

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
GOVERNMENT OF GUAM, PORT AUTHORITY OF GUAM
AND
THE U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION**

This MEMORANDUM OF UNDERSTANDING (hereinafter, "MOU") by and between the Government of Guam, Port Authority of Guam (hereinafter "PAG") and the U.S. Department of Transportation, Maritime Administration (hereinafter "Maritime Administration"), collectively, ("PARTIES"), outlines the responsibilities of each party with respect to facilitating the modernization and expansion of the Jose D. Leon Guerrero Commercial Port.

WHEREAS ninety percent of all commerce for Guam comes through the Jose D. Leon Guerrero Commercial Port;

WHEREAS the Jose D. Leon Guerrero Commercial Port has not been significantly modernized since it was constructed in the 1960's;

WHEREAS the United States Government and the Government of Japan initiated and intensified consultations on respective security and defense policies in December 2002, which included discussions about the Outer Western Pacific Islands;

WHEREAS on July 11, 2006 the U.S. Pacific Command released the "Guam Integrated Military Development Plan;"

WHEREAS the Department of Defense's military realignments and force structure build-up proposed for the island of Guam will require a significant increase in through-put capacity at the Jose D. Leon Guerrero Commercial Port;

WHEREAS the April 23, 2006 Alliance Transformation Realignment between the United States Government and the Government of Japan envisions the military construction to begin in 2010;

WHEREAS the PARTIES executed a Memorandum of Understanding on May 26, 2008 which subsequently expired on September 30, 2008;

WHEREAS the President of the United States signed into law on October 14, 2008, Public Law 110-417, Section 3512, the National Defense Authorization Act for 2009 which designates the Maritime Administration as the lead federal agency for the "Port of Guam Improvement Enterprise Program;

WHEREAS the Governor of Guam and the Government of Guam recognize the critical role the Jose D. Leon Guerrero Commercial Port plays in the lives of the citizens of Guam, the Micronesian Islands and the strategic importance the Port plays to the security of the United States;

THEREFORE, the Government of Guam, the PAG, and the Maritime Administration, agree it is mutually beneficial to execute this MOU, and agree as follows:

I. PURPOSE: This MOU outlines the responsibilities of the PARTIES with respect to: a) implementing the Port of Guam Improvement Enterprise Program in accordance with the Port Master Plan Update 2007 (“Master Plan”); and b) working collaboratively with the Department of Defense and National Port Readiness Network (i.e., Department of Homeland Security, Northern Command, U.S. Transportation Command, and Surface Deployment Distribution Command) on the designation of the Jose D. Leon Guerrero Commercial Port as a Strategic Port. The combined efforts are hereinafter called “the PROGRAM”.

The PAG has determined that the modernization of the Jose D. Leon Guerrero Commercial Port is required to:

- a) Improve the Port, adequately plan and implement Capital Improvement Programs to bring the Port to world class standards for the benefit of the Territory of Guam;
 - b) Improve the Port as a Transshipment hub for the region, for the benefit of the citizens of Micronesia (Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands); and
 - c) Increase the capacity of the Port to support the expected increase in cargo as a result of the Guam Build-up.
- II. AUTHORITY:** This MOU is made pursuant to the authority contained under the Merchant Marine Act of 1936, as amended (46 U.S.C. 50101 et seq.), Public Law 110-417 Section 3512, a copy of which is attached hereto as Exhibit A, and 12 Guam Code Annotated Chapter 10.
- III. OBJECTIVES:** It is the objective of this MOU that the PARTIES will establish working relations and assign responsibilities that leverage the expertise and experience of the PARTIES toward the facilitation of the modernization, expansion, and transformation of the Jose D. Leon Guerrero Commercial Port. The PARTIES’ intention is that this MOU will benefit the PAG, the users of the Jose D. Leon Guerrero Commercial Port, the United States and its military, and the citizens of Guam on the PAG’s efforts on the planning, development, and construction of their infrastructure needs.

The relationship and responsibilities established herein shall facilitate efficient and timely completion of the PROGRAM undertaken through this MOU with the following Port Modernization Objectives in ranking order of priority within the Port Master Plan framework:

1. Correct the deteriorated structural, utility and infrastructural facility deficiencies and upgrade said facilities to modern safe standards.
2. Execute the modernization program while maintaining levels of service to port users without disruption or deterioration of service levels.
3. Perform the modernization program activities in a fashion that prevents loss of cargo throughput levels including both local and transshipment service.

4. Modernize port equipment, cargo handling and other operational systems to standards equivalent to those in comparable, modern mainland and Asian container and break-bulk cargo ports.
5. Perform the modernization program with phasing and scheduling consistent with the above to achieve anticipated Port capacity requirements.

In consideration of the above objectives and the sense of urgency related to the PROGRAM, PAG wishes to begin execution of the PROGRAM with a minimum of disruption and delay and complete it in a timely fashion.

Within the parameters of this MOU, and to the extent authorized by law, the PARTIES and their authorized agents or representatives shall work cooperatively with each other and ensure coordination of efforts for successful administration of federal and non-federal funds made available for the PROGRAM.

IV. PAG RESPONSIBILITIES:

1. The development of all facilities, elements and components of the PROGRAM shall be performed as approved by PAG and PAG shall be the final decision-maker on the PROGRAM components, sequencing and their standards of performance and quality and on their adequacy or inadequacy for meeting its needs and the objectives outlined in Section III.
2. The PAG shall establish the overall and specific PROGRAM requirements (PROGRAM REQUIREMENTS) including the capacity, type and form of facilities to be integrated into the PROGRAM consistent with PAG's funding and financing framework, objectives for serving its constituencies, and timelines for completion.
3. The PAG shall define the functional, operational, quality, performance and engineering standards and benchmarks for the PROGRAM for use by the Maritime Administration for completion and delivery of the PROGRAM.
4. The PAG in collaboration with the Maritime Administration will develop an implementation plan ("IMPLEMENTATION PLAN") to guide the completion of the PROGRAM. The implementation plan shall be developed consistent with the objectives outlined in Section III and with due deliberation of the environmental concerns, permitting, design/engineering, construction, funding availability, financing and schedule considerations for the PROGRAM.
5. Coordinate the requirements of Guam governmental agencies related to the PROGRAM.
6. Coordinate local Public Outreach and Communications efforts to build awareness and consensus for the PROGRAM amongst key local stakeholders, including the Port Users, citizens of the Territory of Guam, and regional transshipment users of the Port.

7. Contract the services of a professional engineering firm to serve as an owner's agent whose purpose will be to assist the PAG in managing the ongoing port operations in conjunction with the various construction efforts under this PROGRAM.
8. To the extent authorized by law, the PAG will:
 - A. Execute documentation, as deemed necessary, that will enable the Maritime Administration to request interagency funding transfers of all identified "Port of Guam Improvement Enterprise Fund" amounts received by other Federal agencies from present and future annual Congressional Appropriations for the PROGRAM.
 - B. The PAG and other entities, at their own discretion, may elect to provide additional funding under this MOU.
 - C. Review and authorize as appropriate the disbursement of PROGRAM funding maintained by the Maritime Administration for activities to support the PROGRAM.
 - D. Designate primary PAG points of contact for coordination with the Maritime Administration's designated contacts for management of PROGRAM activities.

V. MARITIME ADMINISTRATION RESPONSIBILITIES:

1. To the extent the Maritime Administration is authorized by law as the lead federal agency for this PROGRAM, the Maritime Administration will:
 - A. Subject to the availability of funding, engage in contracts with third parties to complete the PROGRAM in accordance with the PROGRAM REQUIREMENTS and the IMPLEMENTATION PLAN.
 - B. Contract the services of a Program Management Team ("PMT") which will oversee all aspects of the PROGRAM including program management, environmental documentation, engineering and design, and construction for delivery of the PROJECT in accordance with the PROJECT REQUIREMENTS. The PMT shall also be responsible for the development and upkeep of detailed engineering drawings and specifications, schedules, budget, contract activity and execution plans (EXECUTION PLANS) based on the PROGRAM REQUIREMENTS and the IMPLEMENTATION PLAN.
 - C. Provide federal oversight of all work performed by the PMT firm during execution of PROGRAM activities and take any and all remedies, if necessary, to ensure satisfactory performance and maintain compliance with PROGRAM REQUIREMENTS.
 - D. Coordinate with other Federal agencies that receive annual Congressional appropriations that are appropriated for the Port of Guam Improvement Enterprise Program.

- E. Consult with the Port Authority of Guam General Manager or its designated point of contact for the PROGRAM, on all meetings and efforts related to the PROGRAM, and provide periodic status reports to the Port, including quarterly reports on all deposits to and expenditures from the Port of Guam Improvement Enterprise Fund.
- F. As lead Federal agency for the PROGRAM, coordinate National Environmental Policy Act (“NEPA”) requirements, obtain all Federal permits required for the PROGRAM, and work with the Port Authority of Guam to obtain necessary permits to begin program construction in accordance with applicable timelines.
- G. Designate primary Maritime Administration points of contact for day-to-day management of PROGRAM activities.
- H. Collaborate with and assist PAG in developing the IMPLEMENTATION PLAN for the PROGRAM.
- I. Obtain approval from the PAG of all facility and equipment designs, drawings and specifications prior to solicitation of contracts for performance of the work. Additionally, the PAG may, at its discretion, have representation on all contract evaluation and selection boards prior to contract awards. All PAG representatives participating on such boards shall execute a non-disclosure agreement, the terms of which will be specified and provided by MARAD.
- J. Provide transparent and unimpeded access to all material, information, meetings, construction work and activities related to PMT activities and subcontracts related to the PROGRAM and assist PAG in monitoring compliance with the PROGRAM REQUIREMENTS.
- K. Develop and execute all financial documents as required for the transfer to and administration by the Maritime Administration of Federal and non-federal amounts received and released by the Government of Guam or the PAG for PROGRAM activities.
- L. As legally appropriate, MARAD will provide and transfer resources necessary to support the PROGRAM.
- M. Adhere to all applicable Federal laws, including regulations and guidance on funding appropriations, acquisitions, and grants (e.g. Federal Acquisition Regulations and Office of Management and Budget Circulars) and local regulations, as applicable, in the execution of the PROGRAM.
- N. Obligate and disburse funding for the PROGRAM oversight, program management, environmental studies and analysis, the NEPA process, permitting, design, engineering, construction, or rehabilitation pursuant to PROGRAM requirements, including being responsible for all financial reporting requirements

consistent with grant or funding obligations and all funding compliance requirements related to or associated with the PROGRAM.

VI. GOVERNMENT OF GUAM RESPONSIBILITIES:

1. To the extent authorized by law, the Government of Guam will:
 - A. Ensure Government of Guam departments, instrumentalities, entities and agencies collaborate with and provide specialized expertise expeditiously, as appropriate, to the PARTIES, in support of the PROGRAM.
 - B. Consult, coordinate, and cooperate with other elected and non-elected officials to further the purpose of the MOU and PROGRAM, as applicable.

VII. SHARED RESPONSIBILITIES OF THE PARTIES:

1. Cooperate with other local and federal agencies and organizations to further the purpose of this PROGRAM, as applicable.
2. Meet to review PROGRAM development and the partnership, as necessary.
3. Coordinate with each other prior to the release of any public information (including media releases) that pertain to activities performed under this MOU.

VIII. GENERAL PROVISIONS:

1. This MOU does not obligate the PARTIES to spend funds not specifically appropriated or allocated for the PROGRAM. PAG may seek re-programming of excess funds away from the PROGRAM subject to approval of the provider of said excess funds.
2. All Port improvements undertaken and realized through the efforts employed in relation to this MOU are the sole and exclusive property of the PAG.
3. The PARTIES agree to work collaboratively towards achieving the goals and objectives established in this MOU and the IMPLEMENTATION PLAN.

IX. TERM, TERMINATION AND AMENDMENT:

1. This MOU becomes effective when signed by the PARTIES and shall remain effective until:
 - A. A termination date agreed to by mutual agreement, or
 - B. A termination date specified in a written notice by one party sent to the other parties at least 90 days in advance of that termination date, or

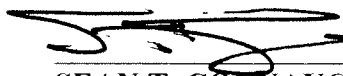
- C. Successful completion of the PROGRAM as mutually agreed by both PARTIES.
2. To the extent authorized by law, in the event of a termination of this MOU, all present and future funds appropriated or otherwise made available for the PROGRAM shall become under the exclusive control and administration of the PAG for use in furtherance of the PROGRAM. All work product, including plans, technical specifications, blue prints, reports, funding requests, and related documents, arising out of this MOU and PROGRAM shall become the exclusive and sole property of the PAG.
3. The PARTIES may propose amendments to this MOU in writing at any time and such amendments shall become effective upon written approval of the PARTIES.

X. MOU INTERPRETATION:

The PARTIES will construe the terms of this MOU pursuant to the provisions set forth in paragraph II.

XI. ADOPTION:

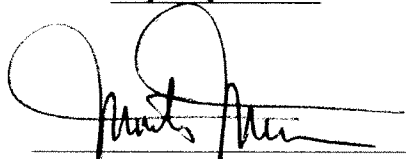
The following officials, having reviewed the terms contained herein, concur with, and hereby approve this MOU:

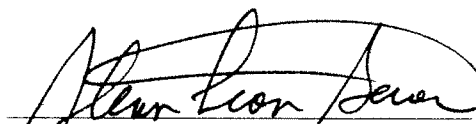

SEAN T. CONNAUGHTON
Maritime Administrator
Maritime Administration


FELIX P. CAMACHO
Governor
Territory of Guam

Date: 12/08/08

Date: 11/26/08


MONTE D. MESA
Chairman, Board of Directors
Port Authority of Guam


GLENN LEON GUERRERO
General Manager
Port Authority of Guam

Date: 11/24/08

Date: 11/21/08

EXHIBIT A: Public Law 110-417 Section 3512

<< 48 USCA § 1421r >>

SEC. **3512.** PORT OF GUAM IMPROVEMENT ENTERPRISE PROGRAM.

SEC. 3512. PORT OF GUAM IMPROVEMENT ENTERPRISE PROGRAM.

(a) In General- The Secretary of Transportation, acting through the Administrator of the Maritime Administration (in this section referred to as the `Administrator'), may establish a Port of Guam Improvement Enterprise Program (in this section referred to as the `Program') to provide for the planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities.

(b) Authorities of the Administrator- In carrying out the Program, the Administrator may--

- (1) receive funds provided for the Program from Federal and non-Federal entities, including private entities;
- (2) provide for coordination among appropriate governmental agencies to expedite the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects carried out under the Program;
- (3) provide for coordination among appropriate governmental agencies in connection with other reviews and requirements applicable to projects carried out under the Program; and
- (4) provide technical assistance to the Port Authority of Guam (and its agents) as needed for projects carried out under the Program.

(c) Port of Guam Improvement Enterprise Fund-

(1) ESTABLISHMENT- There is established in the Treasury of the United States a separate account to be known as the `Port of Guam Improvement Enterprise Fund' (in this section referred to as the `Fund').

(2) DEPOSITS- There shall be deposited into the Fund--

- (A) amounts received by the Administrator from Federal and non-Federal sources under subsection (b)(1);
- (B) amounts transferred to the Administrator under subsection (d); and
- (C) amounts appropriated to carry out this section under subsection (f).

(3) USE OF AMOUNTS- Amounts in the Fund shall be available to the Administrator to carry out the Program.

(4) ADMINISTRATIVE EXPENSES- Not to exceed 3 percent of the amounts appropriated to the Fund for a fiscal year may be used for administrative expenses of the Administrator.

(5) AVAILABILITY OF AMOUNTS- Amounts in the Fund shall remain available until expended.

(d) Transfers of Amounts- Amounts appropriated or otherwise made available for any fiscal year for an intermodal or marine facility comprising a component of the Program shall be transferred to and administered by the Administrator.

(e) Limitation- Nothing in this section shall be construed to authorize amounts made available under section 215 of title 23, United States Code, or any other amounts made available for the construction of highways or amounts otherwise not eligible for making port improvements to be deposited into the Fund.

(f) Authorization of Appropriations- There are authorized to be appropriated to the Fund such sums as may be necessary to carry out this section

Enacted October 14, 2008