

**BOARD OF TRUSTEES**  
**Regular Meeting**  
Friday, November 12, 2004, 12:00 p.m.  
Retirement Fund Conference Room

**MINUTES**

<b>DEFINED BENEFITS</b>
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**I. ATTENDANCE, QUORUM, AND CALL TO ORDER**

After determining a quorum, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:09 p.m. Friday, November 12, 2004, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

**Board of Trustees Present:**

Joe T. San Agustin, Chairman  
James J. Taylor, Secretary  
Katherine T.E. Taitano, Treasurer  
Anthony C. Blaz, Trustee  
Gerard A. Cruz, Trustee  
George A. Santos, Trustee

**Board of Trustees Absent:**

Wilfred P. Leon Guerrero, Vice-Chairman  
*(Off-Island Conference – Excused)*

**Staff Present:**

Wilfred G. Aflague, Director  
Paula M. Bamba, Administrative Services Officer  
Pete Tajalle, Controller  
Ken Dunstan, Acting Benefit Program Administrator  
Vince Camacho, Great West Retirement Services  
Jackie Blas, Recording Secretary

**Legal Counsel Present:**

Pat Mason

**Public Present:**

Dennis Zermeno, Parks and Recreation Commission  
Ava Garcia, UOG Student  
Nicole Pinaula, UOG Student  
Peter F. Perez, Attorney at Law

## II. REVIEW AND APPROVAL OF BOARD MINUTES

### A. October 8, 2004 Regular Meeting

Chairman San Agustin made a clarification on Page 6, Number 5, of the Minutes of October 8, 2004: “After a brief debate, Vice-Chairman Leon Guerrero **ordered** the section be taken out and **directed** management to write a memorandum directly to the Chairman of the Board asking for a policy from the Board.” **It should read:** “After a brief debate, Vice-Chairman Leon Guerrero **moved** that the section be taken out and **requested** management to write a memorandum directly to the Chairman of the Board asking for a policy from the Board.”

Trustee Gerard Cruz stated that if that section (No. 5) were removed, are we saying that now Management does not have the ability to rebalance a portfolio on their own without Board directive. Controller Pete Tajalle stated that it would still stay in order to meet liquidation. Controller Tajalle stated that the Board has to be advised for cash issues first not for rebalancing. Chairman San Agustin stated that it’s a fundamental policy decision. Trustee Cruz asked if Management could rebalance. Secretary James Taylor suggested taking this to the Investment Committee and approving this for a period of six months. Trustee Cruz stated that he wanted to make it clear to Management that Management is asked to write to the Board requesting a memorandum from the Investment Committee.

Trustee Cruz inquired about the section on Page 3 of the Minutes of October 8, 2004 regarding the Attorney General’s opinion on double dipping where it states “In the meantime, **maintain status quo**” it should read “**we should go forward with prospective members with the most current Attorney General’s opinion.**”

**On motion of Trustee George A. Santos, seconded by Trustee Gerard A. Cruz, and unanimously agreed upon, the Minutes of October 8, 2004 Regular Meeting were approved, as corrected. Motion carried.**

## III. CORRESPONDENCE

Chairman San Agustin stated that the November 4, 2004 letter from the Public Auditor is being referred to the Audit Committee. The Audit Committee Meeting is scheduled for 12:00 Noon on November 18, 2004.

## IV. DIRECTOR’S REPORT - EXECUTIVE SUMMARY

**Investment Manager Search** – Director Aflague reported to the Board of Trustees that the International Manager selections were approved by the Board of Trustees. The contracts for services are expected to be in place before the end of November 2004. Chairman San Agustin asked if the contracts have been signed. Director Aflague replied not yet. Paula Bamba, Administrative Services Officer, stated that there are five (5) managers and each manager has a contract. Chairman San Agustin asked how much money are we talking about for the contract. Trustee Cruz replied \$178 Million.

**Actuary Contract** – Director Aflague stated that the contract for actuarial services has been finalized and the Retirement Fund is in the process of providing the required information to the actuary for his study.

**RFP - Defined Contributions Plan Administrator** – Director Aflague stated that the Defined Contributions Plan Administrator RFP process is ongoing.

**Investment Manager Due Diligence Review** – Director Aflague stated that the investment manager due diligence reviews are scheduled for November 29 through December 3, 2004.

**Contributions** – Director Aflague stated that as of today's date, all agencies are current with their fiscal year 2005 employee and employer contributions with the exception of Guam Memorial Hospital Authority which is outstanding for the Defined Benefit Plan for the pay period ended October 16, 2004. First and second delinquency notices have been sent to GMH's Administrator. Chairman San Agustin asked if any payment was made on the \$15 Million. Controller Tajalle replied no. Trustee Cruz asked if we could apply their current contributions to their past due debts. Controller Tajalle stated that there's nothing in the law that prevents us from doing that. Director Aflague stated that he will explore the possibility of applying current remittances to past due contributions.

**Financial Statements** – Director Aflague stated that the Retirement Fund is in the process of closing the month of September 2004. Once this is completed, the September 2004 Financial Statement will be provided. Secretary Taylor asked if the draft financial report would be distributed to the Board. Controller Tajalle replied yes, it would be sent out today.

**FY 2003 Supplemental** – Director Aflague stated that the supplemental payments were made to the General Fund funded retirees for the pay period ended January 15, 2003. The remaining pay periods for fiscal year 2003 from the General Fund are still pending. All agencies are current with the fiscal year 2004 supplemental payments with the exception of Guam Waterworks Authority (GWA). Trustee Anthony Blaz asked if GWA is generally behind or entirely behind. Director Aflague replied no, not since March 2003.

**FY 2005 Supplemental** – Director Aflague stated that the annuitants eligible for supplemental benefits were issued their supplemental annuities for the month of October 2004 in accordance with Public Law 27-106. Director Aflague stated that the Department of Administration (DOA) will print the supplemental checks once a month for the two pay periods. Secretary Taylor asked if the checks were printed here on General Fund checks. Director Aflague replied yes.

Chairman San Agustin stated that we should ask DOA for a delegated procurement authority.

**2004 Financial Audit** – Director Aflague stated that the audit for fiscal year ended September 30, 2004 is in progress. The draft completion date is targeted for March 31, 2005 and the finalization is targeted for April 15, 2005. The Public Auditor has reviewed the audit for the fiscal year ended September 30, 2003 with finalization expected on November 12, 2004.

## **V. TREASURER'S REPORT OF FINANCIAL STATUS**

Treasurer Katherine Taitano stated that there's no report available at this time. The Retirement Fund's Accounting Division is running behind in their workload. Chairman San Agustin suggested using UOG interns to do research and develop a position paper. Director Aflague stated that he has brought up the matter of using UOG interns with Dr. McNinch.

Chairman San Agustin stated that there are some outstanding issues. The Chairman stated that back in March 2004, Mercer was being investigated. Trustee Gerard Cruz stated that the issue was that of disclosure. Director Aflague stated that a presentation had been made by Joyce Tang about the Enron matter.

Chairman San Agustin stated that we are getting a report from Merrill Lynch. Controller Tajalle stated that it's the AIM report. The Chairman stated that the report should be summarized. Chairman San Agustin asked how much does the report cost. Controller Tajalle stated that the report cost \$50,000.00. Chairman San Agustin suggested for Management to consider if we should renew the contract.

Secretary Taylor inquired about the Directors and Officers Liability Insurance. Ms. Paula Bamba stated that currently there is a renewed policy that has been extended to us. Ms. Bamba stated that we are still covered. Secretary Taylor stated that he's concerned that we do have insurance coverage. Chairman San Agustin requested that a summary be provided to the Board of Trustees of the terms and conditions of the policy.

## **VI. STANDING COMMITTEE REPORTS**

### **A. Members and Benefits Committee**

Trustee George A. Santos moved to approve pages 4-11 of the Members and Benefits Committee Report based on their review and findings during their meeting of October 15, 2004 and continuation meetings pertaining thereto. Chairman San Agustin inquired about Item C 1 on Page 7. Chairman San Agustin asked if the recommendation is to approve the appeal. Trustee Santos replied yes, to approve the appeal. Chairman San Agustin wanted to clarify if the appeal was heard. Treasurer Taitano stated that upon new development, the appeal was granted. The Chairman stated that he's concerned about the effective date of action. Ms. Bamba stated that the effective date is the denial of the Board of Trustees. Chairman San Agustin stated that we need to establish precedence. Trustee Santos stated that we are following standard practice. Trustee Santos stated that we could approve this subject to legal opinion. Trustee Anthony Blaz stated that it should be moved to the original date of this case. Ms. Bamba stated that the section reads: "commencement date of disability; or the date of Board approval, provided that if a member is receiving salary for sick leave, payment shall accrue from date salary ceases."

Trustee Blaz moved to make it effective to the date specified in the statute. Trustee Santos yields to the amendment of his motion. Trustee Cruz seconded the motion on the amendment of the original motion. Secretary Taylor voted nay. Chairman San Agustin clarified that the motion is on the amendment of the original motion. Everyone then voted on the amendment of the original motion.

Trustee Santos moved to approve Resolution No. 2005-001 relative to adopting the use of the American Medical Association (AMA) Guidelines, the list of participating physicians and the disability processing forms. Chairman San Agustin questioned the implementation phase. Trustee Santos stated that it's only to adopt the guidelines. Trustee Cruz seconded the motion. Trustee Santos amended his original motion to include Dr. Florencio Lizama on the list of participating physicians. Motion was seconded by Trustee Cruz. Motion carried.

#### **B. Investment Committee**

Secretary James Taylor reported that the Evaluation Committee for the DC Plan Administrator has met and has made its conclusion and recommendation and other issues which were appropriately addressed. Secretary Taylor stated that after we checked with our Legal Counsel, the Legal Counsel came up with a discussion paper which is being addressed.

Secretary Taylor stated that after looking at the agenda for the evaluation of the Investment Managers he is suggesting breaking it up into several portions. Chairman San Agustin stated that it's the Investment Committee's call. Trustee Cruz stated that we should get in touch with Mercer. Secretary Taylor suggested that fixed income investments would be in March or April and equity would be in November. Chairman San Agustin suggested bringing this up with Vice-Chairman Leon Guerrero.

#### **C. Audit and Operations Committee**

Trustee Blaz reported that the Audit and Operations Committee will be meeting on November 18, 2004 at 12:00 Noon. Trustee Blaz stated that he has drafted an RFP for the Board's consideration.

*[Treasurer Katherine Taitano was excused from the meeting at this time (1:22 p.m.)]*

#### **D. Governmental Liaison**

Trustee Cruz suggested that the draft legislation on the AMA Guidelines be reviewed by the Members and Benefits Committee.

Chairman San Agustin stated that he has sent an email trying to push the lame duck session to get the moratorium on compensation be taken away, and he is also pushing for the confirmation of the three Board members and a consideration of the actuarial rate of contribution. Secretary Taylor stated that we should push on this legislation. Chairman San Agustin that we are also working on this with Congresswoman Bordallo.

*[Trustee Anthony Blaz was excused from the meeting at this time (1:26 p.m.)]*

### **VII. LEGAL COUNSEL REPORT**

Pat Mason, Legal Counsel, from the Law Firm of Carlsmith Ball LLP, reported on the pending litigation cases. The MacIntyre case is pending in court under the prior law. Mr. Mason stated that the current law does not apply.

Mr. Mason stated that there is a Title 7 lawsuit on racial discrimination with regard to the decision of the Lubofsky disability. The appeal has not been decided yet. The response is due on November 15, 2004.

Mr. Mason also stated that Mr. Ralph Gutierrez was served on November 10, 2004. Chairman San Agustin asked if Management decided to go ahead with the case. Ms. Bamba stated that we should proceed. Mr. Gutierrez's answer is due on November 30, 2004.

Secretary Taylor inquired about the Candelaria T. Rios case. Mr. Mason stated that this is still pending in court. The judges have disqualified themselves. Chairman San Agustin stated that the law that was cited was repealed on the basis of an understanding that the case will be dropped. Secretary Taylor requested for a list of open cases. Mr. Mason stated that he will provide the Board with the list of open cases.

Mr. Mason stated that on the issue of the effective date of disability, the commencement date should be at the time the Board made a decision.

Chairman San Agustin inquired about the Enron case. The Chairman asked if there is a litigation to recover amounts the Retirement Fund has lost. Trustee Cruz stated that there is a class action suit and suggested we join such a suit.

## **VIII. OLD BUSINESS**

### **A. Attorney General's Opinion – Double Dipping**

Director Aflague stated that he received a response from Ms. Joanne Grimes regarding the Attorney General's opinion concerning the suspension of annuity provisions in Section 8121 of the Defined Benefit Plan. Director Aflague stated that his understanding, per the Board, is that we will apply that prospectively. Trustee Cruz stated that if we want to agree with the first Attorney General, then we would go with either option A1, A2 or A3. Director Aflague stated that Ms. Grimes is not in opposition to the Attorney General's opinion but is giving additional options to consider. Chairman San Agustin asked what is Legal Counsel's recommendation. Trustee Cruz asked how does this Board feel – either use the prior Attorney General's opinion or the recent opinion. Director Aflague stated that if we agree with the AG's opinion, it's an advantage to the Fund. Director Aflague stated that the AG stated that he did not clarify in written form how this applies to those being re-employed in the Government of Guam. Secretary Taylor stated that we should follow the recent AG's opinion. Chairman San Agustin approved the resolution, as recommended, relative to Subsection 8121, Article 1, Chapter 8, Title 4 of the Guam Code Annotated, as amended most recently by Public Law 26-19 concerning the suspension of Defined Benefit Plan Retirement Annuities upon re-employment by the Government of Guam, as interpreted by the Attorney General of Guam.

Trustee Gerard A. Cruz, seconded by Trustee George A. Santos, moved for passage of the resolution relative to the suspension of Defined Benefit Plan retirement annuities as interpreted by the Attorney General of Guam. Motion carried unanimously.

## **B. By-Laws of Government of Guam Retirement Fund**

Trustee Cruz recommended tabling this item. However, the following discussion took place.

Chairman San Agustin inquired about why Page 13, Section 4 (b), 1 and 2 were blank – “Duties and Responsibilities. The Members and Benefits Committee shall report to and make recommendations to the Board of Trustees in the following areas: (1) \_\_\_\_ and (2) \_\_\_\_.” Ms. Bamba stated that these responsibilities will be further identified. The Chairman inquired about the amendments to the by-laws on Page 13 – “The Board of Trustees may adopt, amend or repeal any of these By-Laws by written assent of a majority of the Board of Trustees.” The Chairman stated that it should read that any amendment should be made at any regularly scheduled Board meeting. Secretary Taylor asked who drafted the by-laws. Director Aflague stated that it’s a combination of Legal, Investment Committee input, Members and Benefits Committee input and Retirement Fund Management.

## **C. Retirement Option for GovGuam Employees upon the Complete Remittance of Individual Retirement Fund Contributions**

Director Aflague stated that there’s a new legal opinion from the Attorney General on this matter. Trustee Cruz stated that the law does not give us the authority to terminate a member from membership in the Retirement Fund because of the inability of an employer to make the contribution. Chairman San Agustin stated that Judge Lamorena had stated in his Order that “However, this did not preclude the termination of delinquent member after proper notice of their non-payment of contributions.” Director Aflague pointed out that since October 1, 2004, the Fund has not allowed any GMH or DOE employees to retire. Chairman San Agustin asked if we are going to continue to do that. Director Aflague stated that he is waiting for the Board of Trustees’ decision. Secretary Taylor asked on what legal basis would the Board disrespect the court order. Mr. Mason stated that we should let the court know about the violation of the court order. Chairman San Agustin asked Mr. Mason to review the matter and report back to the Board of Trustees on the course of action to take on this issue. Director Aflague asked if we should maintain the present status. Chairman San Agustin replied yes.

## **XI. NEW BUSINESS**

### **A. Results of Meeting with Delegate Madeleine Bordallo**

Director Aflague stated that he has made contact with Mr. Kin Perez who is waiting for John Whitt’s input from Washington. Chairman San Agustin stated that this is the study on the establishment of the Trust Fund and Trust Agreement through the amendment of the Organic Act.

### **B. Listing of Pending Matters**

Chairman San Agustin stated that we should look at Items 6, 7, and 9 of the list of open issues.

No. 6 – Brokerage Fees, Recapture and 12B fees, and Soft-dollars statistical information.

No. 7 - SEC Legal Suits/Settlement with Smith Barney & Solomon Bros., regarding CitiGroup Assets Managements; and Merrill Lynch.

No. 9 – Custodial Bank’s monitoring activities.

Chairman San Agustin stated that we need some statistical information. The Chairman also asked when is the RFP going to be issued on the Custodial Banks' monitoring activities? Controller Tajalle stated that we are working on a draft which is due to the Investment Committee on November 15, 2004.

### **C. Attorney General's Request for a Board Meeting**

Director Aflague stated that Chairman San Agustin had extended an invitation to the Attorney General to attend our Board meeting. Chairman San Agustin stated that he and other members of the Board have met with the Attorney General. Director Aflague stated that he'll wait for the Board's consensus on calling for a special meeting with the Attorney General.

### **X. OPEN DISCUSSION / GENERAL PUBLIC INPUT**

**Health Insurance** – Chairman San Agustin stated that Judge BJ Cruz and Speaker Ben Pangelinan are up in arms on the rapid increase of the health insurance premiums. Ms. Bamba stated that not all retirees are eligible for Medicare. Chairman San Agustin stated that we need to develop and prepare a position paper on the increases in cost affecting the age and the financial hardship incurred by our people and find out what course of action needs to be taken. The position paper to be developed is to be presented to the Board to act on the health insurance plights of the retirees. The Board of Trustees approved the proposal to develop and prepare a position paper regarding the health insurance for retirees. Ms. Bamba informed the Board of Trustees that there is a Health Insurance Benefits Review Committee being established in GovGuam.

**Dennis Zermeno, Government of Guam Retiree under the Defined Benefit Plan** - Mr. Zermeno stated that he is concerned over the fact that we have over \$146 Million in receivables that have not been paid. Mr. Zermeno stated that within fifteen years the Fund would be out of business. Mr. Zermeno is asking for the repayment of the COLA debt in the amount of \$118 Million and provision of matching at the actuarial rate of 25.92%. GMH and DOE have been unable to pay since 1998.

Mr. Zermeno stated that the Fund's unfunded liability is a disaster because the actuarial rate is costing the Fund \$17 Million a year. The fault lies with the Administration. The unfunded liability is \$1.2 Billion. The retirees are being stepped on by the government. Mr. Zermeno stated that he is begging this Board and Management to make a public stand when it comes to money. The Retirement Fund should be first in line. The public needs to demand legislation to pay the old debts. We should get money from the sale of GTA. We need to demand the actuarial rate of 25.92%. Mr. Zermeno reiterated that the Board takes the most aggressive stand demanding its rights. Chairman San Agustin stated that we are trying to do that. Secretary Taylor asked to also include the active employees, not just retirees.

### **XI. ANNOUNCEMENTS**

None



## **XII. ADJOURNMENT**

**There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George A. Santos, seconded by Trustee Gerard A. Cruz, and unanimously agreed upon, the meeting was adjourned at 2:51 p.m. Motion carried.**

**I hereby certify that the foregoing is a full, true and correct copy of the Minutes of November 12, 2004 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on December 17, 2004.**

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**James J. Taylor, Board Secretary**

### **RECORDING SECRETARY:**

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**Jackie Blas**

<b>DEFINED CONTRIBUTIONS</b>
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### **I. ATTENDANCE, QUORUM, AND CALL TO ORDER**

After determining a quorum, the Retirement Fund Board of Trustees Regular Meeting for the Defined Contributions Plan was called to order at 2:51 p.m. Friday, November 12, 2004, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

#### **Board of Trustees Present:**

Joe T. San Agustin, Chairman  
James J. Taylor, Secretary  
Gerard A. Cruz, Trustee  
George A. Santos, Trustee

#### **Board of Trustees Absent:**

Wilfred P. Leon Guerrero, Vice-Chairman  
*(Off-Island Conference –Excused)*  
Katherine T.E. Taitano, Treasurer *(Excused)*  
Anthony C. Blaz, Trustee *(Excused)*

#### **Staff Present:**

Wilfred G. Aflague, Director  
Paula M. Bamba, Administrative Services Officer  
Pete Tajalle, Controller  
Ken Dunstan, Acting Benefit Program Administrator  
Vince Camacho, Great West Retirement Services  
Jackie Blas, Recording Secretary

#### **Legal Counsel Present:**

Pat Mason

**II. REVIEW AND APPROVAL OF BOARD MINUTES**

**A. October 8, 2004 Regular Meeting**

**On motion of Trustee Gerard A. Cruz, seconded by Trustee George A. Santos, and unanimously agreed upon, the Minutes of October 8, 2004 Regular Meeting were approved, subject to corrections. Motion carried.**

**III. OLD BUSINESS**

**A. Contribution Report – October 2004**

Mr. Vince Camacho, Great West Retirement Services, reported to the Board of Trustees that all agencies are up to date with their payments for the DC Plan and the 457 Plan. Mr. Camacho stated that we have received the payment from Guam Power Authority but we have not received the data on the distribution of the payments.

**B. Status of RFP for the Defined Contributions Retirement System Third Party Administrator**

Chairman San Agustin stated that Secretary Taylor had made a report earlier regarding the status of the RFP for the Defined Contributions Retirement System Third Party Administrator.

**IV. OPEN DISCUSSION / GENERAL PUBLIC INPUT**

None

**V. ANNOUNCEMENTS**

None

**VI. ADJOURNMENT**

**There being no further business before the Board for the Defined Contributions Plan, on motion of Trustee George A. Santos, seconded by Trustee Gerard A. Cruz, and unanimously agreed upon, the meeting was adjourned at 2:54 p.m. Motion carried.**

**I hereby certify that the foregoing is a full, true and correct copy of the Minutes of November 12, 2004 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on December 17, 2004.**

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**James J. Taylor, Board Secretary**

**RECORDING SECRETARY:**

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**Jackie Blas**