

DETERMINATION OF NEED FOR EXCEPTIONAL TERM CONTRACT
Lot 7054-R8, Yigo, 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. 2016-11 which designated this property for commercial lease was adopted on June 16, 2016 and transmitted to the Legislature as required by Public Law 33-95 on June 24, 2016 (Legislative Doc. No. 33GL-16-1728).

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 Lot 7054-R8, Yigo, containing 8 acres and zoned Agriculture (The Property). The Property is located off Route 1, behind the Yigo Gym. 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 just off Marine Corps Drive. 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 Agriculture Zone (A) designation. If required, the offeror will be allowed to pledge the leasehold interest in the property to secure development financing.

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.

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 1, behind the Yigo Gymnasium, Guam (See attached Map).

1.1.2 Previous Land Use. The Property was not previously used by the government of Guam.

1.1.3 Current Zoning. The property is zoned Agriculture (A). 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.

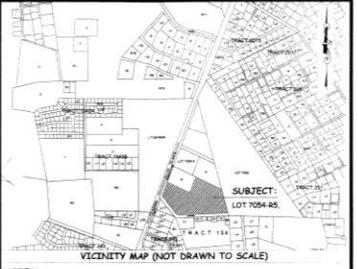
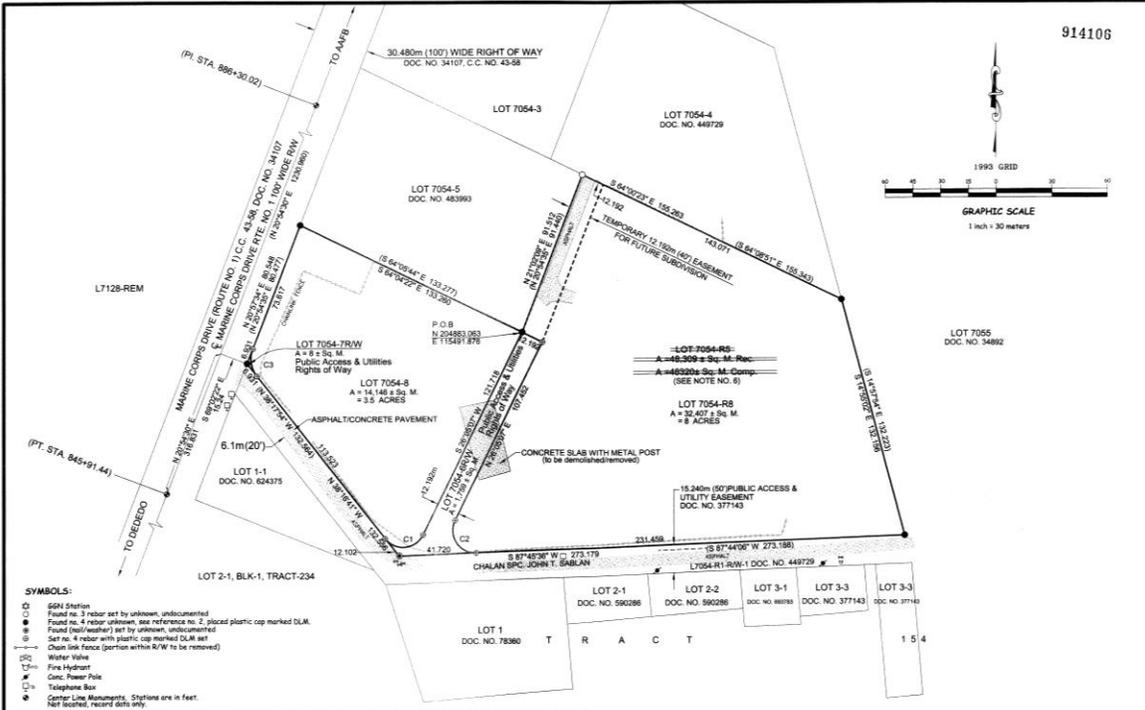
1.4.3. Alternative Payment Mechanisms. Alternatives to property rent, subtenant and other rents may be proposed by offerors in their proposals, however, any proposal suggesting such alternatives must demonstrate how CLTC's objective of generating the highest amount of revenue is achieved by comparing 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



NOTES:

- SURVEY WAS BASED ON FOUND CORNERS AS SHOWN.
- ALL DISTANCES ARE IN METERS UNLESS OTHERWISE NOTED.
- READINGS & DISTANCES IN PARENTHESES IS ARE RECORD DATA.
- ALL OTHERS IN 1993 GRID.
- SUBJECT LOT NO. 7054-R5 IS ZONED "M1 LIGHT INDUSTRIAL, PER PUBLIC LAW 34-36 AND LOT 7054-R8, LOT 7054-R6-W, AND LOT 7054-R7-W ARE ZONED "A" AGRICULTURE AS PER 2ND OPTICAL ZONING MAP NO. 13-4745.
- SUBJECT LOTS 15 ARE WITHIN THE GROUND WATER PROTECTION ZONE (GWZ).
- THE DIFFERENCE IN AREA BETWEEN RECORD AND COMPUTED IS DUE TO FIELD CONDITIONS.

REFERENCES:

- PARCEL SURVEY PLAT OF LOT 7054-R5 DWG. NO. P.W. 90-01 L.M. DRAWING NO. 034 FY 91 PREPARED BY RLS 61 ROBERTO A. MOYA, DOCUMENT NO. 449729
- PARCEL SURVEY PLAT OF LOT 7054-R6 DWG. NO. D.B.P. 02-1993 L.M. DRAWING NO. 167 FY 93 PREPARED BY RLS 44 DOMESTRO B. PARLO, DOCUMENT NO. 483993

CERTIFICATIONS AND APPROVALS

SATISFACTORY TO AND APPROVED BY:

Michael J.B. BORJA
DIRECTOR, DEPARTMENT OF LAND MANAGEMENT
DATE: 02/26/2017

Joseph I. Cruz
CHIEF OF POLICE, GUAM POLICE DEPARTMENT
DATE: 07/25/17

CHECKED BY:

Frank F. Taitano
PLANNER, DLM
DATE: 02/15/17

Pierce J. Castro
ENGINEERING TECHNICIAN - DLM
DATE: 10/25/17

Edgardo E. Aguilar
CARTOGRAPHIC SUPERVISOR
DATE: 10/25/17

CERTIFICATION OF GUAM CHIEF PLANNER

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

Paul L. Santos
GUAM CHIEF PLANNER
DATE: 10-23-2017

CERTIFICATION OF GUAM CHIEF SURVEYOR/CHIEF OF CADASTRE

THIS MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH TITLE 21, GUAM CODE ANNOTATED, CHAPTER 60, ARTICLE 5, AND THE TRANSMISSION SYSTEM AND REGISTRATION THEREON IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 207.

Paul L. Santos, PLS
GUAM CHIEF SURVEYOR / CHIEF OF CADASTRE
DATE: 10-23-2017

REVISIONS	DESCRIPTION	BY	APPROVED BY	DATE

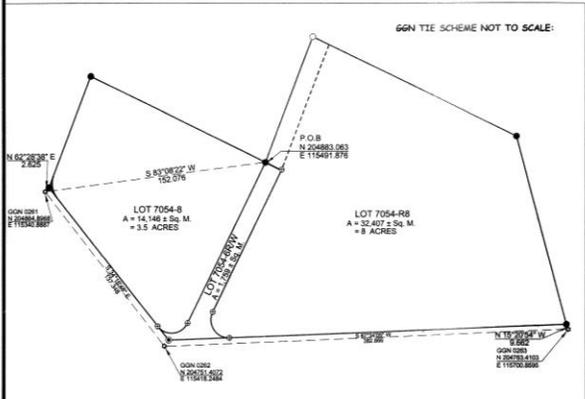
PARCELLING SURVEY MAP

OF
LOT 7054-R5
MUNICIPALITY OF YIGO

SURVEY DATA		LOT DATA	
JOB NO.	2302-3-17	SEPT 2007	LOT 7054-R5
COMPILED BY	RTL	SEPT 2007	CERTIFICATE OF TITLE NO. 109946
DRAWN BY	RTL	SEPT 2007	REGISTERED ON: 11-19-97
RESEARCHED BY	PC	SEPT 2007	ESTATE NO.
FIELD BY	LA & RTL	SEPT 2007	IN THE NAME OF:

CHECKED BY: PLS
SCALED IN METRIC SYSTEM AS SHOWN
SHEET 1 OF 1
DWG. NO. 14-027 T 781
L.M. CHECK NO. 124 FY 2007

GOVERNMENT OF GUAM
GUBERNAMENTON GUÅHAN
DEPARTMENT OF LAND MANAGEMENT
DIPARTAMENTON MAMANEHAN TANG
LAND SURVEY DIVISION
DISECCION AGRAMANSIAN TANG



CURVE DATA:

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	24.898	12.192	119.281°	S 82°14'36" W	20.038
C2	15.178	11.912	118.183°	N 53°24'38" W	10.807
C3	12.605	11.192	109°14'19"	N 08°39'33" W	12.050

SPECIAL NOTE:

- PURSUANT TO PUBLIC LAW 28-126, SECTION 1(d) THIS IS A "PARCELLING" SURVEY AND THEREFORE EXEMPTED FROM THE MAP PROCESSING REQUIREMENTS OF PUBLIC LAW 28-126, SECTION 1(a).
- AUTHORIZED BY PUBLIC LAW 34-36.

GOVERNMENT OF GUAM - Department of Land Management
Office of the Recorder

File for Record is Instrument Number **914106**
On the Year 20 17 Month 10 Day 26 Time 9:51
Recording Fee De-Office Recd No. _____
Deputy Recorder *Paul Santos*

CERTIFICATION OF PROFESSIONAL LAND SURVEYOR

I, PAUL L. SANTOS, HEREBY CERTIFY THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, THAT IT IS BASED ON A FIELD SURVEY MADE ON SEPTEMBER, 2017 IN CONFORMANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, AND THAT I AM RESPONSIBLE FOR THE ACCURACY OF ALL DATA AND INFORMATION SHOWN HEREON. I ALSO CERTIFY THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED ON THIS MAP.

Paul L. Santos
PROFESSIONAL LAND SURVEYOR NO. 68
DATE: 10-23-17



5-15412