

MINUTES OF A REGULAR MEETING  
OF THE BOARD OF DIRECTORS OF THE  
**GUAM ECONOMIC DEVELOPMENT AUTHORITY**

July 24, 2012

*Call to Order*

§ 1. The regular meeting of the Board of Directors of the **GUAM ECONOMIC DEVELOPMENT AUTHORITY** (referred to as “GEDA” or the “Authority”) was held on July 24, 2012 at the hour of 1:50 p.m. at the Guam Economic Development Authority Conference Room, Fifth Floor, Suite 511, ITC Building, Tamuning, Guam. The meeting was called to order to consider several items on the agenda.

*Attendance and quorum*

§ 2. **Roll call.** As determined by the roll call, the following directors were present:

*Directors:*

Ricardo C. Duenas  
Edward J. Calvo  
Arlene P. Bordallo  
George Chiu  
Robert P. Salas

*Offices or positions:*

Chairman  
Vice Chairman  
Assistant Secretary

*Absent and excused:*

Ramona L.E. Jones  
David J. John

Secretary

*Also present were:*

*GEDA officials:*

Karl A. Pangelinan  
Christina D. Garcia  
Janalynn Damian

Administrator  
Acting Deputy Administrator  
GEDA Legal Counsel  
(Calvo Fisher & Jacob LLP)  
Real Property Manager

Larry Toves

Lester L. Carlson, Jr.	Business Development & Marketing Manager
Claire Cruz	Programs & Compliance Manager
Bernice Torres	Admin. & Operations Manager
Mike Cruz	Project Director
Antoinette Leon Guerrero	Public Finance Officer
George Bamba	Administrative Services Officer
Charlene Concepcion	Executive Assistant
Maree Pelkey	Management Analyst
Arleen Evangelista	Administrative Assistant, FSD
Rachel Leon Guerrero	SSBCI Program Coordinator

### *Approval of Agenda*

§ 3. The first item considered was approval of the agenda. There was a recommendation to move Executive Session to Item V. On motion duly made by Director Calvo and seconded by Director Chiu, the agenda was unanimously approved as amended.

### *Executive Session*

§ 4. Upon recommendation of legal counsel, on motion duly made by Director Calvo and seconded by Director Bordallo, the Board recessed at 1:52 p.m. to convene an Executive Session to discuss Civil Case CV1279-06. After the Executive Session, the Board reconvened at 2:13 p.m.

On motion duly made by Director Bordallo and seconded by Director Calvo, the following resolution was unanimously approved:

### *Resolution No. 12-030*

RESOLVED, that the Board directs legal counsel to send a letter to counsel for Mr. Laing acknowledging receipt of Mr. Laing's payment and rejecting Mr. Laing's request to amend the payment schedule in the settlement agreement.

### *Approval of Minutes*

§ 5. The next item on the agenda was approval of the minutes of the June 21, 2012 Board meeting. On motion duly made by Director Chiu and seconded by Director Bordallo, the following resolution was unanimously approved:

***Resolution No. 12-031***

RESOLVED, that the Board approves the minutes of the June 21, 2012 meeting.

***Communications***

§ 6. The next item considered was Communications. Administrator Pangelinan briefed the board on Executive Order No. 2012-10 Relative to Creating the Governor's Performance Based Management System Executive Steering Committee. Administrator Pangelinan informed the Board that he was appointed to this taskforce. There was no further discussion.

***Old Business***

§ 7. The next item discussed was Old Business. The first item of discussion was the modification of Qualifying Certificate No. 242 for Asia Pacific Hotels (Guam), Inc. dba Fiesta Resort Hotel. Director Chiu recused himself from participating in the discussion because of a conflict of interest. Mrs. Claire Cruz, Programs & Compliance Manager, referred the Board to the write-up contained in their board packet. Mrs. Cruz briefed the Board on two requests for modification for Board approval on said qualifying certificate - 1) the effective dates for the provisions listed in Section 3.05 of the modified QC and 2) acknowledgement that as of May 16, 2007 the number of hotel rooms changed from 336 to 318 and the number of hotel restaurants from 4 to 1. After discussion, on motion duly made by Director Calvo and seconded by Director Salas, the following resolution was unanimously passed:

***Resolution No. 12-032***

RESOLVED, that the Board approves the request to modify Asia Pacific Hotels, Inc. (Guam) dba Fiesta Resort Guam's Qualifying Certificate No. 242, as recommended in that request for modification of Qualifying Certificate No. 242 included as part of the Board's packet and attached hereto as Attachment 1; and be it

RESOLVED FURTHER, that the Board adopts the findings as set forth in said request for modification of Qualifying Certificate No. 242, attached hereto as Attachment 1; and be it

RESOLVED FURTHER, that this resolution shall take effect from and after its adoption and that the Chairman certify and the Secretary or Assistant Secretary attest to the adoption of this resolution.

§ 8. The next item of Old Business for discussion was the Grow Guam LLC Qualifying Certificate No. 251. This item was tabled.

§ 9. The next item of Old Business for discussion was the Program Management Office (PMO) update. Mr. Larry Toves, Real Property Manager briefed the Board on the Archeological Services Contract for the Guam Museum and Other HOT Bond Projects. GEDA staff recommended that the Board authorize the Administrator to execute a professional services contract with Southeastern Archaeological Research, Inc. (SEARCH) upon final approval of the contract by Legal Counsel. After discussion, on motion duly made by Director Chiu and seconded by Director Bordallo, the following resolution was unanimously passed:

***Resolution No. 12-033***

RESOLVED, that the Board authorizes the Administrator to execute a professional services contract with Southeastern Archaeological Research, Inc. (SEARCH) upon final approval of the contract by Legal Counsel. Thereafter, the contract will be provided to the Bureau of Budget and Management Research and the Attorney General's Office for review and approval before being submitted to the Governor for final approval

***New Business***

§ 10. The next item on the agenda was New Business. The first item for discussion was RFP 12-019 for Underwriter Services for the Government of Guam's Proposed Financing Projects ("RFP 12-019"). The Board began with opening of the proposals submitted in response to RFP 12-019. George Bamba, Administrative Services Officer, informed the Board that GEDA received eight

(8) proposals, which were opened in the presence of the Board. All of the proposals received were initially classified as responsive (one original, one electronic copy, and seven copies were submitted to GEDA on or before 4:00 p.m., June 22, 2012), and are as follows:

<u>Proposal No.</u>	<u>Company</u>
1	Bank of America Merrill Lynch
2	Morgan Stanley Smith Barney
3	Samuel A. Ramirez & Co.
4	CitiGroup
5	Piper Jaffray & Co.
6	Barclays Capital
7	Wells Fargo
8	Roosevelt & Cross

Copies of the proposals were distributed to the Board for review. Chairman Duenas acknowledged receipt of the submissions. Mrs. Christina Garcia, Acting Deputy Administrator and Financial Services Manager, briefed the Board on RFP 12-019's proposed financing projects and recommended approval of the members appointed for the evaluation team. On motion duly made by Director Chiu and seconded by Director Calvo, the following resolution was unanimously passed:

***Resolution No. 12-034***

RESOLVED, that the Board approves the recommendation to appoint Karl A. Pangelinan – GEDA's Administrator, Christina D. Garcia – GEDA's Acting Deputy Administrator and Financial Services Division Manager, Carlos Bordallo – GIAA, Governor's Office Representative, and Department of Administration Representative to serve as the members of the evaluation committee for review of the proposals submitted in response to RFP 12-019.

§ 11. The next item of New Business for discussion was RFP 12-022 for Trustee, Co-Trustee, Depository and/or Paying Agent Services for the Anticipated Government of Guam's Department of Public Works Grant Anticipation Revenue Vehicle (GARVEE) Financing. Mrs.

Garcia briefed the Board on said RFP. Mrs. Garcia informed the Board that only two responses were received in response to the RFP (one declination) and recommended approval of the selection of Bank of Guam as the most qualified offeror to provide the services as outlined in the RFP, and to commence fee negotiations. After discussion, on motion duly made by Director Calvo and seconded by Director Bordallo, the following resolution was approved.

***Resolution No. 12-035***

RESOLVED, that the Board approves the selection of Bank of Guam to serve as the Trustee, Co-Trustee, Depository and/or Paying Agent Services for the Anticipated Government of Guam’s Department of Public Works Grant Anticipation Revenue Vehicle (GARVEE) Financing for RFP 12-022, and to commence fee negotiations.

§ 12. The next item of New Business for discussion was RFP 12-024 for Underwriter Services for the Guam Power Authority’s (GPA) Anticipated 1993 and 1999 Revenue Bond Refunding / Refinancing (“RFP 12-024”). The Board began with opening of the proposals submitted in response to RFP 12-024. George Bamba, Administrative Services Officer, informed the Board that GEDA received eight (8) proposals, which were opened in the presence of the Board. All of the proposals received were initially classified as responsive (one original, one electronic copy, and seven copies were submitted to GEDA on or before 4:00 p.m., July 23, 2012), and are as follows:

<u>Proposal No.</u>	<u>Company</u>
1	Morgan Stanley Smith Barney (2 submissions)
2	CitiGroup
3	Samuel A. Ramirez
4	Bank of America Merrill Lynch
5	Piper, Jaffray & Co.
6	Barclays Capital (2 submissions)

Copies of the proposals were distributed to the Board for review. Chairman Duenas acknowledged receipt of the submissions. Mrs. Garcia, briefed the Board on RFP 12-024 and recommended approval of the members appointed for the evaluation team. On motion duly made by Director Chiuand seconded by Director Bordallo, the following resolution was unanimously passed:

***Resolution No. 12-036***

RESOLVED, that the Board approves recommendation to appoint two GPA Management Team Members, two GEDA Public Finance Team Members, and one Governor's Office Representative to serve as the members of the evaluation committee for review of the proposals submitted in response to RFP 12-024.

***Public Comments***

§ 13. The next item on the agenda was Public Comments. There were no comments.

***Reports***

§ 14. The next item on the agenda was Reports. The Board was referred to their Board packets for the written reports of the various divisions. There was no discussion.

***Others***

§ 15. The next item on the agenda was Others. Mr. Lester L. Carlson Jr., Business Development & Marketing Manager, informed the Board that the Association of Government Accountants awarded GEDA the Silver Award for the Best Government of Guam Website for 2012. This award recognizes Government of Guam websites that promote transparency and accountability.

***Adjournment***

§ 16. There was a recommendation to recess and reconvene the meeting on July 26, 2012 at 1:30 p.m. On motion duly made by Director Calvo and seconded by Director Bordallo, at 3:30 p.m. the meeting was recessed.


Dated this 23 day of August, 2012.



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Ricardo C. Duenas  
Chairman

ATTEST:



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Arlene P. Bordallo  
Assistant Secretary



# Attachment 1



EDDIE BAZA CALVO  
GOVERNOR OF GUAM  
I MAGA' LAHEN GUAHAN  
RAY TENORIO  
LT. GOVERNOR OF GUAM  
I SEGUNDO NA MAGA' LAHEN GUAHAN  
KARL PANGELINAN  
ADMINISTRATOR  
ADMINISTRADOR

Aturidâd Inadilânton Ikunumihan Guahan

**GUAM ECONOMIC DEVELOPMENT AUTHORITY**  
**Modification of QC 242**  
**Asia Pacific Hotels, Inc. (Guam), Inc. dba Fiesta Resort Hotel**

**REQUEST No. 1: Approve effective dates for the provisions as listed in Section 3.05 of modified QC #242:** §3.05 The effective date of this Certificate and commencement of the tax rebates and abatement provided for in Article 1, supra, shall be the date the Governor signs this Certificate. However, the following provisions will be retroactively effective to May 16, 2007, the date the Board approved the amendments: §§1.02; 1.03; 1.04; 3.03; 3.06.01; and 3.16..01. Sections 3.17.03; 3.17.04 and 3.17.05 shall be effective upon the dates stated in those respective provisions.

Modifications to those sections are as follows:

Nature of Tax	From 2003	From 2003	From 2007	From 2007	Benefit % to Remain Unchanged
	# of Remaining Years	Expiration	# of Remaining Years	Expiration	
Corporate Income Tax	16	2023	10	2017	75%
Real Property Tax	6	2013	4	2011	100%
Shareholder Dividend Tax	4	2007	0	2007	100%

**Income and activities subject to this Certificate**

§3.03 The income tax rebate authorized by this Certificate shall only apply to income received from the operation of a tourist class hotel featuring 336 rooms to 318 rooms from May 16, 2007, 4 restaurants to 1 restaurants from May 16, 2007, marine sports center and swimming pool facilities, all on Guam; such facilities are to be owned and operated by the Corporation at all times during the term of this Certificate.

**Employment obligations**

§3.06.01 **Minimum employment figures.** In order to allow for fluctuation in visitor arrivals, a tiered staffing pattern will be put into place based on average hotel occupancy as follows:

Average Occupancy	No. of Employees	No. of Employees after May 16, 2007
Less than 60%	160	132
60% to 69%	180	142
70% to 79%	200	152
80% to 89%	220	162
90% or more	240	172

**Other obligations of a public nature**

§3.17.03 Beginning July 15, 2011, the Corporation shall annually contribute Forty Thousand Dollars (\$40,000.00) in cash to GEDA to assist with the economic development of Guam, which contributions shall not be used for employee's salaries or benefits.

§3.17.04 From May 16, 2007 until July 14, 2011, the Corporation shall annually contribute twenty thousand dollars (\$20,000) in cash to the Guam Visitors Bureau for their anti graffiti program, not to be used for employee salaries.

§3.17.05 From May 16, 2007 until July 14, 2011, the Corporation shall annually contribute twenty thousand dollars in cash to assist GEDCA in promoting Guam as a distinct investment destination, in accordance with 12 GCA §58110.

**Request NO. 2: for purposes of clarification, per Section 3.03 of the modified QC the Board acknowledges that as of May 16, 2007 the number of hotel rooms changed from 336 to 318 and the number of hotel restaurants from 4 to 1.**

**FINDINGS**

**Findings: 12 GCA §58132 Modification of Tax Benefits.**

1. 12 GCA §58132 authorizes the government to modify the tax benefits of an existing QC only when the beneficiary of the QC agrees in return to substantially expand or add to the activities. Upon findings and recommendations of the Authority, the Governor may modify the original QC subject to (a) additional proposed activities satisfy requirements of 12 GCA §58103 and §58106 and the Authority makes its recommendations required by §58109. (b) cancellation of original QC and (c) tax benefits applicable to the additional activities may be at rates, conditions, and for a term different from those in the original QC.

- Substantial expansion. On 4/11/07 Fiesta Resort submitted to GEDA a completed QC1 (QC application form) detailing how the hotel has substantially added to its activities at a cost of \$22 million when it undertook a rebranding of the hotels image into a tropical image that matched the local environment and also met the current needs of its customers.

- 12 GCA §58103. Benefits of a QC. Fiesta modification request only changed certain provisions of its original QC it continues to meet all the eligibility requirements: licensed to do business in Guam, employment of US/PR, offers wages no lower than prevailing wage, offers training and health benefits, submits monthly reports to GEDA on financial, employment and payroll.

- 12 GCA §58106. QC Issuance of. Must be a Guam corporation engaging in an eligible business. Asia Pacific Hotels, Inc. dba Fiesta Resort is a guam corporation which operates as a hotel an approved entity under the QC law.

- 12 GCA §58109. Specific findings.

1. **Impact of proposed activities on established businesses and markets in Guam.** The government of Guam still considers tourism as the major private sector revenue source and supports the development of facilities to support its growth.

2. **Financial risk facing the applicant in undertaking the proposed activities:**

- Beneficiary's risk in investing \$22 million (100% sourced from the parent company as equity interest) in renovation and marketing activities represents significant faith in the future health of Guam's visitor industry.
- Beneficiary accepted shorten term of its original tax benefits in exchange for these modifications. Govguam to receive 100% corporate tax and real property taxes from this corporation earlier than originally obligated.

**3. Location of the proposed activities.**

The hotel is located in the center of Tumon Bay and being one of the oldest hotels on island.

**4. Importance of the proposed activities to the economy of Guam and to the official economic policies of the government of Guam.**

- The renovation will prolong the life of the property and upgrade the appearance and value of the Tumon Bay area.
- The injection of \$22 million to the construction industry sparks economic activity of the island's contractors and suppliers.
- A major portion of the hotel's operating expenses would generate an average of \$7 million per year for local businesses.
- Provide continued employment for Guam residents at an annual average payroll cost of \$3 million.
- The government of Guam still considers tourism as the major private sector revenue source and supports the development of facilities to support its growth.

2. 12 GCA §58107 and §58111. The tax benefits granted to a beneficiary in a QC can not be curtailed, limited, or impaired without the consent of both parties except in the case of suspension, rescission, or revocation of a QC.

- On 5/16/07 the GEDA Board approved certain amendments to QC 242 that included the reduction in QC benefits. The Boards recommendations where conveyed in writing to the Beneficiary on 5/21/07, followed with other similar correspondence through 8/29/07. Subsequently, on 11/14/07 GEDA received a letter from Fiesta Resort acknowledging their acceptance of the terms and conditions of the GEDA Boards recommendations.

**STAFF RECOMMENDATION: Approve requests No. 1 and No. 2**

**BASIS:**

1. Based on an AG Opinion ref. GEDCA 05-0710 dated 2/13/07 "Retroactive Application of a Qualifying Certificate Agreement". This opinion states among other things that a QC amendment can be made to change the effective dates for QC benefits to accrue back to the time when the GEDA Board made its recommendations based on its findings relative to the Beneficiary's request.
2. Based upon the findings set forth above, the Authority satisfied the requirements of 12 GCA §58103 and §58106 and the Authority makes its recommendations required by §58109.

Respectfully Submitted by:

\_\_\_\_\_  
**KARL A. PANGELINAN, Administrator**

**BOARD ACTION:** APPROVED / /      DISAPPROVED / /

\_\_\_\_\_  
**RICARDO DUENAS**  
Chairman

DATE: \_\_\_\_\_