

DETERMINATION OF NEED FOR EXCEPTIONAL TERM CONTRACT
Tract 111, Lot 12, Municipality of Tamuning, Guam

1.0 OVERVIEW

This Determination of Need for Exceptional Term Contract is issued pursuant to Public Law 32-40 as amended by Public Law 34-99 wherein the Chamorro Land Trust Commission hereby makes this “written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract, and specifying the full term, inclusive of extensions, options and renewals, for such contract, and provide a copy of such Determination of Need to the Speaker of *I Liheslaturan Guahan*.”

CLTC Resolution No. 2017-05 which designated this property for commercial lease was adopted on March 20, 2017 and transmitted to the Legislature as required by Public Law 33-95 on March 21, 2017 (Legislative Doc. No. 34GL-17-0313).

The Chamorro Land Trust Commission (hereinafter referred to as “CLTC”) via its property manager, the Guam Economic Development Authority (hereinafter referred to as “GEDA”), intends to issue a Request for Proposals (“RFP”) for the lease availability of Tract 111, Lot 12, Municipality of Tamuning, consisting of approximately 2,564 square meters, as shown on survey map L.M. No. 332FY95, Instrument No. 530747, currently Resort-Hotel Zone (The Property). The Property is located off Route 14, along San Vitores Road across from the Ypao Beach Park and the Proa Restaurant. The CLTC intends to negotiate a lease agreement for the Property that allows a prospective developer to implement its proposed and approved development plans. The Property has potential for commercial use as it is located within Guam’s tourist district. CLTC intends to negotiate a lease agreement for the Property that allows a prospective lessee to utilize the Property for land uses consistent with the Resort-Hotel Zone (H) designation. If required, the offeror will be allowed to pledge the leasehold interest in the property to secure development financing. The property is located in Census Tract 66010951902 which is a Qualified Opportunity Zone (QOZ) pursuant to Section 13823 of U. S. Public Law 115-97 which provides tax incentives for investments in QOZs.

To allow prospective developers to invest in the Property and recover investments, CLTC proposes to allow a lessee to lease the property for a term of up to fifty (50) years with one or more options to extend the term for an additional Forty-Nine (49) years. Such term will be subject to negotiations based primarily upon the amount of time required by the lessee to recover its investment, satisfy financing requirements and profit from investments.

Smaller scale developments (in the tens to hundreds of thousands of dollars), have traditionally been pursued by smaller organizations and are met with a distinctly unique set of challenges. Smaller local corporations, partnerships and sole proprietorships that are common on Guam are very much dependent on local financing institutions to engage in almost any form of commerce. A commercial loan is dependent on various terms such as, the principle loan amount, interest, and primarily, the borrower’s ability to repay. While there may be some organizations or businesses that might be able to afford a loan from hundreds of thousands to the millions of dollars,

and still able to repay it back in less than five years, there are also a large number of small local businesses that are unable to do so. For example, even a \$250K business loan at only 4% interest over a mere 5 year term would require monthly payments of almost \$5K a month for the loan itself, not to mention other standard overhead, operational, or costs of goods sold. Limiting a lease term to 5 years would only add an additional hardship, or even exclusion, for most small local businesses to participate, employ local workers, or have a hope at success.

Even if a business were to be successful at negotiating a real property lease, a basic guideline for any local lending institutions is that a commercial loan would generally not be granted to any organization with only a leasehold interest that would be shorter than the life of the loan itself. Thus, in order to provide a fair commercial lease opportunity to a wider range of the small local business community and still provide a decent chance at success, it is concluded that an Exceptional Term Lease for longer than 5 years be allowed.

The tax assessed value is \$336 per square meter. Fair market rental value will be based upon two recent property appraisals as required for CLTC properties by Public Law 31-44. A description of the property and the potential major components of a Request for Proposals follows, to provide preliminary but more detailed information on this development opportunity.

1.1 LAND USE CONSIDERATIONS

1.1.1 Property Location. The Property is located off Route 14, along San Vitores Road across from the Ypao Beach Park and the Proa Restaurant in Tumon, Guam (See attached Map).

1.1.2 Previous Land Use. The Property was formerly utilized by GVB as a park.

1.1.3 Current Zoning. The property is zoned Resort Hotel (H). If a change to this zoning designation is needed to implement the developer's plans, an explanation of the need for change must be included in the proposal submitted in response to an RFP.

1.1.4 Mining of Property. Should aggregate mining be intended by the prospective developer as part of its development plan, CLTC requires that proposal in response to an RFP discuss how the property will become usable after the developer ceases to use the property for this purpose and discuss royalties that will be paid from the use of the property for this purpose.

1.2 CLTC COMMITMENTS

- To support designation of the appropriate zone for the property to accommodate the development plan, to the extent allowable by law.
- To support the developer in satisfying all regulatory, land use, environmental, business, building and other local and federal permitting requirements, to the extent allowable by law.
- To support the developer in presenting and securing approval of the lease agreement to the extent allowable by law.

1.3 OFFER RESPONSIBILITIES

A lease agreement(s) will be prepared once negotiations with the successful offeror(s) have concluded. Since the lease will require offeror(s) to carry out various responsibilities, including, but not limited to those listed below, proposals must indicate concurrence with paying the costs for and carrying out the major responsibilities listed below:

1.3.1 Conceptual Plan. Prepare a conceptual plan for the proposed development, commit to a specific development schedule and secure all necessary development permits. In submitting a proposal in response to an RFP, offerors are required to submit this conceptual plan for the development of the property or portion(s) thereof which shall identify the type of use, the market demand for the goods and/or services to be offered, a rough order of magnitude cost for developing the site and the offeror's ability to finance development and operations including evidence of such financial ability.

1.3.2. Business Plan. Create for itself and for CLTC, a Business Plan that contains a project pro forma consistent with the conceptual plan covering the period of time required by the offeror(s) for project development and operation.

1.3.3 Infrastructure. Plan, implement and fund all infrastructure improvements needed for development plans.

1.3.4. Management. Accept management and maintenance responsibility for the Property that preserves the value and revenue generating capacity of the Property.

1.3.5. Environmental Remediation (If Needed). Accept responsibility for performance and costs of any environmental remediation required to develop the Property as proposed. Prospective lessees shall prepare a Phase I Environmental Site Assessment before the issuance of a lease agreement and shall provide a performance bond to ensure that the property is returned in an acceptable end-state.

1.3.6. Insurance. Obtain all required property, liability and workmen's compensation insurance, and indemnify CLTC from any liability arising from the development and use of the Property.

1.3.7 Survey/Retracement. Prepare a property boundary survey map of the Property and obtain all required approvals. Survey monuments must be maintained and visible at all times for inspection by CLTC.

1.3.8. Fees. Pay all fees associated with the recording the Lease at the Department of Land Management.

1.4 OFFEROR REQUIREMENTS

A primary consideration of the CLTC and the Government of Guam is the benefits to be derived through the lease and development of this valuable asset. Traditional methods of generating revenue are addressed in subsections 1.4.1 and 1.4.2 below. However, CLTC, GEDA and the Government of Guam recognize that significant public benefits can also be derived through public/private partnerships and other mechanisms that, considered as a whole, exceed the benefits derived from a traditional real estate lease transaction. Should other non-traditional methods be proposed by the offeror, these methods will be given serious consideration but offerors must still identify the benefits that would have been derived from a strict real estate lease transaction for comparative purposes. Offerors are required to review the CLTC Rules and Regulations codified at 21 GCA Section 75122 (attached) and to address the following requirements in their proposals:

1.4.1. Rent. Rent shall be no less than ten percent (10%) of the appraised fair market value. Per Public Law 31-44, two appraisals must be prepared at the expense of the prospective developer with CLTC selection of one appraiser. Prospective developers are required to identify the amount of ground rent to be paid annually/monthly over the term of the lease, taking into account CLTC's objective of generating the highest amount of revenue. Rent shall escalate at a minimum of five (5) year intervals based at a minimum upon current appraisal of fair market value but in no event shall rent be lower than the rent charged during the previous five (5) year period.

1.4.2. Participation Rent. Participation rent, which is a mutually agreed upon percentage of the revenues generated from the use of the property above a mutually agreed upon revenue threshold shall be paid by the lessee to the landlord beginning on the fifth (5th) anniversary of the lease and shall be paid in four (4) equal quarterly installments. To arrive at this threshold, prospective offerors must submit a pro-forma financial statement and propose a reasonable threshold in their proposals to meet this requirement.

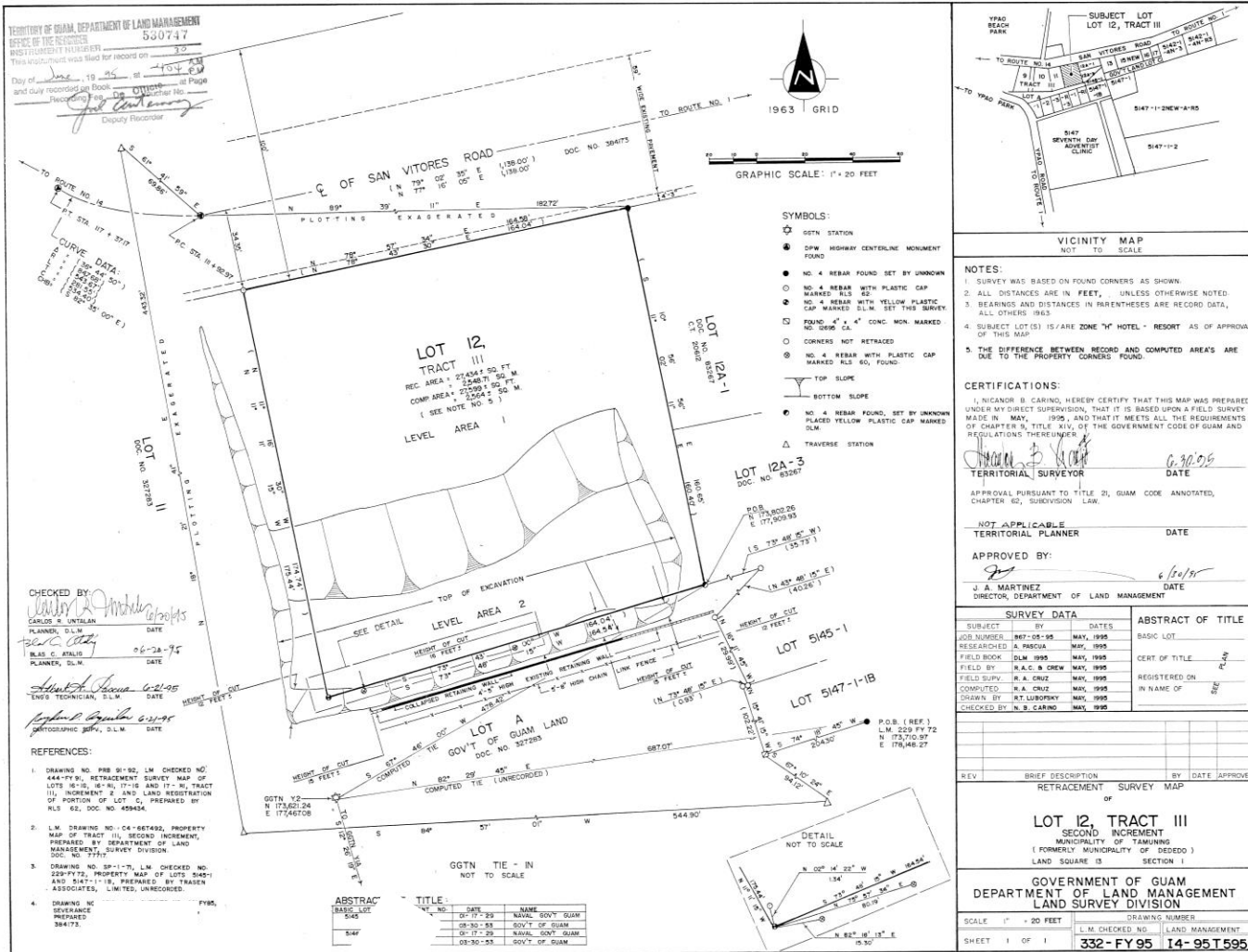
1.4.3. Alternative Payment Mechanisms. Alternatives to property rent, subtenant and other rents may be proposed by offerors in their proposals, however, any proposal suggesting such alternatives must demonstrate how CLTC's objective of generating the highest amount of revenue is achieved by comparing the suggested alternative to the property rent, subtenant and other payments described above. Alternative payment schedules including rent deferrals may also be proposed but in no event will the total amount of rent be reduced. Interest may also be charged on any deferred rents.

1.4.4. Security Deposit. The proposal shall indicate that the developer(s) agrees to pay a non-refundable security deposit upon execution of a lease and the amount of such security deposit.

1.4.5. Sub-lessee Use of Property. Offerors must specify in their proposals whether or not subletting (or any form of third party use) is intended for any or all portions of the property being leased. Should subletting be intended, offerors shall identify the proportion of sub-lessee rents paid to the lessee to be paid to CLTC, if any. In addition, participation rent as described above may be required to be paid by sub-lessees.

1.4.6. Other Requirements. To ensure acceptability of the intended lease agreement by the public and the government of Guam, compliance with 21 GCA Section 75122 is required however, additional requirements may be imposed and/or negotiated that are not specifically identified in this RFP, at the discretion of the Government of Guam. In addition, Public Law 32-40 requires Legislative approval of all leases whose term exceeds five (5) years. Additional requirement(s) may be imposed by the Guam Legislature. By submitting a proposal in response to this RFP, prospective offerors understand and agree that additional requirements may be negotiated by the Executive and/or Legislative Branches of the Government of Guam.

ATTACHMENT A: MAP



TERRITORY OF GUAM, DEPARTMENT OF LAND MANAGEMENT
OFFICE OF THE RECORDS
530747
 This instrument was filed for record on 1995
 Day of June 1995 at 10:46 AM
 and duly recorded on Book 34 Page 61
 Recorder J. A. Martinez
 Deputy Recorder

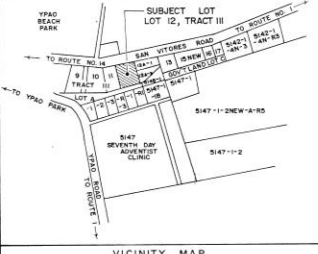
CHECKED BY
 CARLOS R. UNTLAN
 PLANNER, D.L.M. DATE 6/20/95
 BLAS C. ATALUIS
 PLANNER, D.L.M. DATE 6-24-95
 ENIG TECNICIAN, D.L.M. DATE 6-21-95
 J. A. MARTINEZ
 DIRECTOR, D.L.M. DATE

- REFERENCES:**
- DRAWING NO. P88 91-92, L.M. CHECKED NO. 444-179, RETRACEMENT SURVEY MAP OF LOTS 16-19, 16-A, 17-16 AND 17-N, TRACT III, INCREMENT 2 AND LAND RESTRICTION OF PORTION OF LOT C, PREPARED BY HLS 62, DOC. NO. 459434.
 - L.M. DRAWING NO. C4-667492, PROPERTY MAP OF TRACT III, SECOND INCREMENT, PREPARED BY DEPARTMENT OF LAND MANAGEMENT, SURVEY DIVISION, DOC. NO. 77717.
 - DRAWING NO. 204-17, L.M. CHECKED NO. 220-PY72, PROPERTY MAP OF LOTS 5145-1 AND 5147-1B, PREPARED BY TRASEN ASSOCIATES, LIMITED, UNRECORDED.
 - DRAWING NO. SEVERANCE PREPARED 38472.

ABSTRACT OF TITLE

NO.	DATE	NAME
01-17-29	NAVAL GOV'T GUAM	
01-30-88	GOV'T OF GUAM	
01-17-29	NAVAL GOV'T GUAM	
03-30-93	GOV'T OF GUAM	

- SYMBOLS:**
- ⊙ GSN STATION FOUND
 - ⊙ DPW HIGHWAY CENTERLINE MONUMENT FOUND
 - NO. 4 REBAR FOUND SET BY UNKNOWN MARKED HLS 62
 - NO. 4 REBAR WITH YELLOW PLASTIC CAP MARKED D.L.M. SET THIS SURVEY
 - ⊙ FOUND "4" x "4" CONC. MON. MARKED NO. 1089 CA
 - ⊙ CORNERS NOT RETRACED
 - NO. 4 REBAR WITH PLASTIC CAP MARKED HLS 60, FOUND
 - ▽ TOP SLOPE
 - ▽ BOTTOM SLOPE
 - NO. 4 REBAR FOUND, SET BY UNKNOWN PLACED YELLOW PLASTIC CAP MARKED D.L.M.
 - △ TRAVERSE STATION



- NOTES:**
- SURVEY WAS BASED ON FOUND CORNERS AS SHOWN.
 - ALL DISTANCES ARE IN FEET, UNLESS OTHERWISE NOTED.
 - BEARINGS AND DISTANCES IN PARENTHESES ARE RECORD DATA, ALL OTHERS ARE THIS SURVEY.
 - SUBJECT LOT (S) IS ZONE "H" HOTEL - RESORT AS OF APPROVAL OF THIS MAP.
 - THE DIFFERENCE BETWEEN RECORD AND COMPUTED AREA'S ARE DUE TO THE PROPERTY CORNERS FOUND.

CERTIFICATIONS:

I, NICANOR B. CARINO, HEREBY CERTIFY THAT THIS MAP WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS BASED UPON A FIELD SURVEY MADE IN MAY, 1995, AND THAT IT MEETS ALL THE REQUIREMENTS OF CHAPTER 9, TITLE XIV, OF THE GOVERNMENT CODE OF GUAM AND REGULATIONS THEREUNDER.

TERRITORIAL SURVEYOR Nicanor B. Carino DATE 6/20/95

APPROVAL PURSUANT TO TITLE 21, GUAM CODE ANNOTATED, CHAPTER 62, SUBDIVISION LAW.

NOT APPLICABLE
 TERRITORIAL PLANNER DATE

APPROVED BY: J. A. Martinez DATE 6/20/95
 DIRECTOR, DEPARTMENT OF LAND MANAGEMENT

SURVEY DATA		ABSTRACT OF TITLE	
SUBJECT	BY	DATES	
JOB NUMBER	887-01-95	MAY, 1995	BASIC LOT
RESEARCHED	A. PARCIVA	MAY, 1995	
FIELD BOOK	D.M. 1995	MAY, 1995	CERT. OF TITLE
FIELD BY	R.A.C. & CREW	MAY, 1995	REGISTERED ON
FIELD SUPV.	R.A. CRUZ	MAY, 1995	IN NAME OF
COMPUTED	R.A. CRUZ	MAY, 1995	
DRAWN BY	J.T. LUBORSKY	MAY, 1995	
CHECKED BY	N.B. CARINO	MAY, 1995	

REV. BRIEF DESCRIPTION BY DATE APPROVED
 RETRACEMENT SURVEY MAP

LOT 12, TRACT III
SECOND INCREMENT
 MUNICIPALITY OF TAMUNING
 (FORMERLY MUNICIPALITY OF DESEDO)
 LAND SQUARE IS SECTION I

GOVERNMENT OF GUAM
DEPARTMENT OF LAND MANAGEMENT
LAND SURVEY DIVISION

SCALE	1" = 20 FEET	DRAWING NUMBER
SHEET	1 OF 1	L.M. CHECKED NO. <u>332-FY 95</u> LAND MANAGEMENT <u>14-95T.595</u>