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PROCUREMENT APPEALS

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FILE NO. OPA-PA: 10-004

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8 *Attorneys for*
9 *Jose D. Leon Guerrero Commercial Port*

10 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

11 **PROCUREMENT APPEAL**

12 IN THE MATTER OF APPEAL of

APPEAL NO: OPA-PA-010-004

13 HARBOR CENTRE GUAM CO. LTD.
14 And HARBOUR CENTRE PORT
15 TERMINAL, INC.

Appellant.

**OPPOSITION TO APPELLANT'S
MOTION FOR PUBLIC AUDITOR TO
RECUSE HERSELF**

16 Comes Now the Jose D. Leon Guerrero Commercial Port (the "Port"), the Purchasing
17 Agency in this Appeal, and opposes Appellant's Motion for the Public Auditor to Recuse Herself
18 for the reasons discussed below.

19 Appellant argues that the Public Auditor should recuse herself from this appeal because
20 her husband, Mr. James Brooks, is an employee of Lujan Aguigui & Perez, LLP, the Port's
21 counsel in this case. In support of its motion, Appellant cites a decision and order issued in *In the*
22 *Appeal of Teleguam Holdings LLC*, Appeal No. OPA-PA-10-002. In that case, the Public
23 Auditor's stepson, Terrence Brooks Esq., served as legal counsel for the Appellant, but not with
24 regard to the formation of or representation in the appeal. The Public Auditor found there was no
25 actual bias that resulted from the relationship between herself, her stepson, and the Appellant but
26 did recuse herself on the basis that her stepson had "a financial interest in [the] matter because he
27
28

1 is one of the Appellant's legal counsels." (Decision and Order Re: Purchasing Agency's Motion
2 for the Public Auditor to Recuse Self, *In the Appeal of Teleguam Holdings LLC*, Appeal No.
3 OPA-PA-10-002, p. 3).

4 Appellant now urges the Public Auditor to recuse herself from this matter because her
5 husband is an employee of the Port's legal counsel and therefore must have a financial interest in
6 this case. However, this case is distinguishable from *Teleguam Holdings*. First, it is believed the
7 Public Auditor's stepson owns his legal office; he therefore holds a financial interest in each and
8 every case he handles. Mr. James Brooks, however, is a salaried employee of the firm of Lujan
9 Aguigui & Perez LLP. His salary is not dependent on the outcome of any single case or his
10 relationship with a single client, including cases involving the Port (See Declaration of Cathy
11 Cepeda, Office Manager for Lujan Aguigui & Perez LLP, attached herewith as Exhibit A.) The
12 term "financial interest" as referenced in Appellant's Motion is defined at 5 GCA §5601(e)(1) as
13 follows:
14
15

16 (e) Financial Interest means: (1) Ownership of any interest or involvement in any
17 relationship from which, or as a result of which, a person within the past year has
18 received, or is presently or in the future entitled to receive, more than Two
19 Thousand Five Hundred Dollars (\$2,500) per year, or its equivalent

20 As James Brooks is a salaried employee whose salary is not affected by his employer's
21 representation of the Port, there is no "ownership of any interest or involvement in any
22 relationship" from which Mr. Brooks is entitled to receive more than \$2,500.

23 Second, an Ethical Wall has been established prohibiting James Brooks from any
24 involvement with this Appeal. (See Exhibit A).

1 For these reasons, the current case is distinguishable from *Teleguam Holdings* and there is
2 no actual bias nor conflict of interest under which the Public Auditor should recuse herself from
3 this matter. Appellant's Motion should therefore be denied.
4

5 Dated this 13th day of October, 2010.
6

7 Respectfully submitted,

8 **LUJAN AGUIGUI & PEREZ LLP**

9
10 By: 

11 **REBECCA PEREZ SANTO TOMAS, ESQ.**

12 *Attorneys for Jose D. Leon Guerrero Commercial Port*
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EXHIBIT A

1 **LUJAN AGUIGUI & PEREZ LLP**

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15 And HARBOUR CENTRE PORT
16 TERMINAL, INC.

17 **DECLARATION OF CATHY CEPEDA**

18 Appellant.

- 19
- 20 1. I am currently the Office Manager of Lujan Aguigui & Perez, LLP (“the Firm”).
 - 21 2. As the Office Manager, I have knowledge of the status of every employee of the Firm.
 - 22 3. Since January 2003, James Brooks has been employed as a paralegal of the Firm and
23 remains employed in that position today.
 - 24 4. As a paralegal, Mr. James Brooks is a salaried employee earning more than \$2,500.00
25 annually.
 - 26 5. As a salaried employee, Mr. James Brooks’ salary is not affected by the outcome of any
27 particular case or of any particular client relationship.
 - 28 6. An Ethical Wall has been established within the Firm prohibiting the involvement of Mr.
James Brooks in any matter regarding the Appeal of Harbor Centre Guam Co, Ltd. and
Harbour Centre Port Terminal, Inc., Appeal No. OPA-PA-10-004.

1 I declare under penalty of perjury that the foregoing statements are true and correct to the best
2 of my knowledge and belief.

3
4 Dated this 13th day of October, 2010.

5
6 By: Cathy Cepeda
7 **CATHY CEPEDA**
8 *Executive Office Manager*

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