you know. So... you want to adjust to the times and... and learn from your mistakes and incorporate some of those changes in there, you know, I hope- so you look at that later on Rory, I appreciate that.

Rory Respicio, General Manager, Port Authority of Guam: If you- if you can point out where you believe my mistakes are, I'm certainly open to those... constructive-

Senator Telo T. Taitague: Well, you didn't write out the Drug-Free Workplace Program Policies, you didn't do that- it was done in 2010. What I'm suggesting is to, just to go over there and- and revamp and maybe... you know... add some additional, you know, safety measures in there or- or things that people have- And I agree when- when the Chairman brought up the... you know, zero tolerance. You know, especially in an area like this... that might be considered zero drug tolerance, especially in areas like the Port and the Airport... may be considered. So, it's just a suggestion... to look at – again- the Policy Program that's in place.

Rory Respicio, General Manager, Port Authority of Guam: What I think is zero tolerance is when you take some administrative action. I don't think zero tolerance is always that has to end in termination. So, zero- so not having zero tolerance means not even disciplining them at all. I'm telling you, the consequences that are inflicted upon these people are very painful, granted they didn't lose their job, but the consequences for them testing positive... to include the hard work that they have to undergo to continue to work at the Port, it's not easy. It's not easy, and- and so maybe we need to define what zero tolerances [are]- are you suggesting that an employee get terminated even after he or she has come forward and said, "I want to do the hard work" and, it's not even- understand that the Port invests a lot of training in these individuals. And so, you have to look at these things holistically just like- when I talked about the COVID – following the CDC guidelines for critical infrastructure worker – it's easy to tell an employee you're exposed to someone who was positive stay home for 14 days; we had tested 180 people within three working days, I cannot move cargo if 180 people are quarantined for 14 days. So, it sounds good to say, but in a practical reality, in our world here at the Port, it's not practical. And so, but I- but in terms of trust, I hope the community sees that we are taking very aggressive... stances on- on the- the three cases that we had involving- involving drugs.

Senator Telo T. Taitague: And I thank you for, also, considering the future as well for our Port... with regard to that. Thank you, Madam Chair, for the opportunity.

Chairperson Senator Telenia Cruz Nelson: Thank you Senator Taitague. Senator Brown do you have any questions at this time?

Senator Joanne M. Brown: Thank you very much, Madam Chair. Yes I do... because you know, certainly, I'm aware – having been at the Port for six years – that there are some concerns- I mean the majority of the Port employees are very

good and know their responsibility to themselves and their community. But we certainly have had issues with regards to individuals in very critical positions that, unfortunately, ...have tested positive for drugs. But I just want to clarify with... Mr. Respicio, with regards to random drug testing... You did allude to this most recent situation of 24 employees were too... you know, decided to step out and you've taken, you know, they've since resigned. But during your two-year period, have you ever implemented... random drug testing with regards to your designated employees? Aside from- aside from incidences where, you know, they get into an accident – and that's almost like an automatic drug test – but just in general to keep track of your- your employee population... to make sure that... you know, your employees are not on drugs.

Rory Respicio, General Manager, Port Authority of Guam: Yeah, well first of all, three employees... tested positive. I tested 24 and 24 were negative. So, in response to your question about the random drug testing, [I] had explained that all of the first year – even when we were testing based on workplace accidents – there's no cases of positives. It didn't start showing up until just this last December – almost two years into the term here where we had three cases. And so, we informed all the employees, reminded them of the drug-free workplace, the- the drug testing and, based on those conditions which were required... And- and so when we did the drug test on the one division... 24 were tested and 24 came back... negative. I don't know what... the point of your question is, if I- I should have done random drug testing early on?

Senator Joanne M. Brown: That is the point of my question: did you conduct any random drug- because you do have these designated positions where people fill a critical role. They are either moving cargo, maintaining equipment, or providing security with regards to that and the Port has been designated as such. Have you conducted, you know- it's not uncommon, of course, you can have accidents and not everybody that has an accident, obviously, is going to come up with a positive... drug- drug result. But with regards to random testing just... -also to discourage the possibility because I'm sure overnight we didn't have a drug problem one day and the moment you became GM it disappeared so, in the two-year period prior to this most recent incident in December that you're referring to, have you conducted random drug testing among all your divisions... - randomly, of course, I assume unannounced... - in the last two years?

Rory Respicio, General Manager, Port Authority of Guam: Well, I-, that- that was the first... instance I talked about based on the positives that- three positives

that came up as a result of those workplace accidents. But understand too that coming into the Port, there are so many things that we are working on: getting the employees to understand who we are, what we're about; they're certainly aware of the Drug-Free Workplace Policy, they know that we do drug testing, so, this idea of had we had tested in the first year maybe we'll have more positives, who's to say; but I don't think it's fair to say that not doing the random drug testing the first year... would have resulted in all these employees testing positive- again, our first data – and I can only go by the data – is we tested 24 in a division and 24 came back... negative, and our leaders here, are supervisors, and the division heads, they're actively going around, identifying... encouraging those employees to come forward and, if they're saying... they're not on drugs, they still could be drug tested based on reasonable suspicion.

Senator Joanne M. Brown: Okay, so- so just to clarify, you are saying you have not conducted any random drug [test] up until last month?

Rory Respicio, General Manager, Port Authority of Guam: Correct.

Chairperson Senator Telen Cruz Nelson: Thank you. Okay, Senator I'm sorry-

Senator Joanne M. Brown: Madam Chair could I- could I just ask one more question?

Chairperson Senator Telen Cruz Nelson: Yes- yes just one more question. Thank you.

Senator Joanne M. Brown: Just one more short question. With- I just wanted to clarify in your statement with regards to- to- now you're allowing – at least, if an employee... tests positive – you're allowing them the opportunity to go through treatment so, does that increase it from no tolerance to- what is the percentage of- of drug use then is being allowed if they're initially can test positive and still remain employed at the Port in a designated position?

Rory Respicio, General Manager, Port Authority of Guam: Of- of the three that test positive, I could tell you that the two of them out of the three are going to go through behavioral health, they're going to do the suspension in lieu of termination program. But you- but remember, if they test positive at any time, they're going to be terminated immediately.

Senator Joanne M. Brown: Madam Chair I know there's a time constraint and thank you for allowing my second question. I'm sure when we have your hearing next week we can- we can get further elaboration on our questions. Thank you very much.

Rory Respicio, General Manager, Port Authority of Guam: And I- and I- I will, -and I'll provide the data because what I'm doing is no different from what you have done, Senator Brown, when you were General Manager.

Chairperson Senator Telen Cruz Nelson: General Manager Rory, we're going to recess right now, and we are going to continue the hearing on February 2nd at 900- at 0900 hours - that's 9AM – and then we'll roll off into our oversight hearing, okay? And so, really... colleagues if you have any additional questions- I- I know... we're pressed for time, but I think that we should really... spend a little bit more time on discussing this drug-free workplace, it's- it's been a concern in our community and I thank you for sharing your concerns during this- this hearing, and I'd like us to continue this conversation so I hope to see you again... Tuesday... February 2nd at 0-900 hours and then we'll roll into the oversight hearing for the hiring processes within the Port. Okay, thank you everyone, it is now 17:27 – 5:57pm – we will adjourn this informational hearing or- we will recess this informational hearing. Thank you very much and have a good day. Thank you.

The public hearing was recessed at 5:27 P.M. and will reconvene on February 2, 2021 at 9:00 A.M.

The Virtual Informational Hearing was reconvened and Called-to-Order at 9:05 A.M.

[Continuation from January 25, 2021, Virtual Informational Hearing]

Senator Telen Cruz Nelson, Committee Chairperson: *Buenas yan Håfa adai!* The Committee on Education and Infrastructural Advancement, Border Protection and Maritime Transportation, *Guåhan* Preservation and Self-Determination, Federal and Foreign Relations will not convene this Virtual Information Hearing, a continuation from the January 25, 2021 Virtual Information Hearing will be followed by an Oversight Hearing regarding the Port Authority of Guam.

Today is Tuesday, February 2, 2021 and it is currently 09:05 a.m. in the morning. For the record and in accordance with the Open Government Law, public notices

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were sent out via email to all senators, stakeholders, and all main media broadcasting outlets on Monday, January 25, 2021 and the second notice on Thursday, January 28, 2021. Notice of today's hearing was also available on the Guam Legislature's website.

Joining me today for this Virtual Informational and Oversight Hearings are Speaker Therese Terlaje, Senator Mary Torres, Senator Chris Duenas, Senator Tony Ada, Vice Speaker Tina Muña Barnes, Senator Telo Taitague, and Senator Joanne Brown. Thank you, everyone for being here today and joining us.

General Rules of Conduct

All must abide by the rules of conduct and quality assurance standards. Please keep video on at all times and ensure you are in a room with little interruptions and adequate lighting, specifically to make sure the participants face is visible at all times.

1. The host of this hearing will mute participants until called upon by the chair.
2. When called to speak, please ensure that you are "un-muted" and that you are speaking into your microphone.
3. Members of the Committee wishing to speak may indicate via the in-app feature chatbox.
4. Individuals testifying shall first be recognized by the Chair before speaking and shall state their name for record-keeping purposes.
5. The order of questioning will begin with the panel of Senators, who shall complete their lines of questioning for each respective item on the agenda. Upon completion of the panel's line of questioning, the Chair will pose questions.
6. Each member will be allowed to pose a question to an individual testifying for a round and will be provided another round, if needed.
7. Questions and testimony shall be confined to the substance or nature of the agenda. Personal inference as to the character or the motive of any Senator, or any individual testifying, is NOT permitted.

Okay, good morning, colleagues and the General Manager, Rory Respicio, Chairman Santos and members of the Port Authority Board. Thank you for being here today.

We are continuing the informational hearing first and then we will move into the oversight hearing. For the informational hearing, we left off on the drug-free

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workplace policy and then as soon as we complete that on our agenda, we will move into the oversight hearing regarding the recruitment and hiring practices and human resources management of the Port Authority of Guam.

So, General Manager, Rory Respicio, can you please just inform us once again of the drug-free workplace policy?

Rory Respicio, General Manager, Port Authority of Guam: Thank you, Madam Chair. Sure, I also want to thank you for this continuation of this informational hearing. I just want to quickly recognize our Board Chair, Mr. Frank Santos, and our two (2) Deputy General Managers are also in this Zoom Meeting.

I guess where we left off discussing the drug-free workplace policy and I've given an overview that the Port Authority of Guam is guided by the drug-free workplace policy as well as the standard operating procedure for how these drug test are to be conducted and if you have any specific questions, Madam Chair, relative to this or any particular instance where you believe that we may or may not have been following the drug-free workplace policy; that I'm certainly here to answer any questions or concerns that you may have.

Senator Telen Cruz Nelson, Committee Chairperson: First of all, I'd like to thank you, it is not a matter whether I believe or not that you the Guam Port Authority is following the drug-free workplace policy. This is an informational hearing on how the Guam Port Authority implements their drug-free workplace policy.

So, the first question, I have is what types of training have been provide to ensure a drug-free workplace and what outreach programs have been provided to employees who may suffer from substance abuse?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, thank you for the question. Our drug-free workplace policy is being handled by PHR. They've been on contract with the Port and so, they administered the drug testing. Now in terms of what kind of training is being done. Well, the HR staff, the drug test can either be ordered by the General Manager or the Department's employee representative.

So, in the cases of the Port, I explained in the last informational hearing, Madam Chair, is that we start...we test automatically for workplace accidents and we

didn't start coming up with the positive until the latter part of last year; that's all of 2019 and then toward the end of 2020. And so, we had one (1) positive and then not too long after that we had another case – two (2) positive that were result of a drug-free...result of a drug-based accident.

I told the two (2) Deputy General Managers and the team that we have to, we will start doing random drug testing. It would be unannounced and so, beginning in December 30th, I believe I wrote a memo to all the employees reminding them of the drug-free workplace. The types of testing that will be conducted at the Port and how they're subject to all of these testing's and so, shortly after that we had a Division within the Port – twenty-four (24) employees were tested and twenty-four (24) were negative.

So, going back to the three (3) other instances; the first employee who tested positive, he had acknowledged that he was on meth. He said that he wanted to be given a second chance as all employees do when they find themselves in this situation and so, we worked through our HR staff, we worked with Guam Behavioral Health. He went through the intake, went through that process. I did give him the maximum suspension in lieu of termination and he was also drug tested prior to me having to make the decision, when the ten (10) days are up on what to do with that decision.

And so, I opted for the personnel rules and regs to do suspension and little termination. That employee has since gone through the Guam Behavioral Health, completed successfully, completed that program and continues to be a productive member of the Port. Then we had two (2) other instances after that. Same situation and those two (2) employees are still going through the notice of Post Adverse Action process. So, I can't disclose what the disposition of those two (2) cases are because I cannot until such time action is taken with the final notice adverse action but generally you could see, Madam Chair and members of your Committee and members of the Legislature that there is such a thing as second chances. That there is such a thing under our policy with the Employee Assistance Program. That's the other thing I did, I'm working with all the division heads – all the supervisors, all the leaders to reach out to the Port Authority employees and if they suspect that any employee is under the influence of drugs or alcohol; that they have an opportunity to come forward.

We will work with behavioral health. We will see what their capacity is to do the hard work to turn their lives around and if they test positive any time after going

to the successful completion of the Employee Assistance Program, then their only recourse is to be terminated. You know so, in a nutshell that's how I've been applying my leadership at the Port based on the drug-free workplace program based on the Rules and Regulations.

Now certainly other people in my position could take another approach where the employee test positive, they're terminated; never mind due process, never mind the employees ability to find it from within themselves to make right of the bad choices they made. And from my perspective as General Manager, we train these employees. Now I have one (1) of these employees that's really good mechanic that is very...doesn't need to be told how to their job. Now I'm not saying because they're an employee with mad skills that they could use drugs and still be employed at the Port. Certainly, there's consequences and in our last informational hearing, we left off of the definition of zero tolerance and zero tolerance means when you take action for the rules and regulations per the policies not having zero tolerance means not doing anything.

I believe I have zero tolerance, Madam Chair, because I did give the maximum suspension under the Personnel Rules and Regs and I have zero tolerance because we're working outside of the Port with particular Director of Guam Behavioral Health, Theresa Arriola, to have these employees to go through the intake process.

And so, out of three hundred fifty-three (353) employees, we have three (3) employees that are going through this and they didn't reveal themselves until December of last year. So, we will continue to do these kinds of testing's and continue to address these matters in which the results come out accordingly.

Senator Telena Cruz Nelson, Committee Chairperson: Thank you, Mr. Respicio. Chairman Santos and perhaps members of the Board, what role do you play in the decision-making process when for the drug-free workplace policy?

Francisco Santos, Chairperson, Port Authority Board of Directors:

Madam Chair, thank you for your question. I leave everything to my General Manager because they are the day-to-day operation. I want to rely on them in making that decision and also for our HR and also the General Manager regarding the drugs. They must comply to our personnel rules and regulations and they must follow that.

The Board, we just get the information from the General Manager on his Manager Report regarding what is really happening at the Port. Other than the Port...do not manage – micromanage involved in hiring employees but I leave that to the General Manager.

Senator Telena Cruz Nelson, Committee Chairperson: Thank you, Mr. Chair. Mr. Respicio, do you believe that the Human Resources at the Port Authority of Guam and yourself have acted in accordance with the Personnel Rules and Regulations of the Port Authority of Guam, which is adopted in 2009 by statute?

Rory Respicio, General Manager, Port Authority of Guam: Yes, I do.

Senator Telena Cruz Nelson, Committee Chairperson: Has that been vetted through your legal counsel?

Rory Respicio, General Manager, Port Authority of Guam: It's a policy that has not changed and it's a policy that as we talked about, I think it was like 2010 or 2012. Not if there's anything specifically that you believe that we haven't followed then, I'm hoping to hear from that specific point where you believe there was an infraction. But, I could tell you, Madam Chair, on the record, off the record that as General Manager, I'm following the drug-free workplace; I'm following the drug testing policies and remember this policy gives the General Manager the discretion on the frequency of tests – whether it's necessary or not but what it does not give the General Manager discretion on is drug testing based on a workplace accident.

Senator Telena Cruz Nelson, Committee Chairperson: And can you explain that?

Rory Respicio, General Manager, Port Authority of Guam: So, when there's an accident in the yard, if the accident is not equipment failure and it's manpower issue then our employee...Designated Employee Representative, Mr. Sean Cepeda, he's actually the one (1) that makes that determination. So, as General Manager, I don't say "Sean, test or not test" I leave that decision entirely up to the HR staff because we also want to have a degree of separation to where we can remove any doubt that we're testing some and not testing others.

Senator Telena Cruz Nelson, Committee Chairperson: Okay. Thank you. I will start the order of questioning with Speaker Terlaje, do you have any questions at this time?

Speaker Therese Terlaje: No questions on the drug policy, thank you.

Senator Telena Cruz Nelson, Committee Chairperson: Senator Torres, do you have any questions at this time?

Senator Mary Torres, Committee Vice Chairperson: I just want to ask the General Manager and the Chairman, you know, there's the last hearing that we had there was a lot of questions about the frequency of tests and when you stood up drug testing. But, I also wanted to give you the opportunity to discuss that within the context of what you were expecting the past year – for example, we know that we are nearing the one (1) year mark of the pandemic; when Guam was declared in a State of Health Emergency and throughout this period, you know, we're well aware that the Port was operational 24/7 – never stopped operations.

All employees were required to show up for work. You also within this time frame stood up a clinic at the Port where you were doing a lot of assessments...tests you entered the contact tracing program; where you were some of your employees were certified contact tracers. And you also were managing the testing of employees at the Port because of the incidences of COVID that were presenting themselves.

So, I think that it's important to also discuss that because there was no doubt that there was extreme activity at the Port not only with ensuring the continual throughput of cargo through the Port but you are also managing everything related to pandemic and your employees and the Port users.

So, do you feel that absent that there may have been an opportunity for more frequent drug testing's or do you feel that what you exercise that what you did conduct and the timing that you conducted it was all within reasonable context of what was going on. I know it's convoluted question but I'm trying to you know be fair about what the Port was up against and how much the Port was managing in terms of having the pandemic, having the clinic, having the contact tracing, having the COVID testing and also being responsible for ensuring that any drug activity or drug suspicion. Was being investigated and tested. So, can you just comment on that, Rory or Mr. Santos?

Rory Respicio, General Manager, Port Authority of Guam: Thank you, Madam Chair. If I can go ahead, thank you Vice Chair for that question. Yeah, in the context of the pandemic, the Port Authority is the only agency in the government that remained operational. GMH, some of their divisions teleworked. GPD, they closed down Records and ID and the same can be said for all those other critical agencies. Even Public Health, there's some divisions of Public Health that were able to telework and I'm not saying that's a bad thing. I'm saying that they had to do what they needed to do to maintain their core responsibilities.

At the Port Authority of Guam, our core responsibility is ensuring that ninety percent (90%) of our goods that come into the island, that come to the Port. That the Port remains operational and the Governor's declared the Port to be a truly hundred percent (100%) operational because of its essential nature and so, we were all hands on deck from all of Finance to all of HR, even the Maintenance Division. I early on said every single employee at the Port is a hundred percent (100%) essential because we're required to be one hundred percent (100%) operational. So, you know I didn't even try to respond to the public saying make some essential, make some non-essential.

As General Manager, I have to respond to what I need to do to keep the Port one hundred (100%) operational on the Port Authority employees came through with flying colors as you can see. Having said that Senator, we didn't sacrifice workplace safety. We didn't stop working with Customs to get them to do whatever is needed to address the containers that are coming .

We did certain things like we modernized our processes instead of going seven (7) front-facing steps. We did that in three (3); just to reduce the population here at the Port. Where since February, one (1) month before the Public Health Declaration by the Governor. We issued PPE's – masks, gloves, and eye shields to our dock workers and gave the them a ton of information that we had.

And you talked about the Port clinic, we have almost forty-five thousand (45,000) visits since we started. Now, absent the pandemic again, why are we drug testing? Are we drug testing just to let the employees know that the Port Authority is drug-free and we're drug testing to demonstrate that. And so, I said when we are drug testing because of workplace accidents and the employees are coming up negative. There's no evidence for me as General Manager to say "oh, let's just keep...we

have random drug testing just for the...just so that we can have a chilling effect on the employees and the drug use from the employees.”

So, like I said it wasn't until the first test later on in the year for an employee tested positive, that was my first true experience as General Manager with an employee who tested positive for meth and then working with the employee and doing what we did and then not too long after that we tested three (3) and two (2) and of the three (3) became positive then the record shows that we immediately took action. We immediately took action, I had a division head meeting and I told the division managers that if I learned that employee who tested positive was an employee in their division that it was obvious that they're on drugs, that I will take administrative action from the leader all the way up.

And you saw that with the two (2) employees that invaded, I tool those two (2) employees and I determined with the team, who are surrounding them in the leadership capacity. It's the two (2) leaders; the Supervisors, the Superintendent and they're currently going through the MPAA process and so, when I tested twenty-four (24) and twenty-four (24) came back negative. We're going to keep testing and if the issue is random drug tests just for optics in this pandemic, you know we have to understand what our constraints are, we can't have them congregate, we can't have them just because we're in a pandemic.

I can't say that's the reason why we weren't drug testing. We did other kinds of testing in terms of COVID. About four hundred fifty-nine (459) employees were tested through public health. We lost a co-worker here, Henry San Nicolas, we stood up the Port clinic and so we're doing everything and anything to keep the Port operational and we will have random drug testing because that's what the policy requires. But again, it's a degree of reasonable suspicion and even the Attorney General came out with an opinion that said drug testing in general is unconstitutional provided that there are law enforcement and test designated positions. And so, in the hall of government there's no random drug testing for those positions that aren't test designated and again, I just keep asking what is the end game in this...I understand informational hearing but in the upcoming oversight hearing is there like rampant drug use among the Port employees that this committee is hearing that...I'm not doing enough to do random drug testing and I've explained why we haven't done random drug testing early on and how I've responded as a leader here at the Port, when we did have those few instances and it wasn't there's no gaps in time.

One (1) tested positive that raised my concern immediately after, two (2) tested positive out of three (3) tested. That certainly got our attention and going into this year the employees were reminded and I didn't know if you have that memo but I could submit that memo to the record reminding the employees that they signed off on the drug-free workplace.

The types of testing that will be conducted what will happen if they become positive and what happened if they come forward prior to being drug tested and I even said in writing that if they come forward before being identified through a drug test. As General Manager, I won't take any disciplinary action if they're going to go through Guam Behavioral Health but if they don't successfully complete that program and then they test positive after they do successfully complete the program; then you already know what their fate is.

So, there's not this let's go keep all you know drug users at the Port, no. The safety of the Port, the security of the Port is a paramount concern to me as a General Manager.

Senator Mary Torres, Committee Vice Chairperson: Thank you for that explanation. You know, one (1) thing I also want to note is that the Port really is a team effort when you think about the nature of their work and that they work in groups regularly. So, you know the ability to spot people who are questionable or there's reasonable suspicion, I know exists there even amongst the teams and the supervisors who work very closely with their teams.

So, I thought it was important to you know allow you to discuss that because we can't take for granted what the climate is there at the Port, I mean during COVID and also you know the idea that perhaps you can you know increase the random testing; that's a prerogative but you know then again, there's always a balance to everything right? But it all falls back and what would be the best approach but in terms of being able to spot and have reasonable suspicion.

The environment right, it is ripe for that at the Port in terms of how they work the nature of the work, the proximity of you know how they work amongst each other as well but thank you. I have no further questions but you know *Si Yu'os Ma'åse'* for that.

Senator Telena Cruz Nelson, Committee Chairperson: Thank you, Senator Torres. And just for the record the purpose of this Informational Hearing is

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because my fiduciary responsibility as your Oversight Chair and there have been concerns in the community and so, we brought this to openly discuss the situations at the Port and even the things that you have done as General Manager and all the Port employees have accomplished during this time of COVID.

And so, this was part of the Informational Hearing so, that the public is aware what...how the Port functions, their role the types of grants that they have and to include the drug-free workplace policy and this is just full transparency. No one is accusing anyone of anything here, Mr. Respicio. It's just transparency that the public will see how the Port is operating and the mitigations put into place and for also the administrative actions that are taken.

So, that they can be reassured that the Port and all other agencies within the government are doing their job within the limits of the law and so, that's what we want to ensure. So, we're not going out here and making this a political issue and trying to move it in one (1) direction...not it's just for simple transparency and let the people be aware of the actions taken. You can say things in the media and in the news but they don't detail the facts and the specifics of what we're getting into in this Informational and Oversight Hearing, that's the bottom line. So, we're focusing it on that, okay.

Vice Speaker Barnes, do you have any questions at this time?

Vice Speaker Tina Rose Muña Barnes: *Si Yu'os Ma'åse'*, Madam Chair, yes, I do have one (1) based on presentation provided. I want to thank the previous speaker, Senator Camacho Torres, for asking that because it kind of answered a question as it relates to what has happened in the past and what is happening today. And I must say Madam Chair that based on working closely with trying to being to the forefront for our community in as far as economics and diversification on trans-shipment.

I want to say that we've been working our team has been working closely with the Port and with other stakeholders in as far as the economic viability for Guam and I must say that receiving information from other island nations about what Port Guam has done and port strong for Guam has done to the rest of the road.

It makes me feel like if this is being...if there's anything that is out of the ordinary and things that are not being, I guess are being assumed then, we bring it to the

forefront and that's why sometimes having Informational Briefings or concerns is very fruitful not to slam anybody but just to see how process is done.

So, my first if I'm allowed at least a couple of questions was the good General Manager talked about the administrative process with his team. So, when decisions come about or concerns come about it is the responsibility of just the General Manager or does he include the whole administrative team and if he can provide that because he did say that he works closely with his administrative team and if he can acknowledge who that administrative team is besides the Board because I know that the Chairman said he doesn't want to micromanage the operations of the Port.

So, if you can just reiterate that and tell me who his administrative team is, please?

Rory Respicio, General Manager, Port Authority of Guam: Sure, thank you, Madam Speaker for the question. In the spirit of transparency in wanting to get a good idea of how these policies have been implemented. I do have Ms. Carmen Nededog and Mr. Sean Cepeda, standing by and I'd like to quickly bring them in. so, they can answer any questions you or the Committee may have. You want to hear from the people that are implementing these things. So, I've asked them to be available.

Senator Telena Cruz Nelson, Committee Chairperson: Mr. Respicio, if we can take a pause and bring in those individuals that we would greatly appreciate that.

Rory Respicio, General Manager, Port Authority of Guam: Thank you.

Senator Telena Cruz Nelson, Committee Chairperson: We're going to go into a quick pause for two (2) minutes. Thank you.

Rory Respicio, General Manager, Port Authority of Guam: Madam Chair, they're situated.

Senator Telena Cruz Nelson, Committee Chairperson: Thank you, Mr. Respicio. Can you please just introduce them and then we can move forward with the Vice Speaker's questions.

Rory Respicio, General Manager, Port Authority of Guam: Thank you, Madam Chair. We have with us Mr. Sean Cepeda, who is the Acting Personnel

GUAM CONGRESS BLDG. 163 CHALAN SANTO PAPA HAGÁTÑA, GUAM 96910

Tel: (671) 989-4678/7689 | Email: senatortcnelson@guamlegislature.org

Service Administrator, the Personnel Service Administrators, Ms. Francine Rocho is on a scheduled off-island trip. I believe she's joining us via your legislative website page and also Ms. Carmen Nededog. Both of these individuals have been at the Port for some time now, particularly the period that you're inquiring about. So, I'd like to turn it over to them.

Senator Telen Cruz Nelson, Committee Chairperson: Thank you and just real quick before I forget, I'd like to welcome, Senator Blas and Senator Moylan for joining us today. Thank you senators. Please proceed, Vice Speaker.

Vice Speaker Tina Rose Muña Barnes: Thank you so much, Madam Chair and again Senator, I really appreciate you bringing the team in because you continue to say it's a team effort from the Port Authority and I just wanted to ask then my question is as it relates to drug testing programs as it relates to what has happened in the past versus what is happening today. Are there any concerns of issues brought about how, I guess drug testing is being conducted under what has happened in the past and what is happening today only because as we look at what is perceived. You know perception is everything, if this is not just done by the Manager alone but it's done by an administrative team.

What is the process and what is different from what has happened back then until today. So, I know that's a loaded question, Madam Chair, but I think it's important that it come up to the forefront and anybody at Port can answer that. I mean what has happened in the past, if there's any because it's automatic that if there is an accident according to what I'm hearing today. If it's an accident there is automatic procedures of what is being done, it's an automatic testing there are things that are put in place by the administrative team. Am I hearing that right? Can somebody answer, yes or no? I can't hear.

Senator Telen Cruz Nelson, Committee Chairperson: Just a minute, Vice Speaker, I'm trying to find them, if they're in the room.

Carmen Nededog, Personnel Administrator, Port Authority of Guam: Yes, if there's an accident we automatically test.

Vice Speaker Tina Rose Muña Barnes: You automatically test, right, as noted. So, the General Manager is correct in saying that if there's an accident there's no questions asked. There automatically is a procedure in place through your...

I didn't mute myself, sorry, someone keeps muting me. So, I want to again just a reassurance based on accidents that happen at the Port. It is a procedure with the administrative team not just the General Manager but the team, that if there is an accident that it automatically goes through a process of getting tested. Am I...is that a correct statement to say?

Carmen Nededog, Personnel Administrator, Port Authority of Guam: Yes, Ma'am.

Vice Speaker Tina Rose Muña Barnes: Okay. So, the question I have then is maybe what I need to ask is based on procedures that are in place, right now. Are there, have there been any concerns or issues brought about on how random drug testing has happened in the past and what is happening today.

I don't want to put anybody under the you know the scrutiny but I'm just asking is there a difference.

Carmen Nededog, Personnel Administrator, Port Authority of Guam: There is a difference.

Vice Speaker Tina Rose Muña Barnes: Okay.

Carmen Nededog, Personnel Administrator, Port Authority of Guam: There is a difference in the past when we have conducted random...first of all, random drug testing is requested by the Der, which is the Designated Employee Representative, with that said in the past.

Vice Speaker Tina Rose Muña Barnes: Who is that? Who is that "D" whatever you just said...

Carmen Nededog, Personnel Administrator, Port Authority of Guam: The DER. In the past would it's supposed to be the HR – Human Resources, Personnel Administrator but in that time it was taken away from the HR Office. The random drug testing was taken and it was given to the Deputy General Manager of Operations.

Vice Speaker Tina Rose Muña Barnes: So, that's what's being done today?

Carmen Nededog, Personnel Administrator, Port Authority of Guam: Yeah, today it's much different. We're actually following the policy, the General Manager has appointed the DER, which is Sean and Francine. For the process we are doing it...we're following the process through the policy. Well in the past we the DGMO at the time will request for random drug testing and I had some concerns while I was the Acting Administrator. That conducting the random drug testing it was not consistent. He would go to where the drug testing will actually... HR will not know when the drug testing is happening.

So, I received some concerns while I was Acting that the DGMO would go to the area where the drug testing and pull people out of his purpose and will make them take the drug testing versus today. At least Sean would know when the drug testing will be and he would be at the site. We wouldn't know that there was a drug testing at my time, the responsibility was taken away from the Human Resources Administrator, at the time.

Vice Speaker Tina Rose Muña Barnes: Okay. So, today based on the procedures and based on what is supposed to be the rules and regulations as described in your process it is being adhered to today?

Carmen Nededog, Personnel Administrator, Port Authority of Guam: Yes, ma'am.

Vice Speaker Tina Rose Muña Barnes: Okay. So, then if we just move forward from today, the process on any drug testing program that exists today, if there is doubt, that there is already a process in place today?

Carmen Nededog, Personnel Administrator, Port Authority of Guam: Yes, ma'am.

Vice Speaker Tina Rose Muña Barnes: Okay. Madam Chair, I did have a couple of other questions but I know that Senator Torres's questions earlier really brought to light some of the issues that I had in mind and I'm hoping that you can afford us the opportunity to come back on other issues as it relates to this part.

Senator Telen Cruz Nelson, Committee Chairperson: Thank you, Vice Speaker. Senator Shelton, do you have any questions at this time? Okay, no questions. Senator Taitague, do you have any questions at this time?

Senator Telo Taitague: Thank you, Madam Chair, for the opportunity and good morning to you Director Respicio at the Port. Sorry, my internet has started to go off and on so, if I get cut out, I'll just hop back on.

Anyways it was mentioned earlier, Rory, when did you become the Director of the Port Authority? When did you take the realm?

Rory Respicio, General Manager, Port Authority of Guam: January 8, 2019, when I was hired by the Board.

Senator Telo Taitague: Oh, I'm sorry because I can't hear.

Senator Telena Cruz Nelson, Committee Chairperson: Mr. Respicio, can you please speak into your microphone.

Rory Respicio, General Manager, Port Authority of Guam: January.

Senator Telo Taitague: Yes, thank you, state again.

Rory Respicio, General Manager, Port Authority of Guam: We're sharing a mic here. So, January 8, 2019, when I was hired by the Board.

Senator Telo Taitague: And when did you have your first drug testing at the Port?

Rory Respicio, General Manager, Port Authority of Guam: Maybe a month ago. First drug testing random drug testing but the first...no drug testing based on a workplace accident happened throughout the year.

Senator Telo Taitague: Your first random drug testing? My question was your first, I'm sorry should have been more specific. So, your first drug random drug test? When did you first have that?

Rory Respicio, General Manager, Port Authority of Guam: So, I believe that what's your answer your question is...so I answered, January.

Senator Telo Taitague: Oh, this month was your first random drug testing since you've been a Director at the Port?

Rory Respicio, General Manager, Port Authority of Guam: Correct.

Senator Telo Taitague: Why did it take so long?

Rory Respicio, General Manager, Port Authority of Guam: No, as I've been explaining throughout the first year we always test automatically for drug testing from a workplace accident. So, we've been doing those testing consistently and for the policy it wasn't until December of last year, Senator, when an employee was tested from a workplace accident. That employee turned up positive and then maybe a couple weeks after that, we tested three (3) employees from another workplace accident. There was a hole in the wall and three (3) people were involved and two (2) came back positive.

So, that was beginning around December. So, on December thirtieth (30th), I wrote a letter to all the employees reminding them of the drug-free workplace program, the testing's that are to be conducted based on random suspicion based on return to work based on workplace accident. And so, based on that, you know I saw a video of one (1) of the employees in a particular division and in my mind that didn't look right and so, we did the drug testing for that division. And twenty-four (24) were tested and two (2) evaded and twenty-four (24) came back negative. So, twenty-four (24) out of twenty-four (24) and this is the subject...

Senator Telo Taitague: I guess because I don't mean for you to repeat what you said. I was listening to you earlier about your explanation and greatly appreciate that thoroughness on the step-by-step but I guess my question would be why would you wait so long for an accident to happen where there came out a positive you know try to avoid, you know try to be proactive. So, you know if you were in office since January 2019 and you didn't decide to do a random drug testing until almost a year later. Wouldn't I mean especially considering the Port and the comments that are being made by the Port, I'm sure you want to redeem the reputation of the Port and prove that things are doing well there after six (6) months into office that you might start the random drug testing. So, I was just wondering why you had to wait so long to do this type of random drug testing?

Rory Respicio, General Manager, Port Authority of Guam: First of all, it wasn't waiting to do random drug testing. I'm also having to proceed with caution in how random drug tests are administered. You have Attorney General opinion saying that it's unconstitutional unless it's test designated or law enforcement positions. So, what is the purpose of random drug testing? We talked about this earlier if the purpose just to keep testing to say, hey we have a random based on

all the chatter out there, the data that's been coming back didn't reflect the chatter out in the community about the Port employees being on drugs. It's automatic to test when there's a workplace accident. So, I even...if we kept drug testing you implication is that we wouldn't have any workplace accidents, Senator and so, if you look at the chronology of it...

Senator Telo Taitague: No, no, no Senator, Director Respicio, I'm not saying that at all, please don't put words in my mouth approach to this is what I was referring to but you know you can add every explanation. I don't want to take up too much of your time Madam Chair because I know there's other people who want to speak on this but the point is that you know why not this is an area that the people, I mean the Port Authority, you know that's a major artery into our community.

I mean there needs to be more testing going on absolutely especially in a place like that you know, we hope that you can bring some trust to the community or some confidence into the community that we are being very alert to everything that's coming into the Port. We are being very safe and that's all I'm saying it's just I think that if there's anything that you'd like to put into your rules and regulations on drug testing, it's not having to wait until an accident happens that you do a testing. It should be done randomly and I think six (6) months is a good enough time not wait a whole year, that's all I'm saying Director Respicio. And I hope you don't take it wrong, I'm trying to find every way possible to bring some you know confidence in our Port and the people that work there. I mean there are some great individuals that work at the Port. Some great individuals and doing their part. That's all and Vice Speaker, I mean the Chairman mentioned earlier about the importance of this Oversight. That's all we're doing so, please don't put words in my mouth. You know with regards that I assume this, assume that, no it's called a proactive approach. That's all I'm saying and that's all my intention is.

So, thank you, Madam Chair for the opportunity. Thank you.

Rory Respicio, General Manager, Port Authority of Guam: So, you're saying a lot Senator Taitague.

Senator Telen Cruz Nelson, Committee Chairperson: I have a follow on question, maybe, it will just kind of clear things up. It is normal practice because you've been in the government for so long and so, I'm sure you're aware.

Is it normal practice to conduct random drug testing within agencies every six (6) months? Has it been normal practice for Port Authority of Guam in the past?

Rory Respicio, General Manager, Port Authority of Guam: No, and apparently it's not normal practice in the Legislature either, think about it.

Senator Telen Cruz Nelson, Committee Chairperson: Mr. Respicio, no one is attacking you right now. I'm asking you a question and just to clear the air you know just so, that we can have an unbiased understanding of what happens. This is just a general question that is this normal practice and if it's not, it shows that you are doing your duty – when there are accidents taking place. To implement the drug-free workplace. You brief your employees. You remind your employees about the drug-free workplace and so, really if this is something that we need to examine in all our line agencies then this is something that maybe we can discuss further. But right now, I don't think anyone for me in this Oversight, we're not in this Informational Hearing/ we're not making any accusation towards the Port employees it's just a matter of question and so, the question is should...do you feel that we should do more random drug testing within the Port or do you think that perhaps...or do you think that. The accidents correlate to the positive tests that you've received.

Rory Respicio, General Manager, Port Authority of Guam: Thank you, Madam Chair, for the question and I'm going to try to frame my answer in the context of what the Personnel Rules and Regulations and the directory workplace policy provides.

Senator Telen Cruz Nelson, Committee Chairperson: And that's all we're asking.

Rory Respicio, General Manager, Port Authority of Guam: There's a reason why it's called random and there's a reason why it's left to the discretion of the agency head for me. I'm not going to drug test employees to find who are on drugs because for me that's not the purpose of random drug testing or drug-free workplace and so, when the evidence presented itself that one (1) employee, all of 2019 not a single positive for drugs with all the workplace accidents that we had at the Port. Certainly, I assure you Madam Chair, that if on February 1st through if for example, it's a workplace accident on February 1st and there was an employee or employees that tested positive. Then I'm going to start doing these kinds of things but you know there's so many things involved in drug testing.

There's resources which I'm never going to say, I don't have the money so, I'm not going to do it. There's personnel that are involved. There's also you never want to make any organizational...organization and all the employees feel like as General Manager. I'm going to feed into all the rumors or suspicion that they're on drugs. So, I'm just going to randomly keep drug testing them so you know and I also came into the Port where I needed to stabilize the finances. I need to stabilize the morale. I need to build their efficacies and let them believe what it means to be Port strong and all of this part and parcel to the journey that's I've had at the Port over the last twenty-five (25) months. And so, to say that if I was doing random drug testing early on, we wouldn't have any workplace accidents. Okay, so, those people involved in the workplace accidents were testing negative up until December of last year, when we had those cases pop. And I'm looking at this straight in the face and I'm not looking the other way. We're not turning around where we are addressing the needs of the employee in relation to how that employee is responsible to provide the overall work safe environment and I'm telling you if an employee test positive after successfully completing the EAP program then that's what the focus should be about.

If I'm not taking any disciplinary action on any employees who tested positive that's what the focus should be about but I assure you, Madam Chair, and as diligently as a hard-worker as you are, I assure you that I'm implementing the drug-free workplace and the SOP to the "t". I spent fourteen (14) years in your seat and I had for a majority of my term, I had the oversight responsibilities as well.

So, I understand the difficult position you're in but I also want to make sure that if you can guide me if you can point to any infractions in the drug-free workplace policy and if you guys want us and if Senators want to say randomly drug test every quarter, randomly drug test semi-annually or annually or every day then that's what the policy should reflect.

Senator Telen Cruz Nelson, Committee Chairperson: Okay. So, now my next question is every time there was a workplace accident; did you take action as the General Manager in ensuring that the drug-free workplace and the personnel rules and regulations were applied?

Rory Respicio, General Manager, Port Authority of Guam: Yes, ma'am.

Senator Telena Cruz Nelson, Committee Chairperson: Okay. Thank you. Senator Ada, do you have any questions at this time?

Senator V. Anthony Ada: Yes, Madam Chair. Thank you, this is for the Board Chair, Mr. Santos. Yeah, good morning, Mr. Santos, yeah just wanted to find out at what point does the Board intervene or have oversight of what is going on in the drug-free workplace program. I understand that you said leave it to the General Manager. But at what point do you...does the Board convene and say okay we have an issue here and how does the Board address that issue.

Francisco Santos, Board Chairperson, Port Authority of Guam – Board of Directors: Thank you for your question, Senator. When the reports reach the Board regarding incident of the Port especially when it comes to drug, then the Boards will give you directive to our General Manager to take care of their problems find solution to that problems and make sure that nothing will happen to the Port regarding this incident. If you need any random testing go ahead and do it because we want to make sure that the Port is safe for everyone, especially our Port employees and also always advise the Supervisor or the Manager of that section.

That Supervisor of that section should know every individual employee of their section if they see that something is happening to that person in that section then he must consult that person whether you have personal problems, financial problems or even family problems and take care of their problems instead of going directly to the General Manager. But we give a directive my fellow Board member will make that decision and give directive to the General Managers. The three (3) Managers to make sure that they take care of those problem that is happening at the Port. Thank you.

Senator V. Anthony Ada: Thank you. So, you are then the Board is aware of when incidents happen whether it's a work related incident and that it was in relation to a drug issue.

Francisco Santos, Board Chairperson, Port Authority of Guam – Board of Directors: Yes, sir, during our Board meeting the Manager will submit to us is reports in that reports if we find something that we give more important regarding to report or any incidents, then we will find some solution and give that to the General Manager to solve this remedy of the problems that is happening occurring, a report.

Senator V. Anthony Ada: Okay, I'm glad to hear that the Board does have some type of you know working relation with the Manager in this drug-free policy. This is where the General Manager Respicio. I understand you know I had a constituent that called yesterday asking about a work-related yard accident that happened where an individual got injured; lost the limb and they just wanted to know whether you know the limb, the prosthetic limb, how what the status on that?

Rory Respicio, General Manager, Port Authority of Guam: Thank you for your question Senator. That employee just got back from Hawaii. He got fitted for his prosthesis. We understand that it's in route to...they're going to have to mold it and I mean it'll be in route to Honolulu and then the employee will have to go back to Honolulu to get you know to get fitted.

I have to say though that with this particular employee, the accident review board found that it was neither the fault of the authority or the fault of the employee and it was just some unfortunate accident and that the employee association has gone above and beyond. They raised money for him and since the time of the accident up until now, and the Chairman, Dominic, Luis and I; we visited him at the hospital, at his house. That employee has not gone without a paycheck because the employee is under worker's comp and in addition to not going without a paycheck, the employees did raise some funds to cover some of his incidental expenses while in Hawaii.

So, he's gone to Hawaii, got fit, it's coming back, came back but all I know is that we're doing everything we can for this employee. And it's just a process and it's a matter of time, soon where he would have his leg fitted. The employees' spirits are up, Senator, he can't wait to come back to the Port and his workplace accident is not going to derail him from coming back.

Senator V. Anthony Ada: That's good, I'm glad to hear that, he's well and safe. Madam Chair, that's the only questions I do have and I look forward to the Oversight Hearing.

Senator Telen Cruz Nelson, Committee Chairperson: Thank you, Senator Ada. Senator Duenas, do you have any questions at this time?

Senator Chris Duenas: Thank you, Madam Chair. All the questions that I had have been asked and so, I'm satisfied with the answers. I accept to say also

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that I concur with you as the Chair that this is exactly what we should be doing and the public is benefitting greatly from the information are coming out. So, I thank you for that, Madam Chair and I'll stand by for the Oversight Hearing.

Senator Telena Cruz Nelson, Committee Chairperson: Thank you, Senator. Senator Brown, do you have any questions at this time?

Senator Joanne Brown: Thank you very much Madam Chair. I didn't want to ask a question but I also wanted to make a comment because I think there's this other side of the coin with regards to why these policies are in place with regards to random drug testing and Senator Telo earlier followed up on a question. I would have asked with regards to where we left off last week was the fact that there has been no random drug testing occurring at the Port.

These policies are in place to be proactive. It's not so much waiting until and accident or an incident happens where an employee or someone else can get injured or seriously injured or killed because they may have a fellow worker there who might be under the influence of illegal drugs that might be harming themselves or harming the public. And as we also discussed the Port is a point of entry and it has been a point where illegal drugs have come into this community. Drugs that are devastating our families that are in this community.

So, it's a different perspective GM Respcio perhaps to look at that being proactive is a good thing, it's not so much invading people's privacy. The majority of your employees there that work at the Port are under designated positions that would be authorized to do this type of testing but I think to try to create the impression that there is no real issue except for a few incidents that just happened in December of last year.

Went for two (2) years, a whole year before almost what maybe fifteen (15) months before the pandemic actually happened that there's been no random drug testing and that is more so a preventative measure to encourage people not to be on drugs. I mean I's like to believe that everyone is doing the right thing but you know unfortunately that's not always the case and there's a bigger issue beyond the individual. It's a responsibility to your fellow co-workers and a bigger responsibility of the Port of Guam as it's the property and provides the service to the people of Guam that their interest also needs to be protected first and foremost.

So, with regards to drug cases because I know you've been settling a number of cases GM Respicio have you settled any pending drug cases that went through the Civil Service Commission or employees were found to be tested to be positive for illegal drugs.

Rory Respicio, General Manager, Port Authority of Guam: No and first of all, I have not been settling a number of cases. The Board has authorized the Deputy General Manager to move on those cases because it was a lost cause and so, in answer to your question, Senator Brown, we have not settled any pending drug cases that you're asking about.

Senator Joanne Brown: One (1) question I do...go ahead. Yes, is there anything more you want to add.

Rory Respicio, General Manager, Port Authority of Guam: But I'm very familiar with the case you're talking about and why exactly it is that the Port is in the Civil Service Commission at this time.

Senator Joanne Brown: I do also, Madam Chair, wanted to because I did see the employees from HR and at the time Acting Human Resources Manager had made some comments. I know you did not put any of the participants under oath because we understand this is an informational briefing but I do want to point out since the previous Acting HR Manager did not disclose. I mean that particular employee has a conflict with regards to drug testing issues.

So, for the record, Madam Chair, I just wanted our members and the general public to be mindful and aware of that, since that individual did not disclose that and tried to infer for some reason that individual was taken out of the drug testing notifications for some ulterior reason. So, I just want to put this in place.

Rory Respicio, General Manager, Port Authority of Guam: That the current Senator has conflict by her very nature sitting on that panel and discussing things that she was privy to while she was generally reported at the Port.

Senator Joanne Brown: Not at all, Madam Chair.

Senator Telen Cruz Nelson, Committee Chairperson: Senator Brown, please.

Senator Joanne Brown: I understand what statements are made to try to disparage. I think it's important, we should all, Madam Chair. Points out conflicts. That's all I'm simply saying.

Senator Telen Cruz Nelson, Committee Chairperson: Thank you, Senator Brown. If there is a concern, can you please put that in writing and I do not know who you are speaking of but can you please put it in writing and we can inquire further...okay.

Senator Joanne Brown: I'm just simply because those statements were publicly made. I just felt there was it was important for the public as well and out listening audience, if we do have a conflict it's important that we acknowledge that and state that for the public interest.

Senator Telen Cruz Nelson, Committee Chairperson: Right, I am unaware of what you are what you mentioned earlier but if you can please send put something in writing and send it to us as formal record so, that we can inquire further about it, I would really appreciate that. And if we can please move on to any other questions you may have or concerns.

Senator Joanne Brown: No, I don't. I'm simply, Madam Chair, just responding to statements that were publicly made just to clarify because I think there was an inference that someone was taken out of the process for maybe perhaps other reasons that's all. That's simply all I'm stating since those statements were publicly made during this informational briefing.

Senator Telen Cruz Nelson, Committee Chairperson: Okay, thank you. And if you could please share with is the information that you have so, that we can inquire further to understand the whole situation that is in front of us that was mentioned. I would appreciate that. Thank you, Senator.

Senator Joanne Brown: Thank you.

Senator Telen Cruz Nelson, Committee Chairperson: Senator Moylan, do you have any questions at this time?

Senator James Moylan: Thank you, Madam Chair. Yes, just for further clarification for the Director, please. Mr. Director, okay, I understand then that in 2019 we were this was not an issue. In 2020, it has become an issue and there's

been accidents right and I think you mentioned where there are three (3) accidents is that correct? And we did some testing as a result of those accidents.

Rory Respicio, General Manager, Port Authority of Guam: That's correct, Senator Moylan. All of '19 there was no positives and then almost all of 2020 there was no positives up until the latter part of the year, I believe like end of November early December.

One (1) was a workplace accident and then the other is another workplace accident. They're two (2) separate incidents and from the first and second testing. Three (3) became determined that were positive as a result of the work drug test based on a workplace accident.

Senator James Moylan: Okay, so, each accident we have positive for the drugs based on the testing due to the accident. Did you explain which drugs were identified or can you for us?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, it was crystal meth.

Senator James Moylan: Okay and is there did you mention two (2) did not show up for the testing or were they eventually tested.

Rory Respicio, General Manager, Port Authority of Guam: So, that what you're talking about is the random drug testing that we has in January and twenty-four (24) were tested and twenty-four (24) were negative and then two (2) evaded which they eventually that same day, I believe they turned in their resignations.

Senator James Moylan: Okay, likewise for the other tests where they ran away or that situation where were they tested? Was that also for ice? Did they test positive for that?

Rory Respicio, General Manager, Port Authority of Guam: Yeah, so ,they always test for the whole gamut of illegal drugs including THC. Those two (2) that were invaded they were never drug tested. So, whatever the reason was for resigning they resigned. But the twenty-four (24) that were tested in that division it included meth, THC, ecstasy, all every illegal substance they test for.

So, twenty-four (24) were tested and twenty-four (24) were negative.

Senator James Moylan: Okay, so, your total numbers of those tested positive for drugs which we had the drug-free workplace in that period of time that we're talking about that was a total of five (5) is that correct for with the three (3) incidences?

Rory Respicio, General Manager, Port Authority of Guam: No, I mean we can't say that the two (2) that were evaded were on drugs because they were never tested. You can make that assumption but I don't make assumptions. And so, total were three (3) and then when we did our drug testing on that particular division, a hundred percent (100%) came back negative.

Senator James Moylan: Okay, I appreciate that. Thank you, Madam Chair. I have no further questions. Thank you, Director.

Senator Telen Cruz Nelson, Committee Chairperson: Thank you, Senator Moylan. Senator Blas, forgive me, I can't recall did you have any questions at this time? Did I call you earlier today? Okay, I believe we got everyone for this Informational Hearing. General Manager Mr. Respicio, there are some concerns amongst my colleagues here about the occurrence of the random drug testing process. And in the Personnel Rules and Regulations for maritime positions unique to Port operations and certified technical and professional positions. I just want to read for the public because I'm sure everyone here has read it.

In Chapter 14...Chapter 15 correction, the drug-free workplace program policy – the statement of the policy is the authority is committed to maintaining a safe and healthy work environment free from the influence of alcohol and drugs to that and the authority has adopted a drug-free workplace program.

In compliance with the authority's drug policy is a condition of employment. The authority intends to take severe disciplinary action up to including termination against an employee who violates the authority's drug-free workplace program prevention and treatment. The authority encourages any employee with a drug or alcohol abuse problem to voluntarily seek treatment. The authority has established an employee assistance program to provide counseling and referral services for employees with drug or alcohol abuse problems who voluntarily seek help provided activity... the authority strictly, excuse me...prohibited activity.

The authority strictly prohibits unauthorized use possession including storage in a desk, locker, car or other repository manufactured distribution, dispensation or cell of illegal drugs, drug paraphernalia, controlled substance or alcohol on the authority's premises in official vehicles during working hours or any activity that compromises the integrity or accuracy of the authority's drug and alcohol program or any failure or refusal to abide by the drug-free workplace program and conviction under any criminal drug statute.

Testing, the authority may require employees and applicants to be tested for drugs or alcohol upon hiring when the authority suspects that the employees work performance or on the job behavior may have been affected in any by drugs or alcohol or when the authority determines that an employee may have contributed to an accident involving fatality, serious bodily injury or substantial damage to property. In addition, employees will be subject to random drug testing. Any positive drug or alcohol test is a violation of the authority's drug-free workplace program any test for drug or alcohol abuse will be conducted using reasonable procedural safeguards.

Procedures, the procedures to effectively administer the drug-free workplace program shall be those established by the court and we also have a copy of the...let's see, the drug-free workplace program policy that might I have sent to all of my colleagues. And it shows the processes that the Port Authority may take into rehabilitating those that have tested positive or to termination of those deemed in complete violation of the rules and regulations and the drug-free workplace.

The concern here, Mr. Respicio, is that the frequency of the random drug testing should be addressed by the General Manager, that is one (1) of the concerns and so, perhaps we can look for ways that you implement a more frequent random drug testing rather for waiting for accidents to happen and then implement the process. Then I do want to note that the accidents that have occurred in the past that you have tested not every accident involved instances where individuals were using any type of substance. They were just accidents things that we cannot control. What I'm saying is that you've had accidents in the past, no?

Rory Respicio, General Manager, Port Authority of Guam: Correct and what I'm saying only two (2)...

Senator Telen Cruz Nelson, Committee Chairperson: Exactly so, not every accident that occurred involved had any illegal substances.

Rory Respicio, General Manager, Port Authority of Guam: The two (2) that were tested...

Senator Telen Cruz Nelson, Committee Chairperson: Correct.

Rory Respicio, General Manager, Port Authority of Guam: Can I just say regarding the frequency of the random directive, I guess about the AG opinion this isn't a matter for me to decide in the AG opinion regarding random drug testing. In order to pass constitutional muster, the government employer has the burden of demonstrating a special need to conduct suspicious, suspicionless searches beyond crime detection random drug testing based on a general need to deter drug use is not constitutional.

Senator Telen Cruz Nelson, Committee Chairperson: Do you feel that there is a need to continue random drug testing and to move forward in the frequency has the applying has the AG opined on that.

Rory Respicio, General Manager, Port Authority of Guam: You know, if we're going to be guided by the rule of law. We have the Attorney General saying that you cannot conduct random drug testing for the sake of as a deterrent in order to pass constitutional muster. The government employer has the burden of demonstrating a special need to conduct suspicionless searches beyond crime detection random drug testing based on a general need to deter drug use is not constitutional.

Senator Telen Cruz Nelson, Committee Chairperson: Okay. And in any measure have you been able to apply that when it was deemed constitutional when there was suspicion.

Rory Respicio, General Manager, Port Authority of Guam: Absolutely ma'am. The first random drug testing, I had was based on a video of one (1) of the employees in my eyes, he was amping. One (1) of these...one (1) of these this employee...one (1) of the two (2) employees that invaded. So, I'm not saying he's on drugs, I'm not saying that but that's why what caused me as General Manager to do this random drug testing based on that reasonable suspicion. And that's how I proceeded.

Now, did I have reasonable suspicion all of 2019, no. I didn't because the testing that were conducted were not showing any positives. Then 2020 mostly all of 2020 and to the toward the latter part when those three (3) instances came up. So, all this talk of have more random drug tests to as a deterrent because it's proactive.

Okay, so, we didn't do random drug testing until that one (1) period and twenty-four (24) tested and twenty-four (24) came back negative. I don't know how much more proactive we've been with our employees and how much more the employees can endure when this cloud of suspicion that's just permeating throughout this compound.

Senator Telen Cruz Nelson, Committee Chairperson: Well, then I think that we need to take a look at the rules and regulations in the Port because it vaguely gives the Port the authority to do random drug testing and so, this is the issue at question here.

Rory Respicio, General Manager, Port Authority of Guam: Apologize, the issue is the Attorney General opinion...

Senator Telen Cruz Nelson, Committee Chairperson: Okay.

Rory Respicio, General Manager, Port Authority of Guam: That says random drug testing for the sake of being a deterrent is unconstitutional.

Senator Telen Cruz Nelson, Committee Chairperson: That's why I'm saying that we need to address the rules and regulations because it's conflicting with the AG's opinion.

Rory Respicio, General Manager, Port Authority of Guam: No, no, no, I am implementing the rules and regulations per what would pass the constitutional muster.

Senator Telen Cruz Nelson, Committee Chairperson: With this opinion, so, in the past in 2009 there have been other AG's that take place that have opined on different situations. Okay, that's what I'm saying. So, we're going to right now, we're going to adjourn this Informational Hearing. It is now 10:21. We're going to come back at 10:30 to start the Oversight Hearing. Thank you colleagues. We're going to come back at 10:30. We are in recess.

III. FINDINGS & RECOMMENDATIONS

The Committee found that the status of the Port Authority of Guam's plans and measures, provide a safe and drug free work- workplace program policy to their personnel and support staff; and how the Port addresses drug-test protocols, disciplinary actions, and the Employee Assistance Program. The committee also discussed their continued safety guidelines for COVID-19 and the Port Authority finances, specifically revenues and cargo throughput. The Committee also discussed recruitment practices, hiring procedures and Human Resources Management: 2016 to present.