

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

March 20, 2014

*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 March 20, 2014 at the hour of 1:45 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:*

Edward J. Calvo  
David J. John  
Arlene P. Bordallo  
George Chiu  
Monte Mesa  
Ernesto V. Espaldon, Jr.

*Offices or Positions:*

Chairman  
Vice Chairman  
Secretary  
Director  
Director  
Director

*Absent and excused:*

Vera Wu (off-island)  
Mana Silva Taijeron

Director  
Deputy Administrator

*Also present were:*

*GEDA Officials:*

Henry J. Taitano  
Janalynn Cruz Damian

Administrator  
GEDA Legal Counsel  
Calvo Fisher & Jacob LLP)

Diego Mendiola  
Henry Cruz  
Larry Toves  
Claire Cruz  
Bernice Torres  
Carl Quinata

Real Property Assistant Manager  
Economist  
Real Property Manager  
Loans & Compliance Manager  
Administration & Operations Manager  
Industry Development Specialist

Gloria Molo  
Greg Sablan  
Therese Santos  
Mike Cruz  
Steve Dierking  
Anisia Terlaje  
Purita Quinamague

Administrative Services Officer  
Public Finance Assistant Manager  
Executive Assistant  
Project Director  
Chief Information/Marketing Manager  
Special Assistant Inter-Agency Support  
Accountant

Jeff Marchesseault  
John E. Grady  
Zig Resiak  
Jehan'Ad Martinez  
Nicole Santos

DNA, Inc.  
CHA  
CHA PMO  
Blair Sterling Johnson & Martinez  
Office of Senator Ben Pangelinan

### ***Approval of Agenda***

§3. The first item considered was approval of the agenda. On motion duly made by Director Mesa and seconded by Director Chiu, the agenda was unanimously approved.

### ***Approval of Minutes***

§4. The next item on the agenda was approval of the minutes of the January 16, 2014 regular board meeting and January 27, 2014, reconvened meeting from January 16, 2014. On motion duly made by Director Mesa and seconded by Director Bordallo, the following resolution was unanimously approved:

### ***Resolution No. 14-019***

RESOLVED, that the Board approves the minutes of the January 16, 2014 regular meeting and the January 27, 2014 reconvened meeting from January 16, 2014.

### ***Communications***

§5. The next item on the agenda was Communications.

The first item under Communications, Administrator Taitano congratulated Bernice Torres, Administration & Operations Manager, and her team on GEDA's successful audit, ten years in a row. This is a testament to the work ethic of Mrs. Torres and the rest of the managers.

### ***Old Business***

§6. The next item on the agenda was Old Business.

The first item under Old Business was Real Property: Guam Fishermen's Coop Memorandum of Agreement.

Mr. Larry Toves, Real Property Manager, informed the Board that at the January 27, 2014 meeting, the GEDA Board of Directors tabled the request to approve the Memorandum of Understanding (“MOU”) between the Guam Fisherman’s Cooperative Association (“GFCA”) and GEDA. The Board wanted legal counsel review of Public Law 32-56 and GEDA’s authority to impose conditions on GFCA to carry out GEDA’s fiduciary responsibility over the expenditure of HOT Bond proceeds, including the requirement for GFCA to hire a construction manager.

Mr. Toves, informed the Board that Legal Counsel completed the requested analysis and has determined that, yes, GEDA can request documentation to support expenditures for the project, but GEDA has no approval authority over those expenditures. Further, GEDA can request/recommend that GFCA hire a CM, but GFCA does not need to approve that request.

In an effort to move this project along, GEDA requested and GFCA approved the attached MOU, which contains the provision that GFCA hire a construction manager. Since Senator Pangelinan requested a status report on the project and requested that this item be placed on the GEDA board agenda, the MOU was executed.

GEDA staff recommends that the Board ratify the approval of the MOU with GFCA.

Director Mesa noted that as to item 2(b) of the MOU, it should require that the conditions of section 1(d) should also be satisfied. Director Chiu responded that based on the language of the MOU, section 1(d) is covered under section 1(c) and stated his concern with GEDA liabilities. Director Mesa responded that there is an indemnification provision included.

After further discussion, on motion duly made by Director Mesa and seconded by Director Chiu, the following resolution was unanimously approved:

***Resolution No. 14-020***

RESOLVED, that the Board ratifies the Administrator’s execution of the Memorandum of Understanding between the Guam Fisherman’s Cooperative Association and GEDA on March 5, 2014.

§7. The next item under Old Business was Real Property: IFB 14-004 – Design and Construction of Lighting and Electrical Improvements at Governor Joseph Flores Park (Ypao Beach Park).

Mr. Larry Toves informed the Board that improvement of the lighting and electrical systems at Governor Joseph Flores Park is part of the capital improvement projects outlined in Public Law 30-228 and is funded by proceeds from the Hotel Occupancy Tax (“HOT”) Revenue bonds. The project includes repair and installation of lights in the Park. On January 22, 2014, GEDA issued IFB 14-004 to which seven (7) companies submitted bids before the submission deadline on February 19, 2014. The bidders were Eons Enterprise Corp., DCK Pacific Guam, Inland Builders Corp., Maeda Pacific Corp., Orion Construction Corp., Wadaco Group Inc., and Z4 Corporation.

The Engineer's opinion of Base Bid probable cost was \$228,350.00. The IFB included diagrammatic plans and specifications for the design and construction of the lighting and electrical systems. The IFB indicated that an award decision would be based on the lowest responsible and responsive Base Project pricing and Bid Options would be exercised at GEDA's sole discretion. There were seventeen Bid Options in the IFB. None of the bid options have been identified at this time for inclusion in the final design and construction package. Approximately \$117,639 of optional design and construction can be executed under this project given a project budget of \$330,000, since the lowest Project Base Bid was submitted by Inland Builders for \$212,360.81. GEDA and the PMO are reviewing the bid to determine responsibility and responsiveness.

Staff recommends that the Board authorize the Administrator to execute a contract with the lowest responsible and responsive bidder for a "Not-to-Exceed" amount of \$330,000 for the Design and Construction of Lighting and Electrical Improvements at Ypao Beach Park with options to be provided to the contractor in the contract. The contract will require final review by Legal Counsel. Thereafter, BBMR, AG and Governor's approval will be required.

Chairman Calvo requested for information on what areas in the park will be improved. Mike Cruz informed the Board that the main festival area (from the amphitheater to the Guam Visitors Bureau ("GVB") office) is one part of the park that is part of the base bid; three other zones will be chosen with consideration of priority. GEDA will be coordinating with GVB and Department of Parks and Recreation, but options have not been determined yet.

Chairman Calvo continued to inform the Board that this investment in improving the lighting at Ypao Park will just be the beginning of improvements at the Park. Later improvements will be based on the priority and will easily be enhanced if more funding is available in the future. Initially, GEDA evaluated at a 100% lighting plan and that estimated cost exceed the funding currently available. As funding becomes available the other zones in the park can be improved. Chairman Calvo added that the focus should remain on the priorities now and that the rest can be addressed later. The first time an IFB was issued for this project, the bids came in too high.

After further discussion, on motion duly made by Director Mesa and seconded by Director Espaldon, the following resolution was unanimously approved:

***Resolution No. 021***

RESOLVED, that the Board approves the award of IFB 14-004 for the Design and Construction of Lighting and Electrical Improvements at Ypao Beach Park to the lowest responsible and responsive bidder for a contract amount not-to-exceed \$330,000, to include any option within budget, subject to final review by Legal Counsel.

Chairman Calvo announced that Director John arrived at the start of discussion on IFB 14-004.

§8. The next item under Old business was Business Development: Economic Symposium Update.

Mr. Carl Quinata presented to the Board that the dates and location have been finalized, and the symposium will be held during the week of August 18, 2014, at the Hyatt Hotel. GEDA is working to develop an agenda and speakers for the event. Chairman Calvo elaborated that the reservation at the Hyatt also included room rates to promote to investors from off-island, side meeting rooms, as well as areas for meals for the attendees.

The draft agenda is for a three day conference during one week and an announcement to save the date should be coming out soon so that everyone will know about this important event.

Tourism is going to be a major part of this symposium. Not only existing reports, the vision of GVB short term, but also initiatives like the Cruise Line Industry, the Night Market, and other things that we expect GVB to do.

Chairman Calvo informed the Board that interest in this type of event has been expressed to GEDA staff when they attend conferences over the last three months. Administrator Taitano shared that due to the positive ratings that Guam has had, GEDA is starting to see interest in Guam by companies that are not only in the business of investing but have other core functions. In addition to that, there is the Blumberg Report that came out regarding positive ratings and the Huffington Post report about Guam being a fantastic destination. It is perfect timing for GEDA to use the momentum to get new types of investment on Guam.

Chairman Calvo informed the Board that they will be updated with the progress of the symposium planning.

§8. The next item under Old business was Business Development: QC Program Update.

Director John informed the Board that the QC Committee has finalized the recommendations for the New Construction Hotel QC. GVB has requested that GEDA delay presenting it to the Legislature so that further discussions on the draft legislation can be held between GEDA and GVB.

GEDA had requested from GVB as to a threshold as to what constitutes upgrading a hotel; is it a dollar amount per room, is it a percentage of overall value. GEDA would like to ensure that a QC proposed under this legislation is not issued just for painting.

GEDA has also started discussion on how to use the QC to back up the 2020 Vision, what needs to be put in place for an investor market.

### *New Business*

§12. The next item on the agenda was New Business. The first item for discussion was Real Property Division: Determination of Need – Former Star Press Property Lease.

Mr. Larry Toves presented to the Board that in 2013, GEDA attempted to lease the former Star Press property to a company that marketed and installed solar panels. However, the lease was not consummated as the prospective tenant decided against publication of a Determination of Need (“DON”) to advise the public and to obtain legislative approval of the actual permits, or licenses for use of public real property whose expected term is to exceed five (5) years. The law requires the following steps to be taken:

1. Prepare a “written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract (i.e., more than five (5) year lease term) and specifying the full term, inclusive of extensions options and renewals...”
2. Publicize a “notice of solicitation” which specifies the term thereof
3. Obtain GSA, Governor, or Board approval of Determination of Need
4. Submit copy of approved Determination of Need to Legislature.
5. Issue RFP.
6. Submit resulting lease to Legislature.
7. Legislature has 60 calendar days to act on ETC (lease) otherwise it is approved. Legislative public hearing must be held. Approval is by law, disapproval by resolution.

GEDA staff requested legal counsel to review the applicability of PL 32-40 to the GEDA Industrial Park lease program as GEDA believed that the law could not apply to an existing agreement that was executed in the late 1960’s. However, legal counsel determined that the law does apply to GEDA subleases of its Industrial Park properties. As a result, a DON for the former Star Press property is being presented for Board approval.

GEDA staff recommends that the Board allow the Administrator to publicize the DON and thereafter, provide the DON to the Legislature as the law requires legislative notification (not approval). Once a prospective lessee is selected, the terms of the lease will be presented to the Board for approval. Once approved, the lease will be provided to the Department of Land Management, the Attorney General and the Governor as required by the lease, and then to the Legislature as required by PL 32-40.

After further discussion, on motion duly made by Director Mesa and seconded by seconded by Director Chiu, the following resolution was unanimously approved:

#### ***Resolution No. 14-022***

RESOLVED, that the Board approves the Determination of Need for the Former Star Press property located in the E.T. Calvo Industrial Park as presented.

§13. The next item under new business was Assignment of Fred Chao Inc. lease.

Mr. Larry Toves informed the Board that Fred Chao Inc. (owned by Mr. Fred Bee, Mrs. Jean Bee, and Ms. Gina Endaya) subleases Lots 5, 6 and 8, Block 4, Tract 159 consisting of 3124 square meters of land and 9000 square feet of warehouse from GEDA for \$24,406.80 per year until 2017, not including options (the "Sublease"). Rent increases 10% every five (5) years thereafter until 2032. The land and building are located behind the ITC building at the base of the Tiyan cliff. Mr. and Mrs. Bee and Ms. Endaya, as represented by Attorney Fred Horecky, are selling their interests in Fred Chao Inc. (the "Tenant"). The Tenant's only asset is the Sublease.

Section 13.01(a) of the Sublease provides as follows:

Tenant shall not assign, mortgage, or hypothecate this sublease in whole or in part, or sublet all or any part of the sublease Premises, or otherwise permit third parties to occupy the premises without the prior written consent of landlord in each instance, which consent may be withheld by Landlord at its sole discretion. This prohibition against assigning shall be construed to include a prohibition against any assignment by operation of law. Should Tenant be a corporation, the transfer of more than twenty percent (20%) of the capital stock of Tenant shall constitute an assignment.

Pursuant to Section 13.01(a) of the Sublease, the Tenant is requesting GEDA's approval of the transfer of stock from Mr. and Mrs. Bee and Gina Endaya to Tai Fa Import & Export Company Inc. ("Tai Fa").

Tia Fa is currently leasing a warehouse behind the GPA headquarters in Harmon and will relocate its operations to the E.T. Calvo Memorial Industrial Park.

The Tenant currently pays around \$7.80/sm/year for the land and building as opposed to \$17/sm/yr based upon Carpet Store's 2013 appraisal for land and \$11/sf/year for the building (2010 Carpet Store building appraisal). Base rent for the sublease was negotiated shortly after Guam Fresh Inc. defaulted on its GEDA loan and subleased in 2002 and reflected the concern to immediately re-lease the property to obtain rent. Rent was increased in 2006 in consideration of the Tenant's request to remove use restrictions.

Although owned by GEDA, the building is in need of substantial repair. Staff inspection of the facility last year indicated that the roof leaks, interior partitions are in deteriorated condition, while the flooring also needs repair. The Tenant's previous subtenant, California Mart, removed its freezer upon eviction, and use of the facility by Tai Fa will require substantial investment.

GEDA staff recommends that the Board approve the transfer of 100% of the ownership interest in Fred Chao Inc. from Mr. and Mrs. Bee and Gina Endaya to Tai Fa, subject to final legal counsel review of the consent document and any necessary Sublease amendments, and subject to the following conditions:

- Rent increases to fair market rental value based upon an appraisal of the land and one year from approval of the transfer of ownership interest in order to give Tai Fa an opportunity to invest in improvements. The appraisal shall be commissioned by GEDA with the Tenant reimbursing GEDA for the cost of appraisal;
- The appraisals in 2017 and thereafter shall exclude the value of improvements made by the Tenant so as not to penalize the Tenant for making improvements.
- The Tenant shall maintain the building in a manner that preserves and increases its value.
- The Tenant agrees to an increase in subtenant rent from 3% to 15%, even though the Tenant will probably not sublease.
- Fred Chao or Tai Fa pay all fees to process this request including legal and DLM recording fees. Pursuant to Section 13.01(b) of the Sublease, as a condition to its consent, GEDA may require the Tenant to pay all expenses, including legal fees, incurred by GEDA in connection with the assignment.

After further discussion on the appraised value of the property, Attorney Fred Horecky presented to the Board that his clients believe the existing lease already provided for increases of 10% every five (5) years. The lease started in 2002. The lease states that after the initial term first term, GEDA could do a fair market value appraisal. That was supposed to be for the period of 2007 to 2012. GEDA never did the appraisal. Then at that point, 2006, the rent was increased roughly \$1700 per year.

Attorney Horecky explained to the Board that his clients and Tai Fa entered into their agreement based on the existing rent and not on the idea that there will be an increase. So if the rent is increased on the lines of what is being discussed, that would drastically affect the understanding of the parties and would make the whole deal impossible. Another option that Fred Chao Inc. might have is just to sublease the property to Tai Fa.

After further discussion on the details, the Board requested to table the Assignment of Fred Chao Lease Agreement so that staff can obtain further information on the value of the property.

### *Reports*

§16. The next item on the agenda was Reports.

Administrator Taitano presented a follow up on the Hagåtña Restoration; the final version of the MOU has been signed. The next step is on behalf of the Hagåtña Restoration; GEDA will issue an RFP for the master plan.

As for other development updates, as GEDA works on the MOUs it has with the other agencies, the Real Property Division will continue to pursue the opportunity to help promote our economic development through these land deals.

The next update was the employee of the month. Administrator Taitano congratulated Purita Quinamague on her designation as employee of the month.



*Public Comments*

§17. The next item on the agenda was Public comments. Chairman Calvo asked if there were any public comments.

Director Mesa presented information on the Miami Cruise Conference that he attended. He distributed information to the Board. Director Mesa pointed out that Asia's market share in the cruise industry is 3.4% of the total market. The cruise industry has repositioned ships into Asia and Australia, so Guam's opportunity is the transpacific routes. The handouts provided by Director Mesa illustrate the economic impact of the cruise industry.

The Micronesian Cruise Association has been formed and it involves the government of the CNMI, FSM, Palau and the Republic of Marshals. This speaks volume of the activity within the islands.

The opportunity is the on-shore revenues that will be generated. Chairman Calvo expressed that one of the things he would like to see GEDA do is find investment through government or private entities for facilities. One of the things that we have spoken about is that GEDA take the lead on an Economic Feasibility Study for the cruise line industry.


Former Senator Hope Cristobal addressed the Board regarding the Farmer's Coop Project. She mentioned that there was a condition of April 28 which is a month away and would like a status update on the process.

Mr. Larry Toves informed the Board and Senator Cristobal that he and Legal Counsel are finalizing the contract. Legal Counsel will check on what the April 28 date is that was referred to by former Senator Cristobal.


*Adjournment*

§18. Having no further items to discuss, on motion duly made by Director Chiu and seconded by Director Espaldon, at 3:20 p.m., the meeting was adjourned.

Dated this 24<sup>th</sup> day of March, 2014

  
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Edward J. Calvo  
Chairman

ATTEST:

  
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Arlene P. Bordallo  
Secretary