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BOARD OF PUBLIC WORKS  
GOVERNOR'S RECEPTION ROOM  
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ANNAPOLIS, MARYLAND

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P R E S E N T

LIEUTENANT GOVERNOR ANTHONY BROWN,  
Presiding;

HONORABLE PETER FRANCHOT, Comptroller;

HONORABLE NANCY KOPP, Treasurer;

SHEILA C. MCDONALD, Secretary, Board of  
Public Works;

ALVIN C. COLLINS, Secretary, Department  
of General Services;

T. ELOISE FOSTER, Secretary, Department  
of Budget and Management;

BEVERLEY SWAIM-STALEY, Secretary,  
Department of Transportation;

LISA WARD, Land Acquisition and Planning,  
Department of Natural Resources;

LUWANDA JENKINS, Special Secretary,  
Governor's Office of Minority Affairs;

MARY JO CHILDS, Procurement Advisor, Board  
of Public Works; and,

MARION BOSCHERT, Recording Secretary, Board  
of Public Works.

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P R O C E E D I N G S

LIEUTENANT GOVERNOR BROWN: Welcome to the December 7th meeting of the Board of Public Works. I appreciate everybody's attendance today. Let me start by wishing everyone a happy holiday season. I hope you started it off well with a joyful Thanksgiving. It's a time, of course, to spend with family and loved ones. It's also a time, as we, Maryland Stronger Together, that's our initiative, our campaign this year. The idea, the belief that neighbors can help neighbors by reaching out, lending a hand. This is the end of year time for you to consider your charitable giving and now is the time to do it. Nonprofits certainly are in greater need this year than perhaps, you know, any year in the last several years. So as Marylanders we are very generous people both with our time and our checkbooks, so think about that in the year end. But I also, as I said, I do wish that you and your family have a wonderful end of

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year holiday season and a productive, prosperous, and healthy New Year.

With that I'm just going to turn it over to the Treasurer and then we'll launch into the Agenda for today, starting with the Maryland Department of Transportation. And just a reminder, I am Lieutenant Governor Anthony Brown and not Martin O'Malley, and it's a pleasure to preside over today's meeting of the Board of Public Works. Madam Treasurer?

TREASURER KOPP: Thank you, Governor. First of all, it's good to have you here. It's great to have the trees and the lights up. I was looking at the tree downstairs, the Secretary and I were. It really is terrific. And to see the things made by the children and the citizens from around, throughout the State, it's really, now that one but also the big one downstairs. It's really, really quite beautiful.

However, I did hear, you might be interested as a citizen of the National Capital Area, that they're saying that perhaps the first snow in our area

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will be this evening or tomorrow morning. So we'll see what happens.

LIEUTENANT GOVERNOR BROWN: Well admittedly, I'll jump in, you know the Governor was in India. And it's emergencies that give State leadership an opportunity to show their leadership. I was hoping for the big snowstorm last week.

(Laughter)

LIEUTENANT GOVERNOR BROWN: It wouldn't have been of my making, so, but it's coming now just in time for the Governor's return?

TREASURER KOPP: Maybe. Maybe. Maybe, just in time for his return yes. I see the Deputy Comptroller is here.

MR. KLASMEIER: Please, don't --

(Laughter)

MR. KLASMEIER: He's on his way in.

TREASURER KOPP: Great.

LIEUTENANT GOVERNOR BROWN: So last week, or a week ago or so, something like that, I had an

opportunity to celebrate my mid-century birthday. I'm feeling pretty good about it.

TREASURER KOPP: Happy birthday.

(Applause)

LIEUTENANT GOVERNOR BROWN: Thank you. And I share that with you only to say that I'm willing to share with you my age, but I wouldn't ask our Treasurer to do the same.

TREASURER KOPP: No problem.

(Laughter)

LIEUTENANT GOVERNOR BROWN: But I would ask all of you to join me in acknowledging the Treasurer's birthday today. Happy birthday.

(Applause)

TREASURER KOPP: Thank you very much. I have one of those birthdays that people can remember, a day of infamy for a number of different reasons. Of course for Pearl Harbor, but also I'm 68 years old this morning and proud to be.

(Applause)

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LIEUTENANT GOVERNOR BROWN: Yeah.

TREASURER KOPP: Thank you.

LIEUTENANT GOVERNOR BROWN: Okay. Let's see, what have we got here? Okay. Let's go into the Department of Transportation's Agenda. Good morning.

MS. SWAIM-STALEY: Good morning, Governor and Treasurer. Yes, we might have our snow this weekend but I'm glad we didn't have one last week, Governor. But --

LIEUTENANT GOVERNOR BROWN: We just launched, didn't we, MDOT? We tapdanced, sang Happy Birthday as long as we could. It's the Treasurer's birthday today. And did you want to start with any opening remarks before we --

COMPTROLLER FRANCHOT: -- we can go ahead with --

LIEUTENANT GOVERNOR BROWN: Okay.

TREASURER KOPP: You know, the Comptroller and I share anniversaries, wedding anniversaries, but not birthdays. You can't do everything in tandem.

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COMPTROLLER FRANCHOT: Great --

MS. SWAIM-STALEY: Okay. Good morning. For the record --

COMPTROLLER FRANCHOT: I'd like to make a statement, thank you.

MS. SWAIM-STALEY: I'm sorry.

COMPTROLLER FRANCHOT: First of all, Happy Birthday.

TREASURER KOPP: Thank you.

COMPTROLLER FRANCHOT: I hope, as the State's tax collector I should say in advance thank you for all of your Christmas shopping and your holiday shopping. And for those of you that choose to shop over the internet I'd like to just suggest that I have some blank forms --

(Laughter)

COMPTROLLER FRANCHOT: -- if you'd like to help with the sales tax. I know that I've mentioned over the last couple of weeks the college football season and how proud I am of teams like the Towson

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Tigers and the Salisbury Seagulls who have tremendous success, don't get very much visibility. They unfortunately, both of those great teams, did not go very far in the playoffs. But I know that they brought a lot of enjoyment and visibility and were good ambassadors for the State of Maryland. And I want to congratulate them. Even though I was in the Army many years ago I want to wish Navy good luck in their big game.

LIEUTENANT GOVERNOR BROWN: What?

(Laughter)

COMPTROLLER FRANCHOT: I shop local, baby.

(Laughter)

COMPTROLLER FRANCHOT: But the other team that I love to pat on the back at this time of the year is our team of Maryland retailers. They have gotten off to a great start. The Black Friday and Post-Thanksgiving weekend showed increased activity. It's a very encouraging sign. These Maryland stores frankly have been hammered by the recession and they

desperately need this shopping season between now and the end of December in order frankly to survive, for many of them.

And I've begun a campaign called Shop Maryland for the Holidays. I'm traveling to towns across the State urging Marylanders to do something a little counter-trendy, I guess. Most people apparently enjoy shopping now over the internet. I don't particularly like it that much because you are sitting there by yourself in front of a computer at 10:00 at night, looking at a screen with something you can't touch or handle the product. So I'm encouraging people to, you know, I say be patriotic. Get out there and support these local Maryland businesses. And it's a great experience. You have a warm, supportive, friendly, helpful, wonderful customer service, staff people in these stores. You get a diversity of products. And you help the economy because when you spend a dollar at a local Maryland store 70 cents of that stays in the community. And

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gosh knows these businesses need it. They employ half a million of our neighbors and friends. And so I'm out there challenging all of my Marylanders, get off this cyber kick and get on to Main Street and you'll have a great shopping experience, in my opinion better than over the internet.

And I often say has anybody here in the State ever seen a Little League baseball team sponsored by Amazon.com? They don't care about Maryland. But I'll tell you every Little League team is sponsored by, generally by a Maryland retailer. And they have the, you know, Beachley Hardware on the back. So the philanthropy that these companies contribute to our State, that it's not just Little League, it's Boys and Girls Club, soup kitchens, and every other philanthropy in addition to employment, I just can't emphasize to you how great the customer service is in these Maryland businesses. And it's so much more satisfying than the cold keyboard of internet sales.

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So it's a win-win for consumers and I encourage all of you to spread the holiday cheer, not just to your family and friends but to everyone who benefits from the Maryland retail sector. And if we do that we'll make this holiday season a winning season for all of us.

And Governor, it's great to see you. We saw each other last night. And sorry, once again, that I had to interrupt the flow of events. But thank you very much.

LIEUTENANT GOVERNOR BROWN: No problem. Thank you, Mr. Comptroller. Madam Secretary?

MS. SWAIM-STALEY: Good morning. For the record, Beverley Swaim-Staley, Secretary, Maryland Department of Transportation. Thank you for taking our Agenda items this morning so I can go to another event in Washington. We do have some items on the other Agendas, and Darrell Mobley, Deputy Secretary, will be stepping in when I leave. So thank you very much.

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On our MDOT Agenda today we have six items. Item 4 has been revised. And we're happy to try to answer your questions.

LIEUTENANT GOVERNOR BROWN: Can you just tell us a little bit about Item 6, please?

MS. SWAIM-STALEY: Yes. Item 6 goes along with the announcement that was made by the Governor regarding expansion of BWI Airport. And I think we have Paul here who can come up and talk about this. Of course, it's related, it's the expansion that we have to do of what's called Areas B and C at the Airport. This of course is in, because of the merger with AirTran and Southwest. And I think it's no secret that the Airport is going through its second record year and we're very excited about the merger and Paul can tell us a little bit about the specifics.

LIEUTENANT GOVERNOR BROWN: Good morning.

MR. WIEDEFELD: Good morning. Paul Wiedefeld, Executive Director, BWI Marshall. I thought I'd just give you a little bit of background

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on why the need for the project and the need to do it quickly. Basically it consists of three elements. One is on our Concourse C. It's very, it's our oldest part of the terminal. Just to give you a sense of some of the issues we're up against there, the latest technology from the TSA cannot even be used in that part of the terminal. The security checkpoint doesn't fit within the ceilings. The other issue that we have on the C Concourse, if you ever go down there it's actually very narrow and then gets wide. Well you can imagine if there was ever an event down there when we had to, basically everyone had to egress at one time it gets, you know, right to a choke point right at the C. So that's one issue that we're trying to deal with there. In addition, the hold rooms are very tight in that area so it limits our growth on Concourse C.

The second is as the Secretary mentioned with the Southwest and AirTran merger, on November 15th AirTran moved off of the D Concourse over to the A-B Terminal. And basically has put quite a bit of

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stress on that facility, everything from the roadway, to the passenger screening, to the passenger ticketing, to the baggage screening, to the point where literally we had to add four screening checkpoints on the arrivals level. So it's sort of almost counterintuitive that you would enter the terminal from the area that you pick up your bags. But that's how tight we are in that part of the terminal.

And then finally is the need to grow. Basically that existing terminal is designed for roughly 235 flights a day. This summer we were very lucky to have 246 flights a day there. So you can imagine some of the stress we'll have at that time.

So what we have proposed is a project that deals with all three of those issues, the widening of C Concourse, and the elimination of the security checkpoint at that point. Creating a new checkpoint right between the Concourse at C and D where the existing Delta counter sits today. Delta will be

moving Monday night into Tuesday over to the D Concourse where AirTran used to be. And then the connector, which is basically a secure side connection between the B Concourse and the C Concourse, which will open up 14 additional gates to Southwest and their 26 gates on A-B. It will have moving sidewalks, concession space, and restrooms, and things of that sort.

The bottom line is, you know, we are concerned about maintaining our easy come, easy go brand. And that basically that's threatened if we don't make it a good experience for the customers. The second is that Southwest is moving to a larger aircraft starting this March, with the 737-800, which basically handles roughly 40 more people per plane. So we need to deal with that issue. We want to get, we want to hit this construction season. And to be frank, the quicker we can get this connector built the quicker Southwest can expand at BWI Airport.

So with that, I'll be glad to take any questions. We would recommend that you all approve.

LIEUTENANT GOVERNOR BROWN: I appreciate the sentiment. Sounds like the Airport continues to thrive and do exceptionally well.

MS. SWAIM-STALEY: Thank you.

LIEUTENANT GOVERNOR BROWN: That's fantastic. Good work over there --

TREASURER KOPP: I do have a question, since you've brought it up. I mean, some of the difficulty is in handling our great success. Phase 1 provides for nine new passenger link security checkpoints. And I think, actually, BWI Thurgood Marshall does extremely well in terms of moving people. But our, doesn't the security agency call the shots and how many of those lanes are actually manned?

MR. WIEDEFELD: Mm-hmm.

TREASURER KOPP: And that's right? So they are not fully manned when you go now, or staffed. So

we're building nine new ones. So are we in fact going to get through faster?

MR. WIEDEFELD: You will. Because the way that they do it actually is they, they will not support, they pay for those and they will not support that unless they can man them. So they man them at different times. So if you are there at 4:35 in the morning they are all manned. And that's our peak period. So at different times you will see it. But their goal is to keep the passenger through put under 10 minutes. So that's how they manage their workflow.

TREASURER KOPP: Okay, so is that, that's the general goal? So we can tell six months from now, nine months from now, how we're doing by that indicator?

MR. WIEDEFELD: Mm-hmm. Yep.

TREASURER KOPP: Okay. That's the first one. The other one I just want to touch on, the construction of the new B-C passenger security checkpoint connecting terminal will eliminate the

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egress constraints which is not in accordance with current building codes.

MR. WIEDEFELD: Meaning --

TREASURER KOPP: In English?

MR. WIEDEFELD: -- that we can't expand. We can't expand. We cannot grow. We cannot put more air service on Concourse C given current fire --

TREASURER KOPP: But we meet code now?

MR. WIEDEFELD: We meet it today, but we can't expand it.

TREASURER KOPP: That was my, thank you.

MR. WIEDEFELD: Sorry.

MS. SWAIM-STALEY: We want to make sure we meet code.

TREASURER KOPP: Continue to meet it, thank you very much.

MR. WIEDEFELD: Mm-hmm.

TREASURER KOPP: That caused a little concern.

LIEUTENANT GOVERNOR BROWN: Do you have anything, Mr. Comptroller, on this?

COMPTROLLER FRANCHOT: No.

LIEUTENANT GOVERNOR BROWN: Any other questions, comments, on the MDOT Agenda? This item or any other items? Okay. Hearing none, the Treasurer moves approval, seconded by the Comptroller. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, thank you very much.

MR. WIEDEFELD: Thank you.

LIEUTENANT GOVERNOR BROWN: MDOT's Agenda is approved and please represent us well at the, where did you say you are going?

MS. SWAIM-STALEY: Board of Trade.

LIEUTENANT GOVERNOR BROWN: Board of Trade, excellent.

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MS. SWAIM-STALEY: Thank you.

LIEUTENANT GOVERNOR BROWN: Thank you very much. Let's go now to the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor

--

LIEUTENANT GOVERNOR BROWN: Good morning.

SECRETARY MCDONALD: -- Madam Treasurer, Mr. Comptroller. We have 17 items on the Secretary's Agenda, one report of an emergency procurement. We're ready for your questions.

LIEUTENANT GOVERNOR BROWN: Why don't you tell us a little bit about the emergency procurement? That's Item 1?

SECRETARY MCDONALD: No, actually it's Item 1 in the Appendix.

LIEUTENANT GOVERNOR BROWN: Oh, in the Appendix?

SECRETARY MCDONALD: Yes.

LIEUTENANT GOVERNOR BROWN: Okay.

SECRETARY MCDONALD: And that is, was a flooding situation at the Department of Human Resources Social Services Department in Prince George's County. Is Ms. Johnson here from DHR? Who is here from DHR?

MR. HARVEY: Rainier Harvey.

SECRETARY MCDONALD: Do you want to come up to the podium and be able to answer questions? This was a flood that happened on September 23, 2010 and they need mold remediation and document restoration so they immediately had to get a contractor on board. Could you introduce yourself again for the record and then answer the questions, please?

MR. HARVEY: Yes. Good morning. My name is Rainier Harvey, Chief of Administrative Operations for the Department of Human Resources. This emergency procurement was caused by a flood which occurred on September 23, 2010 at 7:00 p.m. It affected 85 percent of our leased space. We worked with the landlord to bring a company in that was not sufficient

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to do mold remediation and document rescue. The reason we had to do document rescue, one of the things we didn't want to lose was those documents because we would have had to have families come in and resupply us with thousands of documents for services as well as it would have affected our auditing process. We have to keep those documents on site for federal and State audits.

So we worked with the Department of General Services to bring in a vendor that specialized in mold remediation and document restoration and rescue.

SECRETARY MCDONALD: Governor, I think when the Board of Public Works Procurement Advisor looked at this emergency I don't think she felt like there was any problem with an emergency being declared and how the contractor was procured. I think there is a problem with the late report to the Board because the emergency was September, 2010. But I do believe the Procurement Advisor has worked with the Department of Human Resources and has reminded them of getting their

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reports to the Board of Public Works as, within the 60 days instead of 14 months.

LIEUTENANT GOVERNOR BROWN: So what are the one, two, three things that they will do differently?

MS. CHILDS: What had happened is the Department erroneously believed that they had to have all the costs in before they reported it to the Board. I did inform them that once the contractor's name is on a dotted line they needed to report it to the Board immediately. If they had to modify it down the road they could come back to the Board at that time, but they didn't need to have all their costs determined at, until they came to the Board of Public Works. So they did understand that restriction, their mistake, the mistake in their belief that that restriction and they promised in the future to bring them in a timely manner.

LIEUTENANT GOVERNOR BROWN: All right, anything else? Thank you very much. I appreciate that. Anything from any members of the Board on

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either Item 1 on the Appendix or any other items on the Secretary's Agenda?

MR. HARVEY: Thank you.

LIEUTENANT GOVERNOR BROWN: Hearing none, seeing none, the Treasurer moves approval, I'll second that. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, the Secretary's Agenda is approved. Thank you very much. And we'll move down to the next one which is Department of Natural Resources.

SECRETARY MCDONALD: Ms. Lisa Ward is here.

MS. WARD: Yes, ma'am. Good morning, Lieutenant Governor --

LIEUTENANT GOVERNOR BROWN: Good morning.

MS. WARD: -- Mr. Comptroller, and the happiest of birthdays to the Treasurer. Lisa Ward for

the record. Today we have 12 items on our Agenda and are here to answer any questions that you have.

LIEUTENANT GOVERNOR BROWN: Okay, hearing none, seeing none, the Treasurer moves approval. I'll second it.

MS. WARD: Thank you, sir.

LIEUTENANT GOVERNOR BROWN: All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, the Department of Natural Resources Agenda is approved. Thank you. And let's go to the Department of Budget and Management.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are 11 items on the Department of Budget and Management's Agenda for today. I'll be happy to answer any questions you may have.

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TREASURER KOPP: All of these health contracts?

MS. FOSTER: Yes?

TREASURER KOPP: I mean, the bottom line is we're going to see some final contracts going out?

MS. FOSTER: We have three items which extend contracts. They are Items 6, 7, and 8. They are extending contracts for six months and that's basically to allow the procurements to be completed. Item 6 is the contract that continues the inmate medical services contract. Item 8 is applicable to the mental healthcare contract and -- 7, I'm sorry, is applicable to the mental health contract. And 8 is applicable to the utilization review. So yes, they are being extended. Actually for the medical services and the utilization contracts, both of those have been merged into a new procurement. The responses to the new RFP are due back to the Department of Budget and Management next week, on December the 13th. So we expect to bring those items to the Board in April.

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And we're allowing for a 60- to 90-day transition period. The anticipated start of the new contract will be July 1, 2012. The other item is the mental health RFP. That RFP will go out by the end of the week. The responses will be due back in early February, and again, that's a contract that we'll be bringing back to the Board in April with an anticipated start date of July 1.

LIEUTENANT GOVERNOR BROWN: Yes?

COMPTROLLER FRANCHOT: Yes, thank you.

Let's see now, I think I voted for one extension for these contracts. Then I was asked to vote for a second extension, which I believe I did. Then I was asked to vote for a third extension. And here we are being asked for a fourth extension. And I guess my concern, Madam Secretary, and I know we're going through some transitions, but we're talking almost a quarter of a billion dollars in these extensions when you add them together. \$62 million today, and \$240.5 million for the four extensions. And I know these are

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complex contracts. I know they are specialized services, and are sensitive, and understand that you have had to step in, frankly, and assume control from the agency of the procurements. And but, and I support that because I think the earlier procurements you correctly noted were botched by the agency.

So we have this situation but I have to admit I'm concerned that we're exceeding the cost of the original contract by a significant amount to extend these contracts. In other words, the original contracts were for \$170 million. This now is \$240 million in extensions. Why is that a bad thing? Obviously it's a bad thing because the taxpayers are spending somewhat in the dark here in the absence of any bid competition that could afford us the opportunity to get the services at a better price. And my concern, I guess, is I understand you're saying that we'll have the new vendors in place by July 1st of next year. But what basis should we have confidence in that --

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MS. FOSTER: Well I would --

COMPTROLLER FRANCHOT: -- statement on?

MS. FOSTER: Well certainly, as you said, these are very complex procurements. They have hundreds of specifications. They have numerous technical requirements. The Department of Budget and Management did take them over from Public Safety. I would say that there has been a learning curve involved in this process.

I would also indicate that even once the procurements were out on the street there has been an inordinate amount of time spent responding to questions from vendors. My staff has had to respond to over 300 questions and provide additional follow up. All of that is basically additional information that has to be provided to vendors. That kind of extends the process.

At the same time I would point out that we have been involved in other complex procurements, including such things as the drug testing contract,

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including the employee and the retiree pharmacy benefits contract, you know, an item then that has gone to the, had to go before the Board of Contract Appeals. All of that has impacted our ability to go forward and get these out.

But having said that, you know, I would agree with you. These have taken longer than what I would have liked to have seen as well. But at the same time my overall goal has been to make sure that we get these right and that we do what's in the best interest of the taxpayers of the State of Maryland. And, you know, I'm confident that we're going to be back in April and that we're going to have the best deal.

COMPTROLLER FRANCHOT: Well I have a lot of confidence in your abilities. But I guess what I'm concerned about is what you just mentioned in passing. And obviously Mr. Leberknight and others are talented and have expertise in these areas. But with the extraordinary involvement of your agency now in these

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complicated procurements, you mentioned the pharmaceutical benefits, you do as a matter of course the healthcare contracts, we're really, you are involved in State procurement to a new and extraordinary level, your particular agency. And my concern is do you have enough staff? Do you have enough expertise? You mentioned the questions that needed to be answered. You know, I've always operated under the thought that any kind of question should be answered within weeks, not months. But my understanding is that because of the workload you're in a very difficult situation. I guess my question here is, as you assume all these new responsibilities I think one PIN has been transferred from Corrections to accommodate the additional procurement workload. But shouldn't we be staffing up considerably more in your agency if you are going to shoulder this workload?

MS. FOSTER: Well certainly I guess when the initial decision was made in regard to transferring

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this workload from Public Safety to the Department of Budget and Management there was the transfer of one PIN. Obviously in development of this year's budget I'm assessing what my overall needs are going to be and I'll make requests, you know, as are appropriate.

In regard to responding to questions, I would say for the most part we do respond and we respond in a

timely manner. Obviously there was one incidence I think where we dropped the ball. But my agency has been very responsive to the questions that we get from vendors.

COMPTROLLER FRANCHOT: Okay. But I'm also talking about complaints after the fact. I believe, you know, it's when a company protests, we're talking now in some instances six or seven months.

MS. FOSTER: That's the one incidence that I'm referring to, in regard to the protest.

COMPTROLLER FRANCHOT: Yeah, but that's --

MS. FOSTER: And obviously that is a protest that has been continuing. That is not in today's Agenda and if you want to have an offline conversation about that particular contract, Mr. Comptroller, I'll be happy to do that.

COMPTROLLER FRANCHOT: Okay. All I'm referencing here, I'm on your side, is that you may need extra resources in order to handle these additional responsibilities. And I think the public

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would benefit, obviously, from it because we would avoid the situation that we have today where we're approving not the first, second, or third, but the fourth extension of a contract totaling in the extensions 40 percent more than the base of the original contract. I mean, so if you --

MS. FOSTER: I would just --

COMPTROLLER FRANCHOT: -- that there is a, okay, I'm happy to have a further conversation. I don't want to drag it out. I'm just saying that I would certainly understand if you said, "We need, because of our involvement now, we need more help." And --

MS. FOSTER: And as we develop the Governor's fiscal year 2013 budget that's an item that's under consideration for discussions.

TREASURER KOPP: Governor, if I could just throw something in? I happen to fully agree with the concerns of the Comptroller and thought he was going to bring this up, and am pleased that he brought it

up. More generically, this Board has cut several billion dollars from the budget in the last few years, and the Legislature, and the Governor have cut billions more on an annual basis from the budget. And of course we don't know what the federal government is going to be doing and how much more we may have to end up cutting in order to stay in balance. And when we do this it does concern me, and you Madam Secretary have heard this concern before but I want to state it again for the record. It does concern me that we often tend to cut more, indeed to ream out, the infrastructure parts of the government. The Budget Department, the Department of General Services, the IT Department, the things that the people don't see in order to protect the services that go directly to the people. But in doing that I am concerned that it has two impacts.

First of all just in terms of procurement process getting the procurements done, and then overseeing the contracted out services becomes much

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more difficult and less timely. And when the Governor is concerned about red tape it may be that some, it's not really red tape, it's simply insufficient people to do the work. And the other is that we will then tend to try to contract out things that we had done before actually less expensively with public employees. But it does get something off the immediate budget. But as in almost every agency of government, and I must admit Juvenile Services also always jumps to the fore of my mind, we don't always do sufficient oversight of the contracts and the carrying out of public responsibilities. And so I just think that sometimes we have to just make the extra effort to explain to the people that, yes, we have, they may think government isn't good. But government can be very good if it's well resourced and can do its work efficiently. And you can't do work efficiently when you have three people doing the work of 17.

LIEUTENANT GOVERNOR BROWN: Let me just jump in here.

TREASURER KOPP: And that's just my concern.

MS. FOSTER: Yeah --

LIEUTENANT GOVERNOR BROWN: You know, I mean, we're right now in the middle of budget discussions with the Governor. And everyday we are presenting to him a balanced approach to the cuts. And as you know, Madam Treasurer and Mr. Comptroller, both from your work on the Board of Public Works and prior to that on Appropriations, we look for areas to cut that unfortunately have to go to both the infrastructure and capacity of government functions and also to the services and programs that we deliver. I do want to sort of highlight that in the grand scheme of things the larger cuts are in the programs and services that are delivered. I mean, you know, Medicaid reductions and what we asked the hospitals and other providers to --



TREASURER KOPP: Well the larger sum of money is in those programs.

LIEUTENANT GOVERNOR BROWN: Absolutely. So, you know, so those, I mean, the, you know, the Maryland public certainly is seeing fewer services from government over the last few years because of these cuts. And but it is a balanced approach. And every department has been asked to look for, you know, efficiencies in eliminating PINs. Sometimes, you know, we are perfect and we get it right. Sometimes, you know, maybe in retrospect we should have held onto that PIN. But it's an ongoing effort. And we're in the middle of a budget cycle now. And as Secretary Foster mentioned we'll be looking at that.

My question is, how much have these extensions actually cost, had there not been extensions versus where we are today?

MS. FOSTER: The extensions of the contract basically are to provide monies to continue to provide the services. Basically, we would have been spending

approximately the same amounts if contracts had been in place.

LIEUTENANT GOVERNOR BROWN: Okay, so --

MS. FOSTER: So the services would have been

--

LIEUTENANT GOVERNOR BROWN: -- I mean, that's a point to be made. I mean, look, so the process isn't pretty, I guess.

MS. FOSTER: Yes.

LIEUTENANT GOVERNOR BROWN: So the question is, what does that cost the taxpayers and what does it cost the recipient to the services? It sounds like it's no additional to the taxpayers. It sounds like the services continue to be provided.

MS. FOSTER: Right.

LIEUTENANT GOVERNOR BROWN: But there's probably a lot of stress going on in your department -

-

MS. FOSTER: Correct.

LIEUTENANT GOVERNOR BROWN: -- with, you know, the learning curve, etcetera. So you are in the middle of developing your budget. You are going to look at whether or not you need more staffing in this area --

MS. FOSTER: Right.

LIEUTENANT GOVERNOR BROWN: -- so that we can improve the process, make it more efficient going forward. But the point to emphasize is this has not cost the taxpayers additional money by the extension?

MS. FOSTER: Correct.

LIEUTENANT GOVERNOR BROWN: Okay.

MS. FOSTER: And I just, you know --

TREASURER KOPP: Well we don't know that --

MS. FOSTER: -- I understand both the Comptroller's and the Treasurer's concern. But, you know, I just want to reiterate that, you know, this administration basically has been faced with putting the budget together during a period where we've had the greatest recession since the Great Depression.

TREASURER KOPP: Absolutely. Absolutely.

MS. FOSTER: And, you know, with the Board's actions and what we've done in the General Assembly we've cut over \$7 billion. In terms of positions, we've eliminated 5,300 positions. And last year the General Assembly told us to come in with cutting another 450 positions before January. So we have done all of this in a very difficult time, and we've tried to do it in a balanced way as the Lieutenant Governor indicated.

TREASURER KOPP: I could not agree more with everything that you've said, except with an addendum that the people have to understand, the taxpayers have to understand, that there is a real cost to all of this cutting as well as the need to balance, meeting the need to balance the budget. And I don't think that they see that as often. I remember in the 1991 recession my neighbors and I finally saw it when they cut the library hours because finally it hit us. And I am concerned that while we're cutting the

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infrastructure of government and people don't see it as much they are not as aware of what's really happening. That's my only, my fingerprints are all over these cuts too, I understand that.

COMPTROLLER FRANCHOT: Yeah, and let me just comment for the record also, we don't really know what we are avoiding or not avoiding as far as cuts. Because with these extensions that are before us we're not getting the benefit of a competitive bid process. That's my point. We don't, and maybe the bid process would result in higher bids and you end up with savings. But the problem is we're in the dark. And once, maybe. Twice, I don't know. Three times, shame on me. Four times? For almost a quarter of a billion dollars. You know, I hope for the taxpayers that we're getting a really good deal. But we just don't know. And that's why we have a procurement process like this. Otherwise we'd just roll everything over in extensions all the time. We don't. We get out and bid.

MS. FOSTER: And so in April we will be bringing the new contracts back and that's when we can assess.

COMPTROLLER FRANCHOT: Excellent. I look forward to it then.

LIEUTENANT GOVERNOR BROWN: Okay. Any other discussion on that item, or any other item on the DBM Agenda?

COMPTROLLER FRANCHOT: Oh yes, I have a question on Item 11.

MS. FOSTER: Item 11 is a request for approval of a settlement with Dr. Persaud vs. the University of Maryland University College. And we have the representatives from the University of Maryland here.

MR. FAULK: Good morning. Thomas Faulk, Assistant Attorney General on behalf of University of Maryland University College.

MR. SHOENBERGER: And I'm George Shoenberger, Chief Operating Officer.

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COMPTROLLER FRANCHOT: Chief Operating  
Office of UMUC?

MR. SHOENBERGER: Yes, sir.

COMPTROLLER FRANCHOT: Okay. So what are  
doing here?

MR. FAULK: We are, and briefly this is a  
request for a settlement. It was a complex and  
retracted civil litigation matter that involved  
national origin, retaliation, race discrimination, and  
a claim that the University violated the free speech  
rights of a former employee. And we are requesting  
the settlement in the amount of \$430,000. We reached  
that settlement after the University pursued the  
matter to the motion for summary judgment.  
Unfortunately the University wasn't successful on the  
motion for summary judgment. We then entered into a  
mediation before the U.S. District Court. And based  
on the comments of Judge Messitte, who was overseeing  
the case, as well as Charles Day, the Magistrate, we  
reached a settlement in the case.

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COMPTROLLER FRANCHOT: Okay. And so we're going to give \$430,000 to is it Dr. Persaud?

MR. FAULK: Well Your Honor, if I could explain? The \$430,000 is actually --

COMPTROLLER FRANCHOT: I love the, believe me, you don't want to make me into a judge.

(Laughter)

COMPTROLLER FRANCHOT: I'm sorry. So the \$430,000 comes from UMUC, I take it?

MR. SHOENBERGER: Yes, sir.

COMPTROLLER FRANCHOT: And goes to whom?

MR. FAULK: The \$430,000 is actually split. There will be an amount that will go to Dr. Persaud in the amount of roughly \$130,000. The remaining amount will go to his attorneys, which were his attorneys fees in the case.

COMPTROLLER FRANCHOT: Okay. So I see Dr. Persaud's case and I obviously, any comments that are discriminatory in nature I abhor. The question I have is are, were you aware that this suit which we're

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voting I guess today to give \$430,000 for is almost a mirror image of a similar suit that Dr. Persaud filed against Earl Richardson, the President of Morgan State University, and the Dean of the Business School there when he was denied tenure?

MR. FAULK: Actually Mr. Comptroller, it's actually not, although some of the allegations are similar, it's not a mirror image of the case. Dr. Persaud worked for Morgan State University in the nineties and at that time he was denied tenure. He did file a discrimination suit against the University at that time.

COMPTROLLER FRANCHOT: What was that based on?

MR. FAULK: It was based on his failure to receive tenure.

COMPTROLLER FRANCHOT: And what did he claim he was denied tenure for?

MR. FAULK: He claimed that the Dean of the Business School at that time had made several racist

remarks and that that actually contributed to his failure to receive tenure at that time. The court's decision however --

COMPTROLLER FRANCHOT: Isn't, can I just interrupt for a minute?

MR. FAULK: Sure.

COMPTROLLER FRANCHOT: Isn't that exactly what is being alleged here?

MR. FAULK: Well in this particular case, Your Honor, Mr. Comptroller, the allegations are that Mr. Persaud, Dr. Persaud, that when we renewed his contract that the, there were two decisions here. There was one decision to renew his contract for a shorter period of time. There was then a second decision to end his employment. He claims that both of those decisions were due to discrimination and that possibly that second decision was also retaliatory in nature because he had filed an internal discrimination complaint with the University.

COMPTROLLER FRANCHOT: Okay. I think you're in a difficult position and I'm probably going to follow your legal advice. But I just have to comment for the record that I think, you know, this is an unfortunate situation. And you know, for an individual to have sued Morgan State University for racial discrimination for not being granted tenure, sued the State of Maryland, Earl Richardson, a great leader for our State, gone into the Federal District Court in Maryland. Lost overwhelmingly. Apparently we were, your predecessors defended Morgan State because there was no merit. Then he appealed to the Fourth Circuit. Also denied. It wasn't, so here we're being asked on a case that is almost the same charges, we're being asked to vote for \$430,000 based on your recommendation that we face higher risk if we go to trial. And I can see that given this situation. But it certainly, you know, I almost wish, I guess Joe Curran defended the last case where there was no merit determined. Part of me would like to see, you know,

justice come out and the truth come out here in a trial.

Based on this prior action, which was, I mean, do you see what I'm talking about here?

MR. FAULK: Yes, Mr. Comptroller.

COMPTROLLER FRANCHOT: We're apparently going to move forward in this but it's, maybe in the great scheme of things at the Board of Public Works it's not a lot of money but I see it as a lot of money. And so anyway, I've probably got myself in enough trouble there. But it just frustrates me that, you know, you guys can defend the State in a great way and we don't, we end up paying nothing because there wasn't any merit to it. I'm not saying that's the case here. But I wish in these instances we wouldn't settle. I wish we litigated so that the truth would come out. And if we have to pay more, so be it if the State made, in fact is guilty of what these allegations are. But we're not going to know.

LIEUTENANT GOVERNOR BROWN: Are you Mr. Faulk?

MR. FAULK: Yes.

LIEUTENANT GOVERNOR BROWN: Okay how long, and you are the lead counsel on this?

MR. FAULK: Yes, sir, I am.

LIEUTENANT GOVERNOR BROWN: And how long have you been litigating?

MR. FAULK: I've actually been with the Attorney General's Office since 1993 in the Educational Affairs Division. I worked previously at the Department of Health and Mental Hygiene doing litigation in that unit.

LIEUTENANT GOVERNOR BROWN: Right. And so I remember back in my days when we litigated there was sort of a rubric of risk analysis that you did on litigation to make sort of value based and sort of experienced based decisions on whether it's financially wise to continue with litigation versus settling. I mean, can you just, if you can, I mean

just sort of generically talk about your approach to the decision to settle versus going to litigation and a trial?

MR. FAULK: Sure. In this particular case what we were looking at was essentially whether or not the plaintiff in this case would be successful with respect to not necessarily all of the claims but even some of the claims. And unfortunately the State has been in a particularly difficult position with respect to defending retaliation claims. Because as you well know when you are defending a retaliation claim the retaliation doesn't have to happen as a result of the person's race or national origin. If in fact an individual files an internal complaint of discrimination and then that individual, there is adverse employment action taken against that individual following that complaint, there could be a finding by a trier of fact that in fact the employer discriminated. And unfortunately in this

case what we had with respect to the facts is that we

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had an individual who received a decision from the employer. He then filed an internal discrimination complaint. When the University investigated that complaint the investigation took place over a period of months. Unfortunately the University however in working through those issues with this particular employee wasn't able to fully document the ways in which that was worked out. And so then the plaintiff then claimed that all of the sort of remedial or corrective actions that the University attempted to take with respect to his performance, that these were in fact retaliatory.

The additional problems that we had was that unfortunately the manager in this case who worked for the University, there were allegations with respect to discriminatory comments that were made both before this discrimination complaint was filed and after the discrimination complaint was filed. So our risk analysis with respect to the retaliation claim was problematic. Because unfortunately a trier of fact

could find that this particular manager took this action as a result of the discrimination complaint that was filed. And so we had to assess, we had to look at the attorneys fees that were accumulated to date. We had to look at the possible damages that would have flowed from a determination of liability. And we had to assess whether or not settling the case at this time for this amount was a more reasonable decision rather than exposing the State to liability with damages possibly ranging in the neighborhood of a million to a million and half.

LIEUTENANT GOVERNOR BROWN: You said 1993, you started?

MR. FAULK: Yes.

LIEUTENANT GOVERNOR BROWN: So, I mean, so, I mean it is in your professional judgment that this settlement and what you are recommending is more likely than not going to save the State money in this case?



MR. FAULK: Yes, Mr. Lieutenant Governor.

I, it is my assessment based on the facts of this case, and actually based on the findings of the court in this case as well as the comments of both the judge and the magistrate judge who handled the protracted mediation that a settlement in this case is in the best interests of the State and it's reasonable.

LIEUTENANT GOVERNOR BROWN: Thank you. Any other questions or comments on this?

COMPTROLLER FRANCHOT: No. Like I say, I'm going to vote for this because I recognize, as the Lieutenant Governor mentions, you are between a rock and a hard place. But based on the earlier litigation of identical claims, I agree I don't know who the employee was that was responsible for these comments. They are outrageous if they were made and, you know, I abhor that. But --

MR. FAULK: Mr. Comptroller, that individual no longer works for the University.

COMPTROLLER FRANCHOT: Well that's good.

But --

LIEUTENANT GOVERNOR BROWN: Does -- oh, I'm sorry.

COMPTROLLER FRANCHOT: No, no.

LIEUTENANT GOVERNOR BROWN: So, and I'm sorry, sir, I missed your name. But you are the Chief --

MR. SHOENBERGER: Chief Operating Office, George Shoenberger.

LIEUTENANT GOVERNOR BROWN: So are you the one that's responsible for ensuring that the lessons learned from this matter, and one of them was raised by Mr. Faulk which is, you know, timely accurate documentation of performance and the basis for personnel decisions, are you all going through and sort of ensuring that, you know, managers and supervisors and others are, you know, adhering to best practices when it comes to personnel decisions?

MR. SHOENBERGER: Absolutely we are. We are appalled by what this employee did, who as Tom mentioned is no longer with us. We've done extensive training within that particular unit, as well as across the University. We don't like this one bit. We're appalled at what happened. And we don't take this decision lightly either, as I know none of you do. This is a lot of money. And it's money we could spend on something much more worthwhile. But as Tom said, we looked at this and we just feel that this is a risk mitigation and that the advice from the Attorney General's Office is solid. It's what we need to do. None of us like this. And I can assure you that we have taken this very seriously in terms of making sure that this kind of thing as best as we are able to does not happen again. But it does show you how a single employee can make any employer very vulnerable by actions and words that they use that we abhor and that we're not aware of when these things occur.

LIEUTENANT GOVERNOR BROWN: Anything else on this item? Okay, well thank you very much. Anything else on any other items on, we're still on Budget and Management? We're still on yours?

MS. FOSTER: Yes.

LIEUTENANT GOVERNOR BROWN: Okay. Any others? Seeing none, hearing none, the Comptroller moves approval, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, the DBM calendar is approved for today.

SECRETARY MCDONALD: Governor?

LIEUTENANT GOVERNOR BROWN: Yes?

SECRETARY MCDONALD: Would the Comptroller like to be noted as voting yes on the DNR Agenda and the Secretary's Agenda?

LIEUTENANT GOVERNOR BROWN: I apologize.

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COMPTROLLER FRANCHOT: No, no, no. It's a housekeeping matter.

SECRETARY MCDONALD: Right.

COMPTROLLER FRANCHOT: Apparently I was recorded as the November 6th meeting as voting no on USM Item 3-GM. And the no that I voted was on Item 3-GM, sub-item C-4, the purchase of the 32 Steinway pianos for Bowie State and not the other items.

SECRETARY MCDONALD: Okay. And then again -

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COMPTROLLER FRANCHOT: So I'd like to have the record corrected.

SECRETARY MCDONALD: We will correct the record on that one. And again, though on this Agenda though. The DNR Agenda and the Secretary's Agenda you had had to step up and I just wanted to make sure you had an affirmative vote on those Agendas?

COMPTROLLER FRANCHOT: I'm fine. Vote approval.

SECRETARY MCDONALD: Thank you. Thank you, Governor.

LIEUTENANT GOVERNOR BROWN: Thank you, Madam Secretary, for straightening this out, straightening me out there. Okay. University System of Maryland. Are you, yeah, good morning.

MR. STIRLING: Good morning. Jim Stirling for the University System. We have ten items on today's Agenda and I'll be happy to address any questions.

LIEUTENANT GOVERNOR BROWN: Okay, hearing nothing the Treasurer moves approval, seconded by the Comptroller. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: Hearing none, congratulations.

MR. STIRLING: Thank you.

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LIEUTENANT GOVERNOR BROWN: Approved. And we'll go on to the Department of Information Technology.

SECRETARY MCDONALD: Secretary Schlanger is here.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. This morning we bring you five items on our Agenda. And I'll be happy to answer any questions at this time.

LIEUTENANT GOVERNOR BROWN: Okay. Hearing nothing, the Comptroller moves approval, seconded by the Treasurer. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: None.  
Congratulations.

MR. SCHLANGER: Thank you.

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LIEUTENANT GOVERNOR BROWN: Okay. And the final Agenda for today is the Department of General Services.

MR. COLLINS: Good morning, Mr. Lieutenant Governor. Al Collins, Secretary of the Department of General Services. Good morning, Mr. Lieutenant Governor, Madam Treasurer, Mr. Comptroller. The Department of General Services has 24 items on our Agenda, including one supplemental. We are withdrawing Item 11-LL. I'll be glad to answer any questions you have at this time.

Mr. Lieutenant Governor, I would like to point out, and unfortunately the Governor is not here this morning, but we've heard his message about surface parking. And I'm just pleased to present, and thank Mr. Jordan Loran from the Department of Natural Resources. We have an item in front of you that talks about Cunningham State Park. We've actually reduced the surface parking by 33 percent. It's the first time we've done that in a very long time. So I just

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want to show you that we and DNR are certainly supporting the cleaning up of the Bay.

COMPTROLLER FRANCHOT: I just want to state for the record that I have something incredibly positive to say about the O'Malley-Brown administration on Item 11-LL but it was withdrawn.

(Laughter)

LIEUTENANT GOVERNOR BROWN: It will be back.

MR. COLLINS: It will be back.

LIEUTENANT GOVERNOR BROWN: Any other comments on any other items --

TREASURER KOPP: I'm sure it's not incredibly positive.

LIEUTENANT GOVERNOR BROWN: Hearing none, the Treasurer moves approval, seconded by the Comptroller. All those in favor say, "Aye."

THE BOARD: Aye.

LIEUTENANT GOVERNOR BROWN: Any opposed?

(No response.)

LIEUTENANT GOVERNOR BROWN: None. You had something?

COMPTROLLER FRANCHOT: Yeah I just wanted, if we're through that --

LIEUTENANT GOVERNOR BROWN: Well let's close this out. Okay, well that is approved then. Okay.

COMPTROLLER FRANCHOT: Excellent. I just wanted to make a general comment that I understand the next Board meeting on December 21st has a large number of significant items. And I would, I mentioned this to you last night, Lieutenant Governor, that I think to the extent we can balance some of the Agenda and move it into January it would allow for the proper level of review. And I'm looking at video lottery terminals, wetland licenses for nuclear power plants, the pharmacy contract, easement purchases in Point Pleasant, which, the extensions of 63 SHA contracts from the audit. And I guess now the anaerobic digests --

MR. COLLINS: Yes, sir.

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COMPTROLLER FRANCHOT: To the extent someone can kind of help manage that so that we don't have an imbalance I would be grateful.

SECRETARY MCDONALD: I appreciate your instructions, Mr. Comptroller. We will take that into account. We are preparing the record for your meeting this week so we will take that into account, definitely.

LIEUTENANT GOVERNOR BROWN: Okay. We have a, do we have to move to adjourn, or --

SECRETARY MCDONALD: No, you can just adjourn.

LIEUTENANT GOVERNOR BROWN: So there's none. Okay, Happy Holidays, everyone.

(Whereupon, at 11:00 a.m., the meeting was concluded.)