I Mina'trentai Ocho Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
119-38 (COR)	Telo T. Taitague Chris Barnett Therese M. Terlaje Sabina Flores Perez Shelly V. Calvo Frank F. Blas, Jr	AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS	4/14/25 11:30 a.m.	4/29/25	Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure.	Request: 4/29/25 Waiver: 4/30/25	7/1/25 2:00 p.m.	9/8/25 As Amended.	

September 3, 2025

Honorable Frank F. Blas, Jr
Speaker
Mina'trentai Ocho na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, Guam 96910

VIA: Honorable V. Anthony Ada
Chairperson, Committee on Rules

Re: Committee Report on Bill No. 119–38 (COR) As amended

Håfa adai Speaker Blas:

Transmitted herewith is the Committee Report on the **Bill No. 119–38 (COR) As amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure** – Telo T. Taitague, Chris Barnett, Therese M. Terlaje, Sabina Flores Perez, Shelly V. Calvo, Frank F. Blas, Jr. - AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

Committee votes are as follows:

4 TO DO PASS

0 TO NOT PASS

4 TO REPORT OUT ONLY

0 TO ABSTAIN

0 TO PLACE IN INACTIVE FILE

COMMITTEE ON RULES
RECEIVED:
September 3, 2025 2:31 p.m.
Marie Crisostomo

Si Yu'os ma'åse',

V. Anthony Ada

OFFICE OF THE VICE SPEAKER
V. Anthony Ada
I Mina'trentai Ocho Na Liheslaturan Guåhan | 38th Guam Legislature
Chairperson - Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

COMMITTEE REPORT

Bill No. 119-38 (COR)

As amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure

Introduced by Telo T. Taitague

"AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.."

by Vice Speaker V. Anthony Ada

Guam Congress Building • 163 Chalan Santo Papa, Hagåtña, Guam 96910
Tel: (671) 989-0855 • Email: vicespeakertonyada@guamlegislature.gov

OFFICE OF THE VICE SPEAKER
V. Anthony Ada

I Mina'trentai Ocho Na Liheslaturan Guåhan | 38th Guam Legislature

Chairperson - Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

September 2, 2025

MEMORANDUM

To: **All Members**
Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure

From: **Vice Speaker V. Anthony Ada**
Committee Chairperson

Subject: **Committee Report on Bill No. 119-38 (COR) As amended**

Transmitted herewith for your consideration is the Committee Report on **Bill No. 119-38 (COR), As amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure** – Introduced by Telo T. Taitague – "AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS."

This report includes the following:

- Copy of COR Referral of Bill No. 119-38 (COR)
- Notices of Public Hearing & Other Correspondence
- Copy of the Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimonies & Supporting Documents
- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 119-38 (COR)
- Copy of Bill No. 119-38 (COR) as amended by the Committee
- Amended Mark-Up Version
- Copy of Fiscal Note Waiver from Bureau of Budget and Management Research

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Si Yu'os ma'åse'

COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson
I Mina'trentai Ocho Na Liheslaturan Guåhan
38th Guam Legislature

April 29, 2025

To: **Rennae V. C. Meno**
Clerk of the Legislature

Attorney Darleen Hiton
Legislative Legal Counsel

From: **Vice Speaker V. Anthony Ada**
Chairperson, Committee on Rules

Subject: **Referral of Bill No. 119-38 (COR)**

Håfa Adai,

As per my authority as Chairperson of the Committee on Rules and subject to 6.01(d)(1), Rule VI of our Standing Rules, I am forwarding the referral of **Bill No. 119-38 (COR)** – Telo T. Taitague, Chris Barnett, Therese M. Terlaje, Sabina Flores Perez, Shelly V. Calvo, Frank F. Blas, Jr. – "AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS."

Please ensure that the subject bill is referred to the Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure by Vice Speaker V. Anthony Ada. I also request that the same be copied to the Prime Sponsor of the subject bill and to Management Information Services (MIS) for posting on our website.

A copy of the bill is available on our legislative website.

Should you have any questions or concerns, please feel free to contact Kamarin Nelson, Committee on Rules Director at 671-472-2461.

FIRST NOTICE of Public Hearing: July 1, 2025

Vice Speaker V. Anthony Ada <vicespeakertonyada@guamlegislature.gov> Tue, Jun 24, 2025 at 2:09 PM
Bcc: phnotice@guamlegislature.gov, cltc.admin@cltc.guam.gov, "glenn.eay@cltc.guam.gov" <glenn.eay@cltc.guam.gov>, Arlene Acfalle <arlene.acfalle@epa.guam.gov>, Michelle Lastimoza <michelle.lastimoza@epa.guam.gov>, edward.birn@doa.guam.gov, john.aguon@clb.guam.gov, Geralynn Tennessen <geralynn.tennessen@clb.guam.gov>, vince.arriola@dpw.guam.gov, benny.sannicolas@dol.guam.gov, david.dellisolla@dol.guam.gov, "bjcruz@guamopa.com" <bjcruz@guamopa.com>, "admin@guamopa.com" <admin@guamopa.com>, administration@oagguam.org, dbmoylan@oagguam.org, "Joseph M. Borja" <joseph.borja@land.guam.gov>

FOR IMMEDIATE RELEASE
June 24, 2025

MEMORANDUM

To: All Senators, Stakeholders, Media
From: Vice Speaker V. Anthony Ada
Re: FIRST NOTICE of Public Hearing: July 1, 2025

The Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure will conduct a public hearing on **Tuesday, July 1, 2025** at **2:00 pm** in the Public Hearing Room in the Guam Congress Building. The agenda is as follows:

- **Bill No. 7-38 (COR)** – Joe S. San Agustin - AN ACT TO REPEAL AND REENACT A NEW § 75122(c)(2) AND ADD A NEW § 75122(d) AND § 75122(e) TO CHAPTER 75 OF TITLE 21, GUAM CODE ANNOTATED RELATIVE TO REQUIRING THE CHAMORRO LAND TRUST TO SOLICIT COMPETITIVE BIDS FOR THE MASS GRADING AND MINERAL EXTRACTION OF A PORTION OF LOT 5412, MANGILAO.
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If you are interested in participating in the Public Hearing to provide testimony, please contact the Office of Vice Speaker V. Anthony Ada at (671) 989-0855 or via electronic mail at vicespeakertonyada@guamlegislature.gov for further guidance.

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The Public Hearing will broadcast LIVE on local television (GTA Channel 21, Docomo Channel 117) and stream online via i Liheslaturan Guåhan's live feed. Written testimonies may be sent via email at vicespeakertonyada@guamlegislature.gov.

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Office of Vice Speaker V. Anthony Ada
38th Guam Legislature
I Mina'trentai Ocho Na Liheslaturan Guåhan
Guam Congress Building, 2nd Floor
163 Chalan Santo Papa
Hagåtña, Guam 96910
Phone: (671) 989-0855
Email: vicespeakertonyada@guamlegislature.gov

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3 attachments

2025-06-24 FIRST Notice .pdf
265K

Bill No. 7-38 (COR) Referred Version.pdf
890K

Bill No. 119-38 (COR).pdf
3316K

FOR IMMEDIATE RELEASE
June 24, 2025

MEMORANDUM

To: All Senators, Stakeholders, Media
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FIRST NOTICE of Public Hearing: July 1, 2025

PUBLIC HEARING

- **Posted on:** 06/24/2025 12:00 PM
- **Posted by:** Erin Grajek
- **Public Hearing Date:** 07/01/2025 02:00 PM

Department(s): GUAM LEGISLATURE (/notices?department_id=92)

- **Division(s):** OFFICE OF VICE SPEAKER V. ANTHONY ADA (/notices?division_id=261)
- **Notice Topic(s):** PUBLIC HEARING (/notices?topic_id=74)
- **Types of Notice:** PUBLIC HEARING (/notices?type_id=7)
- **For Audience(s):** PUBLIC (/notices?public=1)
- **Share this notice**

FOR IMMEDIATE RELEASE
June 24, 2025

MEMORANDUM

To: All Senators, Stakeholders, Media
From: Vice Speaker V. Anthony Ada
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AD SCRIPT – 06/24/25
FIRST NOTICE OF PUBLIC HEARING: JULY 1, 2025

June 24, 2025

FIRST NOTICE of Public Hearing: July 1, 2025

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INVOICE: I LIHESLATURAN GUAHAN-38TH GUAM LEGISLATURE

KUAM COMMUNICATIONS

600 Harmon Loop Road Ste 102
Dededo, GU 96929
Tel: 671.637.5826
Mobile: [redacted]

DATE
6/20/2025
INVOICE NO.
2720-00019-0000M

To: I LIHESLATURAN GUAHAN
38TH GUAM LEGISLATURE

Attn: Accounting Department

Date(s)	Service Details	Amount
6/20/2025	**COMMITTEE ON LAND, ENVIROMENT, HOUSING AGRICULTURE, PARKS AND INFRASTRUCTURE** PUBLIC HEARING FIRST NOTICE: 6.24.25 (PH070125)	$ 160.00
	Please make check payable to: **KUAM**	
	PAYMENT IS DUE UPON RECEIPT OF INVOICE. THANK YOU.	
		$ 160.00

Please pay amount stated above.

Should you have any questions please contact: 671-687-8879 or 671-635-5836.

SECOND NOTICE of Public Hearing

Vice Speaker V. Anthony Ada <vicespeakertonyada@guamlegislature.gov> Sun, Jun 29, 2025 at 2:39 PM
Bcc: phnotice@guamlegislature.gov

FOR IMMEDIATE RELEASE
June 29, 2025

MEMORANDUM

To: All Senators, Stakeholders, Media
From: Vice Speaker V. Anthony Ada
Re: SECOND NOTICE of Public Hearing: July 1, 2025

The Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure will conduct a public hearing on **Tuesday, July 1, 2025** at **2:00 pm** in the Public Hearing Room in the Guam Congress Building. The agenda is as follows:

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Office of Vice Speaker V. Anthony Ada
38th Guam Legislature

I Mina'trentai Ocho Na Liheslaturan Guåhan
Guam Congress Building, 2nd Floor
163 Chalan Santo Papa
Hagåtña, Guam 96910
Phone: (671) 989-0855
Email: vicespeakertonyada@guamlegislature.gov

3 attachments

2025-06-29 SECOND Notice .pdf
336K

Bill No. 7-38 (COR) Referred Version.pdf
890K

Bill No. 119-38 (COR).pdf
3316K

FOR IMMEDIATE RELEASE
June 29, 2025

MEMORANDUM

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From: Vice Speaker V. Anthony Ada
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SECOND NOTICE of Public Hearing: July 1, 2025

SECOND NOTICE of Public Hearing: July 1, 2025

PUBLIC HEARING

- **Posted on:** 06/29/2025 02:00 PM
- **Posted by:** Erin Grajek
- **Public Hearing Date:** 07/01/2025 02:00 PM
- **Department(s): GUAM LEGISLATURE (/notices?department_id=92)**
- **Division(s):** OFFICE OF VICE SPEAKER V. ANTHONY ADA (/notices?division_id=261)
- **Notice Topic(s):** PUBLIC HEARING (/notices?topic_id=74)
- **Types of Notice:** PUBLIC HEARING (/notices?type_id=7)
- **For Audience(s):** PUBLIC (/notices?public=1)
- **Share this notice**

FOR IMMEDIATE RELEASE
June 29, 2025

MEMORANDUM

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AD SCRIPT – 06/29/25
SECOND NOTICE OF PUBLIC HEARING: JULY 1, 2025

June 29, 2025

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KUAM COMMUNICATIONS

600 Harmon Loop Road Ste 102
Dededo, GU 96929
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DATE
6/26/2025
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2720-00020-0000M

To: I LIHESLATURAN GUAHAN
38TH GUAM LEGISLATURE

Attn: Accounting Department

Date(s)	Service Details	Amount
6/26/2025	**COMMITTEE ON LAND, ENVIROMENT, HOUSING AGRICULTURE, PARKS AND INFRASTRUCTURE** PUBLIC HEARING SECOND NOTICE: 6.29.25 (PH070125)	$ 160.00
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OFFICE OF THE VICE SPEAKER
V. Anthony Ada
I Mina'trentai Ocho Na Liheslaturan Guåhan | 38th Guam Legislature

Chairperson - Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

Public Hearing

Public Hearing Room · Guam Congress Building
Tuesday, July 1, 2025 · 2:00 pm

Agenda

- **Bill No. 7-38 (COR)** – Joe S. San Agustin - AN ACT TO REPEAL AND REENACT A NEW § 75122(c)(2) AND ADD A NEW § 75122(d) AND § 75122(e) TO CHAPTER 75 OF TITLE 21, GUAM CODE ANNOTATED RELATIVE TO REQUIRING THE CHAMORRO LAND TRUST TO SOLICIT COMPETITIVE BIDS FOR THE MASS GRADING AND MINERAL EXTRACTION OF A PORTION OF LOT 5412, MANGILAO.

- **Bill No. 119-38 (COR)** – Telo T. Taitague, Chris Barnett, Therese M. Terlaje, Sabina Flores Perez, Shelly V. Calvo, Frank F. Blas, Jr. - AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

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Written testimonies may be submitted to the Office of Vice Speaker V. Anthony Ada at (671) 989-0855 or via electronic mail at vicespeakertonyada@guamlegislature.gov.

The Public Hearing will broadcast LIVE on local television (GTA Channel 21, Docomo Channel 117) and stream online via i Liheslaturan Guåhan's YouTube live feed.

OFFICE OF THE VICE SPEAKER
V. Anthony Ada

I Mina'trentai Ocho Na Liheslaturan Guåhan | 38th Guam Legislature

Chairperson - Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

PUBLIC HEARING SIGN-IN SHEET

Tuesday, July 1, 2025 · 2:00 pm · Public Hearing Room, Guam Congress Building

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NAME	AGENCY/ ORGANIZATION	POSITION	TESTIMONY	CONTACT INFO
1. Aisek Crisostomo	CLTC	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
2. Maja [illegible]	CLTC	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
3. Dexter [illegible]	CLTC	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
4. Hon. Douglas B. Moylan	Attorney General's Office	SUPPORT ☑ OPPOSE ☐	WRITTEN ☐ ORAL ☑	475-3324 ext. 2150
5. Atty. Lee Miller	Attorney General's Office	SUPPORT ☑ OPPOSE ☐	WRITTEN ☐ ORAL ☑	475-3324 ext. 2150
6. BJ Cruz	OPA	SUPPORT ☑ OPPOSE ☐	WRITTEN ☐ ORAL ☑	
7.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
8.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
9.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
10.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	

OFFICE OF THE VICE SPEAKER
V. Anthony Ada

I Mina'trentai Ocho Na Liheslaturan Guåhan · 38th Guam Legislature

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NAME	AGENCY/ ORGANIZATION	POSITION	TESTIMONY	CONTACT INFO
1. Dave Thomas	Self	SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☒	[redacted]
2.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
3.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
4.		SUPPORT ☐ OPPOSE ☐	WRITTEN ☐ ORAL ☐	
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June 25, 2025

RECEIVED
JUN 25 2025
Office of the Vice Speaker
V. Anthony Ada

The Honorable V. Anthony Ada
Vice Speaker, Chairperson, Committee on Rules
Chairperson, Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure
I Mina' Trentai Ocho na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Subject: Testimony in Support of Bill No.119-38(COR)

Håfa Adai Chairman Ada,

I write in strong support of Bill No.119-38(COR), an act to restore legislative oversight on exceptional term contracts involving our island's public lands and facilities.

As a former Governor of Guam, I have always believed that transparency, accountability, and the prudent management of our public assets are essential to effective government leadership and operations. This measure appropriately seeks to reinstate a vital safeguard ensuring that significant, long-term agreements involving public property are subject to legislative review and approval. This is not about creating unnecessary bureaucracy; it is about upholding public trust and protecting the interests of our people – now and for future generations.

Exceptional term contracts often involve leases or agreements of substantial value and long-term consequences to our island. Allowing such agreements to proceed without legislative oversight invites the risk of decisions being made without sufficient public input, long-term vision, or adequate checks and balances. Bill No.119-38 ensures that these decisions will be made in the open, with the people's elected representatives weighing in on matters that can shape our community's future.

I respectfully urge your committee and the legislature to support its passage.

Thank you for your attention to this important matter. And for your dedicated service to the people of Guam.

Si Yu'os Ma'åse',

Joseph F. Ada

Joseph F. Ada
Former Governor of Guam

Attorney General of Guam's Testimony Supporting Bill No. 119-38.

Join the Fight!

An Act to Restore Legislative Oversight on Exceptional Term Contracts
(July 1, 2025, 2:00pm, Legislative Public Hearing)

Hafa Adai. This Testimony is submitted on behalf of the Office of the Attorney General of Guam, and our client the People of Guam, in ***support*** of Bill No. 119-38 (COR). This Bill addresses the *Balance of Powers* between 2 key branches of our government. The Legislature has the authority, but more importantly the duty to protect our People's financial welfare.

All too often, and now more than ever, you Senators must protect our wallets against ruinous financial decisions by an Executive Branch that has a history of fiscal irresponsibility. The Governor not only tried to "**buck**" the last Legislature by trying to indebt our People with a lease with the US Department of Defense for a medical complex, but a Governor whose Administration is now under active criminal investigations & indictments in the both the local and Federal courts. Attached to my written testimony is our March 31, 2023 legal opinion about that "dooms-day lease." I refused to approve that 75 year lease because it circumvented your duty as Senators to decide whether our People should be bound to pay to build, equip and staff a huge medical complex. A huge medical facility that on its face had no source of funding to complete, could be nationalized by the military during an emergency (to our people's detriment), and would be the Federal government's hospital & campus after the expiration of that lease. Bill 119-38 enforces your important role to *check & balance* the lone chief executive. "***If you can't pay for it, don't buy it***" . . . is the type of common sense this Governor lacks, and which we need a strong Republican Legislature to enforce to protect us.

Like the law Bill 119-38 attempts to change, this Administration ignored this Legislature's core duty. Without safeguards built into the system, like the elected AG's signature being required for contracts before the Governor, or the AG's signature required for over $500,000 procurements by all depts. and agencies, financial ruin and deteriorating living conditions from no money will plague us.

The elected Public Auditor's reports for the past 6 years signaled the alarm bells. This Governor and the prior AG marginalized our Public Auditor's reports, and simply ignored BJ Cruz. When this elected AG took office, those reports and each report issued thereafter became "*required reading*" for my prosecutors and civil attorneys. **How did the Governor respond?** She weaponized our Judiciary to attack my prosecutors and attorneys to get them terminated and go back to the States. This Governor and certain persons in her Administration are engaging in a pattern to undermine my law enforcement operations and my ability to investigate and prosecute her corrupt government employees who have and are hurting Us. From slow walking my procurements and hiring attorneys and support staff, to literally weaponzing the Courts to use ethical rules to stop my law enforcement duties. This Governor is using our taxpayer monies to protect her and her corrupt Administration. With all due respect, it is your duties as Senators to help BJ and me to protect our People from this type of blatant corruption. Corruption at taxpayer expense. Passing Bill 119-38, that restores the old law, simply shores up the safeguards against a Corrupt Governor & Administration like this Governor Lou Leon Guerrero is running.

Now more than ever, the Guam Legislature has a duty to our People to reign in a Governor and her cabinet. From all indications, she presides over a corrupt syndicate of certain taxpayer-funded officials whose judgment day before our Jurors is fast-approaching. Bill 119-38 restores the responsibility that past lawmakers believed in. Namely, that the Chief Executive and her cabinet spending must be checked and safeguarded by the People's democratically-elected Senate. "**Checks and Balances**" requires the ability to say **NO**. "**NO**" if you all say that it is not in our People's best financial interests. **It's always about the money.** With that money, or lack thereof, our quality of life improves or gets worse, especially on an Island. These Governors and their 4 – 8 year terms suck the life from our community. They can either be Guam's most honored, or Guam's dirty laundry. Legislations like Bill 119-38 make us a "People of Laws," and not victims of a bad choice for Governor.

Healthcare, Education and Public Safety rely upon money. Money wisely invested makes for a good quality of life. Money misspent by corrupt government officials under a corrupt 4 or 8 years Governor, makes for what we have now. Healthcare, Education and Public Safety are all deteriorating under this Governor for the past 6 ½ years. Allowing this Governor, or any future Governor, the ability to bind our People and this Legislature, by contract or lease to 10 more years than the previous 5 year limit can worsen the 4-8 year reign of a bad governor.

Having 15 elected lawmakers scrutinize leases over 5 years, especially over a corrupt Gubernatorial Administration, can save us from 10 years of unnecessary suffering. This Bill 119-38 restores what our past senators understood; specifically, that the 3 greatest powers of the Legislative Branch are the powers of (i) oversight, (ii) passing laws and (iii) spending. Once you delegate or forego any of those 3 powers, you have no further role in government.

Power corrupts and absolute power corrupts absolutely means more now, than it did a month ago, or 2 ½ years ago. After 6 ½ years of this Regime's reign, our lives are worse off. From a "*basket case*" hospital that can't afford its bills, to a school system where kids only get ½ of their education, to an overcrowded prison, caused in large part to a Port Authority failing to inspect cargo for Methamphetamine, this Administration is presiding over our collective suffering. Moreso, this Governor and her Cabinet is causing our suffering. I'm not even describing our *Hagåtña* Swamp of a pool or the roadways that will literally rip your cars apart and into costly repair bills.

I thank GOP member & Oversight Chairwoman Taitague for introducing Bill 119-38, and Speaker Blas, as well as Senators Barnett, Terlaje, Perez and Calvo for co-sponsoring the legislation. This bill corrects recently passed Public Law No. 38-1. Whether that public law was good or bad at the time it was introduced, heard and voted upon, as time passes, and the remaining term of this Governor finally comes to an end, the Guam Legislature and all its Senators, especially the "***President Donald J. Trump Republicans***," must hold the line against a corrupt, liberal Democrat-Socialist, Governor to protect our People from not just bad policies, but this Administration's corruption.

I urge you all to get into the Fight. Fight to Protect our People and to Improve our Quality of Life. Pass bills like this Bill 119-38, our Anti-Crime Bill and any legislations that end or alleviate our People's suffering. Thank you.

Respectfully,

Douglas B. Moylan

Douglas B. Moylan
elected - Attorney General of Guam

Attachments (58)

March 31, 2023

OFFICE OF THE SPEAKER
THERESE M. TERLAJE

03 31 2023

Time: 1:51 pm
Received: MARIE CRUZ

Honorable Lourdes A. Leon Guerrero
Governor of Guam
Ricardo J. Bordallo Complex
513 West Marine Corps Drive
Hagåtña, GU 96910

Subject: Review of Lease Between the USA & GovGuam, DLM for Hospital & Medical Campus

The purpose of this communication is to address an unsigned lease between the U.S. Government and the Government of Guam, Dept. of Land Management provided to the AG's Office on Tuesday, March 14, 2023.

As a preliminary disclosure, this AG's Offices was *not* part of the negotiations leading up to the document that is the subject of this communication. As such, we were unable to earlier recommend any corrective changes to this attached lease. Further, the AG's Office understands that the Lessor will have signed the lease before issuance of this communication, and has committed to its terms.

Background.

Attached and identified as **Exhibit 1** is an unsigned lease agreement entitled, *Lease Between the United States of America and the Government of Guam, Department of Land Management* ("Lease"). The Lease is between the U.S. Government through the Secretary of the Dept. of the Navy and the Government of Guam, Dept. of Land Management.

The essential contractual terms are as follows (*see attached Exh. 1*):

1. Lease duration is for 50 years, with a 25 year option (75 yrs. total) from March 23, 2023 to March 14, 2073 for land located in Barrigada & Mangilao (Tract 18308, *See* Lease Attachment A (map)), ¶ 3;

2. Lease consideration (Lease payments) shall be fair market value for first 10 years (and shall not be payable if facility constructed and operational in 10 yrs.); and/or providing "*in-kind*" services (Attachment F for "in-kind services"

RCVD AT CENTRAL FILES
MAR 31 2023 PM1:55
Moises Gomez

Office of the Attorney General
Douglas B. Moylan · Attorney General of Guam
590 S. Marine Corps. Drive · ITC Bldg., Ste. 901 · Tamuning, Guam 96913 · USA
671-475-3324 · 671-475-4703 (fax) · publicservice@oagguam.org · www.oagguam.org
"Guam's Toughest Law Enforcers"

has not been agreed to); note also Attachment C setting forth fair market values, ¶ 4.2;

3. Scope of the Lease project is "Attachment B," which is not identified, ¶ 4 and use specified in ¶ 5.1 (hospital & medical campus (*only*));

4. Damages are in the context of *not completing the project*, as set forth in Attachment C (rent schedule), ¶ 4.1; and default is set forth in ¶¶ 4.6 and 4.11.6; and

5. Purpose of the Lease is to build a hospital and medical facility for use by the People of Guam and "to benefit the military service members or dependents" with a takeover clause for full use by the military in a "war" or "national emergency," ¶ 5.1.

Based upon our meeting the undersigned further understands that the existing Guam Memorial Hospital located in Oka Tamuning will be replaced (shut down) due to its structural problems. The hospital and medical campus as described in the Lease is slated to be its sole replacement. Further, that the Lease project will cost in excess of $700,000,000 and will be Guam's only hospital (replacement facility to GMH).

Legal Issues.

The Lease provides numerous legal problems that preclude this Office's approval in its present form. Those legal issues include:

I. Non-compliance with Federal & Local Laws and not involving the Guam Legislature in authorizing and appropriating funds for the Lease; and

II. Lease for Guam's Hospital / Medical Campus precluding access by the People of Guam.

Legal Analysis.

I. Role of the Guam Legislature Relative to the Lease.

The Organic Act of Guam provides that appropriations authority rests with the Guam Legislature (i.e. *Appropriation's Clause*). 48 U.S.C. § 1423j. Simultaneously, the Organic Act also provides that the Governor shall have supervision and control authority over departments and agencies and instrumentalities of the Executive Branch. The Governor shall also, "*subject to the laws of Guam*," have the duty to establish, maintain and operate public health services, including hospitals. 48 U.S.C. § 1421g. Under the Organic Act of Guam, both branches of government serve as a "*check and balance*" upon the other's actions in service of the People of Guam (Govt. of Guam).

A. Lease Commits Government of Guam Money and Resources Without Legislative Appropriation and is Not an Enforceable Lease.

The Supreme Court of Guam has made clear that the Governor is unable to enter into a contract that constructively appropriates funds by obligating the Government to pay an entity, such as a Lessor. *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶ 22. Guam's High Court in *Pangelinan* stated,

> **[22]** The Legislature undisputedly has not appropriated funds for the 1996 Agreement. Contrary to the lower court's holding, a thorough examination of the contractual provisions quoted at length indicate that the 1996 Agreement attempts to improperly divest the Legislature of its authority to appropriate funds by ***obligating the Government to pay GRRP a certain sum of costs as defined in the agreement***, in the event that requisite legislative approval is not obtained in the first instance. *See* 1996 Agreement, Sections 4.03 and 4.04. Appellees' representation of the validity of the 1996 Agreement as being completely dependant upon legislative approval contradicts any reasonable interpretation of the terms of the contract. In fact, the 1996 Agreement improperly "set[s] apart from the public revenue a certain sum of money for a specified object," which is in effect, an appropriation. *In re Request of Gutierrez*, 2002 Guam 1 at ¶ 38. As a result, the court finds that the 1996 Agreement is in violation of 48 U.S.C. § 1423j, which reserves for the Legislature the plenary authority to appropriate funds. (Emphasis added).

Id. In this case the Lease clearly binds and commits the Government of Guam to make actual fair market value payments in the event that the project is not completed in 10 years. *See* Lease ¶¶ 4, 4.1, 4.2, 4.6 and 4.11.6, Attachment C. *Infra*. Further, it makes reference to an *undefined* "*in-kind*" consideration obligating the Government of Guam to provide (unspecified) assets or resources. *Infra*.

The Appropriations clause is a foundational tenement separating and balancing the Executive Branch's "*power of the sword*" from the Legislative Branch's "*power of the purse*." *United States House of Representatives v. Mnuchin*, 976 F.3d 1, 8 (D.C. 2020). Regarding the funding sources, although not expressly identified in the Lease, even if federal grant money were to be used for payment of this Lease for the next 50 – 75 years[1], Courts have held that block grant funding requires appropriation decisions by the Legislative Branch. *Cooper v. Berger*, 852 S.E.2d 46 (N.C. 2020). Regardless, the Lease poses a financial obligation upon the Government of Guam under ¶¶ 4, 4.1, 4.2, 4.6 and 4.11.6 (payment obligations & default provision) for paying 10 years of fair market rent if the hospital and medical facility are not built in 10 years and other terms are not satisfied.

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[1] Lease terms provide a 50 year initial term, then renewable by option for another 25 years.

Most importantly, the alternative "in-kind services," Attachment F, has *not* been agreed to. Therefore, the Lease obligates the Guam taxpayers (aka Govt. of Guam) to paying the fair market rent at the time of signing of the Lease. This money amount (fair market value, Attachment C) has *not* been appropriated by the Guam Legislature as required by Guam local and Federal law. *Infra*.

The danger posed by not having Attachment F agreed to at the signing of the Lease is two (2) fold. First, a material term has *not* been agreed to making the Lease unenforceable, *infra*. The second consideration, assuming that the lack of an in-kind consideration agreement between the parties is lacking but the Lease might otherwise be found enforceable[2] in a Court, is that the Lease will then plainly require a fair market value cash payment by the Government of Guam to Lessor.

The lease contains several provisions that discuss consideration (payments), to include:

> 4. CONSIDERATION Payment of fair market rental value shall accrue from the start date of this lease and be deferred until the facilities described in **Attachment B** are constructed and operational, and/or agreed upon services provided, but no longer than ten (10) years from the commencement date of this lease.
>
> 4.1. The Secretary of the Navy has determined that use of the facilities set forth in **Attachment B** for Department of Defense mission purposes including the benefit of United States military service members and dependents, and/or agreed upon services and/or facilities, provides the requisite in-kind consideration. If any of the facilities described in **Attachment B** (to be attached to this lease by modification prior to end of the accrual period) are not constructed within ten (10) years of the Start Date of this lease, or if Lessee refuses access and/or use to the Department of Defense for mission purposes including the benefit of United States military service members or dependents, Lessee shall pay cash consideration proportionately in an amount determined by the Secretary of the Navy for the loss in use of that facility, those facilities or services. If the Guam Public Hospital and Medical Complex is not constructed within ten (10) years of the Start Date of this lease, the Government may terminate this lease and Lessee shall remove all equipment and facilities from the leased property and Lessee shall pay all rent accrued to the Government without recourse to any claim of damages from the United States Government or any Department thereunder. Lessee shall provide the RECO biannual progress reports on the financing and construction of facilities.
>
> 4.2. As required by Title 10 United States Code, Section 2667, the Government of Guam shall pay to the Government annual fair market value rent, the amount of which has been determined by the Secretary of the Navy as set forth in the rent schedule, **Attachment C**, herein, for the term of this lease either in cash or in-kind consideration services and/or facilities. In-Kind Consideration shall be mutually agreed upon by the Parties to this lease and more particularly detailed in the In-Kind Consideration Services Memorandum of Agreement (MOA) between US Department of Navy and the Government of Guam which shall be executed and made a part of this Lease as **Attachment F** no later than one hundred twenty (120) days after the execution of this Lease. Government shall credit In-Kind Consideration Services and Benefits made available to the Government in accordance with the aforementioned MOA as consideration toward the Lessee's rental obligation. The Secretary of the Navy has determined that the services and/or facilities and benefits to be received in the form of In-Kind Consideration is not less than the fair market value of the lease interest hereunder, pursuant to the terms herein, and in accordance with the provisions of 10 U.S.C. §2667(c)(1)(F).
>
> 4.6. Lessee's failure to initiate construction of the Guam Public Hospital and Medical Complex during the Accrual Period is attributable to default under this lease. Lessee's failure to achieve an Operational Date within ten (10) years of commencement of the Start Date of this Lease shall be attributable to default under this Lease. Lessee's failure to perform good faith effort to comply with the terms of this Lease and the MOA attributable to In Kind Consideration Services and/or facilities during the Performance Period of this lease shall be attributable to default under this Lease.

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[2] It is our opinion that the lack of an in-kind agreement envisioned by the parties makes the Lease unenforceable under Guam law as a material term has not been agreed to, and may never be reached. *Infra*.

Lease payments are "*deferred*" under ¶¶ 4 and 4.3 (if updates are provided as required and the project is completed in 10 year period); *however*, the obligation to pay fair market value clearly exists in the lease as a requirement if the facility is not built on schedule. Likewise, the "*in-kind*" payment described in the lease likewise is a form of consideration and carries with it a "*value*" that is clearly within the appropriations authority and duty (obligation) for only the Guam Legislature to decide in order to bind the Government of Guam (People of Guam). Notably, "*deferred lease payments*" does not equate to no consideration, nor does it dispense Leasee Government of Guam being obligated to pay to Lessor money or *undefined* in-kind consideration. *Infra.*

The Supreme Court of Guam likewise acknowledged that the Governor does indeed have the prerogative to administer the expenditure of funds; *however*, the funds must first have been appropriated. *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶ 24. To do otherwise removes the Governor from acting within the Office's authority, and that any contract (lease) is a "nullity." *Id.* The Supreme Court of Guam clearly decided,

> **[24]** Certainly, we do not attempt to limit the executive branch's prerogative in administering the expenditure of funds which *are* appropriated. **However, where the Governor involves the Government in a contract for the payment of money, without the requisite legislative approval for such contract, the Governor acts so without authority.** *See Cray Research, Inc. v. United States*, 44 Fed. Cl. 327, 333 (1999) (finding that the contracting officer was without authority to contract in advance of appropriations).
>
> **[25]** As a result of a violation of 48 U.S.C. § 1423j and 5 GCA §22401, we find the 1996 Agreement to be a nullity. "If contracts violative of statutory prohibitions may be executed by government agencies and subsequently enforced, the power of the legislature and the processes of government itself would be undermined." *Heyl & Patterson Int'l v. Rich Housing of Virgin Islands, Inc.*, 663 F.2d 419, 432 (3d Cir. 1981). *See also Robert F. Simmons and Assocs. v. United States*, 360 F.2d 962, 965 (Ct. Cl. 1966) ("It is settled law that an agency of the Government cannot create a binding contract without the authority of an appropriation of funds from the Congress to cover the contract. If such an unauthorized contract is entered into, it is a nullity."); *Hooe v. United States*, 218 U.S. 322, 334, 31 S. Ct. 85, 88 (1910) ("If an officer, upon his own responsibility, and without the authority of Congress, assumes to bind the government, by express or implied contract, to pay a sum in excess of that limited by Congress for the purposes of such a contract, the contract is a nullity, so far as the government is concerned, and no legal obligation arises upon its part to meet its provisions."). *Cray Research, Inc.,* 44 Fed. Cl. at 333 (holding that where the contracting officer was without authority to contract in advance of appropriations, the Government "would not be bound . . . because the government is not bound by the unauthorized acts of its agents."). (Emphasis added).

Id. at ¶¶ 24 and 25. Guam's High Court also cited the Guam Procurement Law limiting the Governor's ability to enter into contracts, which likewise applies in this case. *Id.* at ¶ 25. *Infra.*

In another case, the Supreme Court of Guam stated *In re Request of Gov. Felix Camacho Relative to the Education Facilities Construction Initiatives*, former Gov. Felix Camacho entered into a 20-year financing lease that pledged future Compact Impact Funds as payment. Guam's High Court ultimately held that the lease was valid because the legislature had enacted specific legislation that allowed the Governor to enter into the lease and to pledge the Compact funds. *See In re Request of Gov. Felix Camacho Relative to the Education Facilities Construction Initiatives,* 2006 Guam 5 ¶¶ 35-36. In this case the Guam Legislature has not done so. *Infra.*

Nevertheless, Guam's High Court also analyzed the case under a general rule that a sitting governor may not enter into contracts which extend beyond his term and thereby bind his future successors. *Id.* at ¶¶ 28-29. There are two (2) exceptions to this general rule: (1) if the legislature approves the long-term contract (applicable here); or (2) if the subject matter of the contract involves a proprietary (aka business) matter as opposed to a government function. *Id.* at ¶ 30. In other words, if legislative approval has not been given for the incurrence of long-term debt, then under the second exception a governor can still bind his successor to a contract if the subject matter involves a "proprietary function." *Id.* ¶ at 42. But if the contract relates to a "governmental function," then "no action taken by the sitting Governor is binding upon his successors." *Id.* at ¶ 42.

A "*proprietary function*" refers to a business matter. *Id.* ¶ 42. Even then, however, the contract at issue must be "reasonable" and "entered into in good faith." *Id.* ¶¶ 49, 51. In contrast, examples of a "*governmental function*" include the decision to build a school [*Id.* at ¶ 46] and the preservation of public health. *Id.* at ¶ 43. Clearly, the decision to build a new hospital is a governmental function since it relates to the preservation of public health. So under the basic general rule expressed by the Guam Supreme Court, the Governor cannot enter into a long-term contract and thereby bind future governors to the debt without prior legislative approval. As noted in *Bordallo v. Baldwin*, the decision on whether or not a hospital shall exist is within the purview of the Guam Legislature. *Bordallo v. Baldwin*, 624 F.2d 932, 934 (9th Cir. 1980). *Infra.*

Based upon the foregoing the Lease as written cannot be signed by this Office.

B. Lease Not in Compliance with Guam Procurement Law.

The Lease appears to violate the Guam Procurement Law, 5 G.C.A. § 22401(a)(3). In *Pangelinan v. Gutierrez*, the Supreme Court of Guam made clear that the Governor must follow the Guam laws that regulate procurements before entering into contracts, such as this Lease pending our Office's review. **Exhibit 1.** *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶ 16. *See also* 5 GCA § 22401(a)(3). Guam's High Court stated in striking down the GRRP contract,

> **[16]** Although not specifically cited by the parties or the lower court, as a corollary to Section 1423j, Title 5 GCA §22401(a)(3) provides that, "No officer or employee of the government of Guam, including the Governor of Guam, shall . . . . ***[i]nvolve the government of Guam in any contract or other obligation, for the payment of money for any purpose***, *in advance of the appropriation* made for such purpose. . . . " Title 5 GCA §22401(a)(3) [FN not included] (Emphasis added).
>
> **[23]** Furthermore, we find the 1996 Agreement to be in violation of 5 GCA §22401. ***Under the terms of the 1996 Agreement, the Government is exposed to a potential liability in the amount of millions of dollars, if, through its own fault, certain conditions required of it by the contract are not met, one of which, incidentally, includes legislative approval***. The Governor of Guam, *in advance of the appropriation made* for the purpose of the 1996 Agreement, entered into the agreement and thereby *"involv[ed]* the government of Guam in a contract or obligation for the *payment of money*." 5 GCA §22401(a)(3) (emphasis added). Such an action constitutes an "illegal expenditure." 5 GCA §22401 (quoting title). (Emphasis added).

Pangelinan v. Gutierrez, 2003 Guam 13, ¶¶ 16 and 23. In the lease contract it contains several paragraphs that make the Government of Guam liable "for payment of money for any purpose." Those provisions include Lease ¶¶ 4, 4.1, 4.2 (fair market value rent due to Lessor or in-kind consideration identified in the *not yet negotiated* Attachment F), and 4.6 and 4.11.6 (default requiring payment). Like in *Pangelinan*, the Lease exposes the taxpayers to millions in dollars of cash payments if certain conditions are not met, a.k.a. default. *See* Lease ¶¶ 4.6 and 4.11.6. *See also Id*. at 23. The Lease's default provision expressly requires full payment in cash by the Government of Guam, stating,

> 4.11.6. Default in Accrual and Performance Periods. Lessee's failure to perform good faith effort during the Accrual and Performance Periods to comply with the terms of this Lease and in accordance with **Attachment F** is attributable to default under this Lease. Rental payments deferred, but not paid, will become immediately due and payable in Cash Rent in accordance with **Attachment C** in the event of Lessee default resulting in termination in accordance with cure procedures of Paragraph 15.

Also, just because the alternate consideration set forth in the Lease is "*in-kind*," this is still a value that constitutes "consideration" that the Government of Guam is obligated to "pay" and therefore requires an appropriation by the Guam Legislature. Again, the lease has default provisions that result in actual cash payments. *See* Lease, ¶ 4.11.6.

Noteworthy is that even if the "*in-kind*" Lease provision were to be struck because it has yet to negotiated and cannot be ascertained at the signing of the Lease, but the other Lease provisions are still enforceable such as the payment of fair market value as identified in Attachment C (Rent Schedule), the rent that becomes payable at the 10 year mark for the past 10 years if the project has not been completed (default) is a binding obligation of the Government of Guam that has not been appropriated by the Guam Legislature by law. The Lease as worded violates 5 G.C.A. § 22401(a)(3). *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶¶ 16 and 23.

Finally, even under an Organic Act of Guam analysis of the Governor's special powers and duties allowing the Governor purview over public health services, the Organic Act still includes the caveat that the Governor's powers are "*subject to the laws of Guam.*" 48 U.S.C. § 1421g. *See also Bordallo v. Baldwin*, 624 F.2d 932, 934 (9th Cir. 1980).

Based upon the foregoing the Lease as written cannot be signed by this Office.

C. "*The Guam 21st Century Healthcare Center Act of 2021*" Does Not Apply (12 G.C.A. § 83101, *et seq.* (Public Law 36-56)).

"*The Guam 21st Century Healthcare Center Act of 2021*" ("Act") clearly does not grant the Governor authority to enter into the Lease. The Act clearly provides that the lease to own option was to be constructed upon Government of Guam real property. *See* 12 G.C.A. §§ 83101 and 82103. The Lease provides for use of Federal lands, and the return of Federal Lands in 50 to 75 years, along with the structures that will have been constructed by Guam's taxpayers (Govt. of Guam). The Act further contains the statement that the hospital would be built upon GovGuam property, and that this would be the manner in which the hospital would be constructed, especially when one considers that the Guam Legislature would need to fund any other hospital facility. 12 G.C.A. § 83103.

The Lease also conflicts with the legislative intent of the Act in that the facility is *not* solely for use and control by the Government of Guam. Specifically, ¶ 15.3 of the Lease terms expressly provides that once a "national emergency" is declared by the USA that the entire facility under the plain wording of the Lease could be used only for patients and purposes as specified by the USA (Lessor). The definition of what constitutes a "national emergency" is not limited or specified. We find that such ambiguity would be construed broadly to favor the Lessor, to the exclusion of Lessee Govt of Guam and its local residents. *Infra*.

D. Lease Appears Incomplete Within Four Corners of Document.

Another fatal problem with the Lease is that the Lease fails to include a "*meeting of the minds*" / agreement on **Attachment B** (facility) and **Attachment F** (in-kind consideration). It lacks being a complete contract setting forth a clear agreement between the Government of Guam and USA pertaining to material terms, such as lease consideration and scope of project. Specifically, ¶ 4.2 provides that the parties have agreed to "Attachment F" (in-kind consideration) that is identified as the "*In-Kind Consideration Services Memorandum of Agreement*" ("MOA"). *See also* Lease ¶ 4.11.1. However, that "*in-kind*" agreement has not been identified and is subject to further future negotiation. The parties clearly may not reach an agreement on "*in-kind*" consideration, and the scope, timing and nature of the "in-kind" consideration is speculative at best.

The actual consideration is not identified within the "*four corners of the lease agreement*," and therefore lacks the understanding between the parties on what consideration shall be paid. An agreement that leaves material terms of a proposed contract to future negotiations is unenforceable. *New York Military Academy v. NewOpen Group*, 142 A.D.3d 489, 490 (N.Y. 2016). A mere agreement to agree, in which a material term is left for future negotiations, is unenforceable, unless a methodology for determining the material terms can be found within the four corners of the agreement or the agreement refers to an objective extrinsic event, condition, or standard by which the material terms may be determined. *Total Telcom Group Corp. v. Kendal on Hudson*, 157 A.D.3d 746, 747 (N.Y. 2018).

The Lease has material provisions still yet to be agreed to and therefore unenforceable. Guam law requires that consideration be identified. 18 G.C.A. § 85102(4). In this case the consideration of in-kind value is impossible to be ascertained and is subject to such further negotiation wherein the parties may never reach an agreement. *Note* 18 G.C.A. §§ 85507 and 85508. The Lease Agreement is not complete, and a material term has yet to be made clear pertaining to the scope, type and extent of "*in-kind*" consideration (as well as to the scope of the project[3]). *Kendal on Hudson*, 157 A.D.3d at 747. This contractual infirmity is in addition to the Legislative role that requires the Legislature be the Branch of Government to make an "appropriation," (aka "*power of the purse*") even if it is government assets (i.e. in-kind consideration). *Supra.* Paragraph 4.2 expressly states,

[3] The size, scope and particulars of the project were not identified in the Lease Attachment B, which makes up the "hospital," and "medical campus." It would be imprudent for the AG's Office to approve a document that lacks what is clearly a joint use facility that the Lessor and Leasee intend to be used between one another, without a more defined scope of the intended joint project, esp. when the Govt. of Guam bears huge financial consequences for non-completion within the 10 year period.

> 4.2. As required by Title 10 United States Code, Section 2667, the Government of Guam shall pay to the Government annual fair market value rent, the amount of which has been determined by the Secretary of the Navy as set forth in the rent schedule, **Attachment C**, herein, for the term of this lease either in cash or in-kind consideration services and/or facilities. In-Kind Consideration shall be mutually agreed upon by the Parties to this lease and more particularly detailed in the In-Kind Consideration Services Memorandum of Agreement (MOA) between US Department of Navy and the Government of Guam which shall be executed and made a part of this Lease as **Attachment F** no later than one hundred twenty (120) days after the execution of this Lease. Government shall credit In-Kind Consideration Services and Benefits made available to the Government in accordance with the aforementioned MOA as consideration toward the Lessee's rental obligation. The Secretary of the Navy has determined that the services and/or facilities and benefits to be received in the form of In-Kind Consideration is not less than the fair market value of the lease interest hereunder, pursuant to the terms herein, and in accordance with the provisions of 10 U.S.C. §2667(c)(1)(F).

Finally, even assuming the current Lease is an enforceable contract, the danger of not making this contract clear (now) between the parties who are presently negotiating it, invites a future lawsuit between the Govt. of Guam and the USA. The current Governor could conceivably *not* be the party that would negotiate either Attachments B or F given the broad and non-descript language currently contained in the Lease.

Based upon the foregoing the Lease as written cannot be signed by this Office.

II. Use of Hospital & Medical Campus for Lessor's *Sole & Exclusive* Use.

Lease ¶¶ 10 and 15.3 allow the Federal Government to use the facility in the event of "*war*" or "*national emergency*." Lease ¶ 4.11, the "*Definitions*" section of the Lease, does *not* include a definition for either terminology. This leads the reader to reasonably conclude that the hospital and medical campus can be used for <u>*solely*</u> the U.S. Government, to the exclusion of the local population and Government of Guam, under those 2 undefined situations. Paragraph 15.3 states,

> 15.3 <u>National Emergency</u>. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the leased premises. Nothing in this Lease shall prevent Lessee from pursuing any rights it may have for reimbursement from Government.

The inclusion of said paragraphs raises additional concerns that the Lease does *not* fall squarely within the Governor's Organic Act duty to establish, maintain and operate public health services *for the People of Guam* (Govt. of Guam), including hospitals, because ¶ 15.3 allows for its exclusive use by the Federal Government in a national emergency, to the exclusion of the People of Guam. *Compare* 48 U.S.C. § 1421g. In contrast, a local facility, such as the existing Oka Point Tamuning hospital is not contractually bound to serve and be take over solely for the Federal Government's use in cases of war or national emergency. That Oka Point hospital facility is exclusively for the Government of Guam and People of Guam's exclusive use[4].

[4] Obviously cooperation between the local and Federal govt. ordinarily occurs, but the Govt. of Guam currently is not contractually obligated to forfeit and prohibited from control and use of its govt.-owned facility in any time of national emergency or war, nor is it obligated to turn the hospital over to any Lessor or the Fed. govt.

Moreover, under the Lease control of the hospital and medical campus facilities does *not* remain under the exclusive control of our Organic Act Governor, nor the Government of Guam for that matter, in the event that ¶ 15.3 were invoked. Its exclusive management and use as a local public health services facility is lost for the local resident population, as well as under the *control of the Governor*, Legislature and local Courts. Paragraph 15.3 contractually relinquishes control of the hospital to the Lessor (USA). In that situation, the hospital and medical campus would be outside the Organic Act of Guam's statute that grants the Governor special powers over (local) public health services type decisions. *Id.*

Notably, in *Bordallo v. Baldwin*,

> The legislature may, of course determine whether a hospital shall exist at all, where and how large it shall be, the size and qualifications for appointment to the governing body, and a wide variety of other matters establishing the laws of Guam "subject to" which the Governor perform his function with respect to the hospital, but it may not negate the command of the Organic Act that the ultimate responsibility for the governance of the Hospital be in the Governor. (Emphasis added).

Bordallo v. Baldwin, 624 F.2d 932, 934 (9th Cir. 1980). In that Ninth Circuit Court of Appeals decision, the question of whether or not to have a hospital can fall within the purview of the Guam Legislature. The Guam Legislature clearly stated in *The Guam 21st Century Healthcare Center Act of 2021*, and has earlier created by statute the existing Guam Memorial Hospital Oka Point Tamuning facility[5], that the People of Guam shall have its own hospital for their own exclusive use. This Lease is contrary to existing Guam law in that the Lease allows for the new hospital and medical campus to be taken from the People of Guam's sole or partial use, to transfer that use to the Lessor's sole use to the exclusion of the People of Guam based upon ¶ 15.3. *Supra*. This is a separate and independent basis why the Lease conflicts with existing Guam law that a hospital exist for the People of Guam's sole or partial use and to always remain under the control of the Government of Guam.

An example illustrating the dual use problem facing this Lease under ¶ 15.3, is that the Lessor declares a "*national emergency*" that causes the Lessor to exercise its rights under ¶ 15.3. Guam's only local hospital under ¶ 15.3 would no longer be accessible nor available to non-military or non-Lessor authorized personnel. Residents with life-threatening conditions or medical ailments would be turned away from the medical equipment and personnel located at this only Guam-funded public hospital. Conceivably, under the Lease's current language, persons suffering from heart attacks, strokes, or any life-threatening emergency illnesses, medical conditions or injuries would be refused access to this locally funded public facility.

[5] The Governor has publicly stated that the new hospital & medical campus shall replace the Oka Point Tamuning hospital.

Finally, the Guam Legislature has in the past statutorily provided for the construction and use of the Oka Point Tamuning hospital, as well as its renovation. 10 G.C.A. § 80109(v).

Based upon the foregoing the Lease as written cannot be signed by this Office.

Summary.

Based upon the foregoing, the Office of the Attorney General is unable to sign the Lease in its current form. Our Office determines that the Lease in its current form is unenforceable. It requires legislative approval, and Attachments B and F must be completed. We recommend the following changes before approval:

1. secure legislative approval for the Lease agreement as drafted, and remove the in-kind agreement (Attachment F) and complete Attachment B (design work for the hospital and medical campus facilities) of the Lease; ***or***

2. complete the in-kind agreement (Attachment F) and design for the hospital and medical campus facilities (Attachment B) and obtain legislative approval, ***and***

3. remove the takeover provisions in ¶ 15.3 and obtain legislative approval, or include the takeover provisions in ¶ 15.3 and obtain legislative approval.

This Attorney General remains committed to assisting you in furthering your desires to provide effective healthcare for our community, and a hospital facility consistent with the appropriations approval by the Guam Legislature. To that extent, if you so choose, please do not hesitate to call upon me to assist in re-drafting and negotiating a healthcare agreement that might achieve your important goals. Otherwise, we have provided our changes to receive our approval for legality. Based upon our legal research, the lease agreement requires the participation and consent of the Guam Legislature, especially as it pertains to authorizing its appropriations towards a replacement healthcare facility (hospital) to the current Oka Point Tamuning hospital.

Respectfully,

Douglas B. Moylan

Douglas B. Moylan
Attorney General of Guam

Attachments (45)

Exhibit

1

DEPARTMENT OF THE NAVY GENERAL PURPOSE OUTLEASE

TABLE OF CONTENTS

All correspondence in connection with this contract should include reference to Lease
Contract No. N40192-23-RP-00002, File No. LO-10945
Installation/UIC N41557-BA

PARAGRAPH

LEASE

BETWEEN THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF GUAM, DEPARTMENT OF LAND MANAGEMENT

THIS LEASE, executed this________day of_____________2023, by and between THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy ("Government"), and the GOVERNMENT OF GUAM, DEPARTMENT OF LAND MANAGEMENT, whose address is P.O. Box 2950 Hagatna, Guam 96932 ("Lessee") (Government and Lessee may jointly be referred to as the "Parties").

WITNESSETH:

WHEREAS, the Leased Premises, as defined below, covered by this Lease is under the control of the Secretary of the Navy (the "Government"); and

WHEREAS, the Leased Premises as described herein at Paragraph 1, is not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 102); and

WHEREAS, the Navy, pursuant to the provisions of 10 U.S.C. §2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or serve the public interest.

NOW THEREFORE, in consideration of the terms, covenants, and conditions in this Lease, Government and Lessee agree as follows:

1. LEASED PREMISES Government leases, rents, and demises to Lessee, and Lessee hires and rents from Government, the Leased Premises consisting of approximately 112.875 acres of land located in Joint Region Marianas, Naval Base Guam in the Municipality of Barrigada and Mangilao, Guam and more particularly described and/or depicted in **Attachment A** (the "Leased Premises"), together with all improvements as described and/or listed in **Attachment A**, with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided under paragraphs 5, 10, and 29 below.

2. LEASE SURVEY A Lease survey and a legal description shall be provided by Lessee to the Real Estate Contracting Officer (RECO) and shall be attached hereto within **Attachment A** by modification to this Lease within 60 days of the date of execution of this Lease.

3. TERM Notwithstanding the Execution Date, the initial term of this Lease for the land described in **Attachment A** shall begin on March 15, 2023 (Start Date) and end on March 14, 2073 (End Initial Term Date), unless sooner terminated under Paragraph 15, for a total initial term not to exceed fifty (50) years.

3.1 Lessee may renew the term of this lease for an additional period of twenty-five (25) years on the same terms and conditions as herein set out, by delivery to the RECO written notice of its intention to renew no later than ninety (90) days prior to the expiration of the then current term.

4. CONSIDERATION Payment of fair market rental value shall accrue from the start date of this lease and be deferred until the facilities described in **Attachment B** are constructed and operational, and/or agreed upon services provided, but no longer than ten (10) years from the commencement date of this lease.

4.1. The Secretary of the Navy has determined that use of the facilities set forth in **Attachment B** for Department of Defense mission purposes including the benefit of United States military service members and dependents, and/or agreed upon services and/or facilities, provides the requisite in-kind consideration. If any of the facilities described in **Attachment B** (to be attached to this lease by modification prior to end of the accrual period) are not constructed within ten (10) years of the Start Date of this lease, or if Lessee refuses access and/or use to the Department of Defense for mission purposes including the benefit of United States military service members or dependents, Lessee shall pay cash consideration proportionately in an amount determined by the Secretary of the Navy for the loss in use of that facility, those facilities or services. If the Guam Public Hospital and Medical Complex is not constructed within ten (10) years of the Start Date of this lease, the Government may terminate this lease and Lessee shall remove all equipment and facilities from the leased property and Lessee shall pay all rent accrued to the Government without recourse to any claim of damages from the United States Government or any Department thereunder. Lessee shall provide the RECO biannual progress reports on the financing and construction of facilities.

4.2. As required by Title 10 United States Code, Section 2667, the Government of Guam shall pay to the Government annual fair market value rent, the amount of which has been determined by the Secretary of the Navy as set forth in the rent schedule, **Attachment C**, herein, for the term of this lease either in cash or in-kind consideration services and/or facilities. In-Kind Consideration shall be mutually agreed upon by the Parties to this lease and more particularly detailed in the In-Kind Consideration Services Memorandum of Agreement (MOA) between US Department of Navy and the Government of Guam which shall be executed and made a part of this Lease as **Attachment F** no later than one hundred twenty (120) days after the execution of this Lease. Government shall credit In-Kind Consideration Services and Benefits made available to the Government in accordance with the aforementioned MOA as consideration toward the Lessee's rental obligation. The Secretary of the Navy has determined that the services and/or facilities and benefits to be received in the form of In-Kind Consideration is not less than the fair market value of the lease interest hereunder, pursuant to the terms herein, and in accordance with the provisions of 10 U.S.C. §2667(c)(1)(F).

4.3. The period commencing with the Start Date of this lease as stated in Paragraph 3, Term, and ending on March 14, 2025, or such sooner date on which the construction period begins, shall be known as the Accrual Period. During the Accrual Period, rental payments payable to the Government are deferred if Lessee provides updates on a biannual basis (every 6 months from Start Date) evidencing progress towards successful completion of the Guam Public Hospital and Medical Complex.

4.4. The period commencing on March 15, 2025, or such sooner date on which the construction period begins, and ending on March 14, 2033, or sooner date on which the Lessee's Guam Public Hospital and Medical Complex becomes operational, shall be known as the Construction Period. During the Construction Period, rental payments payable to the Government are deferred if Lessee provides updates on a biannual basis evidencing progress towards achieving a successful Operational Date.

4.5. The period commencing on March 14, 2033, or such sooner date on which Lessee's Guam Public Hospital and Medical Complex becomes operational (Operational Date), and ending on such date of Lease termination or expiration, shall be known as the Performance Period. Lessee shall pay rent by "Continued Lease Satisfaction." Continued Lease Satisfaction means satisfactory performance of all lease terms for the Performance Period.

4.6. Lessee's failure to initiate construction of the Guam Public Hospital and Medical Complex during the Accrual Period is attributable to default under this lease. Lessee's failure to achieve an Operational Date within ten (10) years of commencement of the Start Date of this Lease shall be attributable to default under this Lease. Lessee's failure to perform good faith effort to comply with the terms of this Lease and the MOA attributable to In Kind Consideration Services and/or facilities during the Performance Period of this lease shall be attributable to default under this Lease.

4.7. A project schedule shall be delivered to the Government within sixty (60) days after lease execution and every six (6) months thereafter during the Accrual and Construction Periods of the Lease.

4.8. Lessee shall provide to the Government a written Notice of Commencement of Operations evidencing the Operational Date of its projects as technically described in **Attachment B**, for inclusion into this lease by modification.

4.9. Government will retain the right of technical review of proposed work to be performed in connection with construction of helipad. Government Technical Specifications may be required to be included in the design and construction of the helipad, at the sole expense of the Lessee. A Government representative may oversee the work solely for the benefit of Government and confirm satisfactory completion to the Commander/Commanding Officer.

4.10. The terms of consideration shall be re-negotiable prior to the renewal of thisLease.

4.11. Definitions

4.11.1. In Kind Consideration. In-Kind Consideration (IKC) hereafter shall mean consideration received by the Government in operation of the Guam Public Hospital and Medical Complex to benefit the Government as described in **Attachment F**.

4.11.2. Accrual Period. The period commencing on the Start Date and ending on March14, 2025, or such sooner date on which the construction period begins, shall be known as the "Accrual Period". During the Accrual Period, rental payments shall accrue according to the schedule in **Attachment C**; however shall be deferred in accordance with paragraph 4.3, above.

4.11.3. Construction Period. The period commencing on March 15, 2025, or such sooner date on which the construction of the Guam Hospital and Medical Complex begins, and ending on March 14, 2033, or sooner date on which the Lessee's Guam Public Hospital and Medical Complex becomes operational, shall be known as the Construction Period. During the Construction Period, rental payments shall accrue according to the schedule in **Attachment C**; however, shall be deferred in accordance with paragraph 4.4, above.

4.11.4. Performance Period: The period commencing on March 15, 2033, or such sooner date on which Lessee's Guam Public Hospital and Medical Complex becomes operational (Operational Date), and ending on such date of Lease termination or expiration, shall be known as the Performance Period.

4.11.5. Continued Lease Satisfaction. Continued Lease Satisfaction shall mean satisfactory performance of all Lease terms and agreements for the Performance Period.

4.11.6. Default in Accrual and Performance Periods. Lessee's failure to perform good faith effort during the Accrual and Performance Periods to comply with the terms of this Lease and in accordance with **Attachment F** is attributable to default under this Lease. Rental payments deferred, but not paid, will become immediately due and payable in Cash Rent in accordance with **Attachment C** in the event of Lessee default resulting in termination in accordance with cure procedures of Paragraph 15.

4.11.7. Default in Construction Period. In the event of default resulting in termination of this Lease, in accordance with Paragraph 15, during the Construction Period, rental payments deferred, but not paid, will become immediately due and payable in Cash Rent in accordance with **Attachment C** in the event of Lessee default resulting in termination in accordance with cure procedures of Paragraph 15.

4.11.8. Cash Rent Payments. Payments made in cash (versus IKC) in accordance with payment procedures of paragraph 4.12 below, that become due only in the event of Lessee default.

4.12. Cash Rent Payments shall be electronically payable to the Treasurer of the United States, through www.pay.gov and citing Contract Number N40192-23-RP-00002. Lessee shall register with www.pay.gov within 10 days of execution of this Lease. If applicable, calculations not encompassing a full Lease-year shall be pro-rated by applying a 365-day year to the rent indicated in **Attachment C**.

5. USE OF LEASED PREMISES.

5.1. The purpose for which the Leased Premises may be used, in the absence of prior written approval by RECO, is for operation of a Guam Public Hospital and Medical Campus and for no other purpose. Lessee understands and acknowledges that this Lease is not, and does not constitute, a commitment by Government with regard to any fee title conveyance of the Leased Premises, in whole or in part, to Lessee or any agency, instrumentality, or affiliate, or to any sub-lessee.

5.2. Lessee shall not undertake any activity that may affect any portion of a historic or archeological property site, as identified in the Environmental Condition of Property (ECP), **Attachment E**, and/or National Environmental Policy Act (NEPA) documentation, including excavation, construction, alteration, or repairs of the Leased Premises, without the prior approval of Government and compliance with section 106 of the National Historic Preservation Act (16 U.S.C. § 470), and the Archeological Resources Protection Act of 1979 (16 U.S.C. §470aa). Buried cultural materials may be present on the Leased Premises. If those materials are encountered, Lessee shall stop work immediately and notify

Government. Government has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of any, Government will immediately notify Lessee.

5.3. Government reserves the right of unrestricted access in accordance with Paragraph 10, below, to the Government utilities/utility corridors on and under the parcels, identified and more particularly described in **Attachment A,** as "Lot 3 R/W, Tract 18308", "Lot 4 R/W, Tract 18308", "Lot 5 R/W, Tract 18308". Any development proposed by Lessee on these aforementioned parcels requires prior written approval of Government.

5.4. Government reserves the right of unrestricted ingress and egress through the leased premises to access the Government's NEXRAD weather radar site. Any development proposed by Lessee on the parcel identified as "Lot 3 R/W, Tract 18308", more particularly described in **Attachment A**, which provides Government ingress and egress through Leased Premises to the NEXRAD weather radar site, is restricted without prior written approval of Government.

6. <u>ASSIGNMENT AND SUBLEASING.</u>

6.1. During the Accrual Period and Construction Period, the Government may withhold consent to the transfer, assignment, or subleasing of this Lease or any interest in it. During the Performance Period, Lessee shall neither transfer, assign, nor sublet this Lease or any interest in it, or any property on the Leased Premises, or grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of Government. Government acknowledges that transfer, assignment or subletting may be required to allow Lessee to satisfy financing requirements and therefor commits that Consent shall not be unreasonably withheld or delayed. The proposed transferee, assignee, or subtenant, as applicable, must provide to Government reasonably satisfactory evidence that such transferee, assignee, or subtenant does not pose a threat to the National Security of the United States. This determination will be made in Government's sole discretion.

6.2. Any sublease granted by Lessee shall reference and contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Lessee or any sub-Lessee, except as specifically stated in this Lease. No sublease shall relieve Lessee of any of its obligations under this Lease. Under any sublease made with or without consent of Government, the sub-Lessee shall be deemed to have assumed all of the obligations of Lessee under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 14 below and **Attachment E**, hereto

6.3. Lessee shall submit to Government for its prior written consent, a copy of each sublease Lessee proposes to execute along with a letter that confirms that the sublease is consistent with the terms and conditions of the lease. Within sixty (60) calendar days, the Government will inform Lessee whether the consent may include a requirement that Lessee must renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either Government or Lessee. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the Government.

6.4. Subject to Government approval, which shall not be unreasonably withheld or delayed, as outlined in Paragraph 6.1 above, during the term of this Lease, Lessee may encumber its interest in the Leased Premises ("Leasehold") as well as its interest in the improvements on the Leased Premises by one or more loans secured by a mortgage, deed of trust, or security agreement or personal property security instrument ("Mortgage.") The proposed holder of any such Mortgage shall be referred to herein as the "Mortgagee." Any proposed Mortgagee shall be identified to the Government prior to closing for determination by the Government that the proposed mortgagee does not pose a threat to the national security of the United States, Notwithstanding any foreclosure, Lessee shall remain liable for the performance of all the provisions of this Lease which, by the terms hereof, are to be carried out and performed by Lessee.

6.5. Lessee shall notify Government promptly of any lien or encumbrance which has been created or attached to the Improvements or Lessee's interest in the Improvements, whether by act of Lessee or otherwise, of which Lessee itself has notice. The Mortgagee or purchaser at foreclosure of Lessee's interest in this Lease may appoint an agent, subcontractor or nominee to operate this Lease contingent upon written notice to the Government of the name of the entity. The Government has the right to deny access if the Government makes the determination that the entity does pose a threat to the national security of the United States. The Mortgagee has a right to submit and obtain preapproval of any agent, subcontractor or nominee from the Government. The Mortgagee or any purchaser at foreclosure shall become liable and fully bound by the provisions of this Lease for the period of time during which such Mortgagee or any purchaser at foreclosure operates under this Lease.

6.6. In no event shall the right granted herein to Lessee to Mortgage or otherwise encumber Lessee's Leasehold interest, created by and pursuant to this Lease, be deemed or interpreted as a subordination of Government's interest in the Leased Premises to the lien of such Mortgage or encumbrance, it being expressly agreed that under no circumstances shall Lessee have the right to Mortgage or encumber the interest of Government in the Leased Premises or subordinate such interests to the lien of any mortgage or encumbrance that Lessee may place upon its fixtures, equipment, inventory, other personal property, and/or other improvements on the Leased Premises created by and pursuant to this Lease.

6.7. Government consents to Lessee's grant to the Mortgagee of a security interest in any fixtures, equipment, inventory and/or other personal property owned by Lessee and located on the Leased Premises. Government hereby waives any interest that Government may have in such personal property, by virtue of this Lease.

6.8. If the Mortgagee has given written notice to the Government of its address, any notice to the Lessee given pursuant to this Lease, including, without limitation, notice of a default or a termination of this Lease shall be delivered simultaneously to such Mortgagee, and no notice of default or termination of this Lease given by the Government to the Lessee shall be deemed effective until like notice is given to such Mortgagee. The Mortgagee shall have the same rights to cure any default as the Lessee has under this Lease, and the Government shall accept performance by such Mortgagee as if the Lessee had performed. The Mortgagee shall not be required to cure any matter that is not reasonably susceptible to cure by Mortgagee (to the extent it actually constitutes a default under this Lease) arising from a bankruptcy or other insolvency action or court proceeding by or against Lessee.

6.9. The Mortgagee (or its designee, assignee, or nominee) shall have the exclusive right to elect to enter into a replacement lease on the terms set forth herein, by providing written notice of such election to the Government within sixty (60) days after receipt of a termination notice with respect to this Lease and subject to Government determination of national security review. Within thirty (30) days following such request of the Mortgagee or its designee, assignee or nominee, or such longer period as reasonably necessary, Government and the Mortgagee (or its respective designee, assignee, or nominee as lessee thereunder and subject to any of the existing requirements in Paragraph 6.1.) shall execute, acknowledge, and deliver a replacement lease, which shall have the same priority as this Lease, shall be subject to any of the existing rights of the Lessee under this lease, shall automatically be effective as of the termination date of this Lease, and shall continue in effect for the remainder of the otherwise unexpired Lease term upon all the covenants, conditions, limitations, and agreements contained in this Lease.

7. JOINT INSPECTION (NON-ENVIRONMENTAL)

7.1. Prior to execution of this Lease, a JIIR will be conducted by representatives of Government and Lessee and a complete inventory of Government real and personal property shall be made. The JIIR shall describe the condition of the Leased Premises and will note any deficiencies found to exist. Prior to execution, the report shall be attached to and made a part of the Lease as **Attachment D**.

7.2. The Leased Premises shall be delivered to Lessee on an "As Is, Where Is" basis, and, as such, Government makes no warranty to its usability generally or its fitness for any particular purpose. Any safety or health hazards identified and listed in the JIIR shall be corrected at Lessee's expense prior to use and occupancy of the related portion of the Leased Premises. The safety or health hazards to be corrected by Lessee shall be limited to those identified in the JIIR.

7.3. In the event this Lease is terminated and the Parties have not agreed to enter into a new lease, Lessee shall return the Leased Premises to Government in the same condition in which it was received, reasonable wear and tear, damage by insurable events, and Acts of Nature excepted. In lieu of restoring the property to original condition, the Government may, at its discretion, accept the property with improvements made by Lessee upon RECO approval. Lessee may, at its expense and with prior written approval of Government, (a) replace any personal property with personal property of like kind and utility, (b) replace any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete, or non-functioning personal property, in accordance with applicable laws and regulations. Government shall not unreasonably withhold or delay granting its approval to Lessee's request for those actions.

8. ENVIRONMENTAL CONDITION OF PROPERTY.

8.1. ECP. An Environmental Condition of Property (ECP) shall be attached to and made a part of this Lease as **Attachment E** either at the time this Lease is executed, or within a reasonable time after the term begins, depending on the time needed by Government to complete the report, and in the latter event, the report will speak from the date the term of this Lease begins. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by Government and sets forth the basis for the Government's determination that the Leased Premises are suitable for leasing. Lessee understands that whenever this Lease ends, Government may conduct an inspection of the Leased Premises to determine if any material deviation from the initial environmental condition has occurred, and if a material deviation has occurred, Lessee will remain liable, to the extent permitted by law, for resulting loss or damage, notwithstanding the ending of this Lease. Lessee and each sub-Lessee are made aware of the notifications contained in the ECP and shall comply with all restrictions in it as well as the following:

8.1.1. UXO. Unexploded Ordnance and other Munitions and Explosives of Concern (UXO) may be present at this site. Unless otherwise explicitly stated in this paragraph, Lessee shall not conduct or permit any sub-Lessee(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface at any time without the prior written approval of the Government. Any excavation, digging, drilling, or other disturbance of the surface shall be done in compliance with all applicable Federal, state, and local laws and regulations and with Department of Defense and Department of the Government safety policies, including those pertaining to explosives safety. Lessee acknowledges that land underlying and adjacent to the Leased Premises may contain UXO. If, after receipt of written approval by Government, Lessee undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, it shall immediately halt work and notify Government of any buried debris, or foreign, potentially hazardous material encountered during this work.

8.1.2. Unexploded Ordnance and other Munitions and Explosives of Concern (UXO). This Lease is granted subject to the following terms and conditions:

8.1.2.1. Lessee acknowledges that Guam was the scene of numerous battles during World War II. As a result, Unexploded Ordnance (UXO) and Munitions and Explosives of Concern (MEC) may be present on the subject premises. The following conditions apply to all ground disturbing and excavation activities:

8.1.2.2. Lessee will provide notice to the Commander Joint Region Marianas (CJRM) at least seven (7) calendar days prior to engaging in any excavation activities on the subject premises. Such notice will include the expected duration of excavation activities.

8.1.2.3. Notice will be made to residents, motorists, and pedestrians within the established explosive safety zones by reasonable means of signs and flyers prior to any excavation activities. (***Warning: Ground excavation ahead. Unexploded Ordnance may be present. *** i.e. acceptable sign verbiage). Such public notices will remain in place through the duration of the excavation activity.

8.1.2.4. Lessee shall consider alternate work schedules and other reasonable methods to minimize vehicular and pedestrian traffic exposure to UXO and MEC risks during excavation activities.

8.1.2.5. Should Lessee encounter suspected UXO or MEC on the subject premises, all work shall cease and Licensee will conduct the "3-Rs": Recognize, Retreat, and Report for all on site personnel. Lessee will confer immediately with CJRM Regional Explosives Safety Officer to determine the scope of any investigation and the requisite response action.

8.2 Lead-Based Paint. Government is not responsible for any removal or containment of lead-based paint (LBP), identified in the ECP. If Lessee, sub-Lessee or other authorized occupant of the Leased Premises intends to make any improvements or repairs that require LBP removal, an appropriate LBP disposal plan ensuring compliance with all applicable Federal, state, and local laws and regulations must be incorporated into the plans and specifications and submitted to Government. The LBP disposal plan will identify the proposed disposal site, or in the event that the site has not been identified, will stipulate for disposal at a licensed facility authorized to receive it.

9. IMPROVEMENTS AND RESTORATION

9.1 Neither Lessee, nor Occupant shall construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (collectively, the "Improvements"), in other than the projects identified to be constructed in accordance with **Attachment B** of this Lease including those that may adversely affect human health or the environment, without the prior written consent of Government. . That consent shall not be unreasonably withheld or delayed. Further, that consent may involve a requirement to furnish Government with a payment and performance bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of Government. For any Improvements in the proximity of any known Government Environmental Restoration Program ("ERP") site, that consent may also include a requirement for the written approval of Government's Remedial Project Manager in addition to approval by the RECO. The Improvements shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes, as applicable. Lessee or Occupant, as applicable, shall give Government prior written notification and a full plan and description of the proposed Improvements, including any other information on the proposed work requested by Government. Except as otherwise stated in this Lease or in Government's written approval, upon expiration or earlier termination of this Lease, Government shall have the option to cause title to all Improvements owned by Lessee or Occupant to be vested in the United States, or to require Lessee to remove the Improvements and restore the Leased Premises to the condition that existed when the term of this Lease began, or to a condition that is acceptable to Government. If requested by Government, Lessee agrees to deliver a quitclaim deed to evidence or perfect the transfer of title to the Improvements to the United States for nominal consideration.

9.2 Height limitation. Maximum height for any structure on premises shall be less than 342 feet Mean Sea level or ~70 feet above ground elevation of the radar and subject to Government approval. This includes but not limited to any antennas on facilities. Should there be a need to exceed this height limitation, Lessee shall request approval from the Government. Notwithstanding this paragraph 9.2, the maximum height for any structure shall be subject to Government approval.

9.3 Frequency emissions. Government shall provide Lessee with any and all releasable information within sixty (60) days of lease start date to ensure that there shall be no electrical or radio frequency emission interference with the operation of the NEXRAD or other Government equipment as the Government may from time to time specify and Lessee commits to ensuring that there shall be no electrical or radio frequency emission interference with the operation of NEXRAD. Prior to use of frequency emitting equipment, Lessee shall provide the Government with frequency spectrum information for Government approval.

10 ACCESS BY GOVERNMENT

10.1 In addition to access required under Paragraph 14, at all reasonable times throughout the term of this Lease, Government shall be allowed access to the Leased Premises without impairing the rights of Lessee, its sub-lessees or patients upon at least 24-hour's notice to Lessee or sub-Lessee, unless Government reasonably determines the entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice shall be required. Except as provided by law, Lessee or sub-Lessee shall have no claim on account of any entries against Government or any Government officer, agent, employee or contractor, provided, however, that nothing in this Lease shall be deemed to prejudice the rights of Lessee or any sub-Lessee under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act. All necessary keys to the buildings and Leased Premises occupied by Lessee or any sub-Lessee shall be made available to Government upon request.

10.2 Access to and restricted development upon Government utility corridors. Government reserves the right of unrestricted access in accordance with notice requirements of Paragraph 10.1, to the Government utilities/utility corridors on and under the parcels, identified and more particularly described in **Attachment A,** as "Lot 3 R/W, Tract 18308", "Lot 4 R/W, Tract 18308", "Lot 5 R/W, Tract 18308". Any development proposed by Lessee on these aforementioned parcels requires prior written approval of Government.

10.3 Access to and restricted development upon NEXRAD access corridor. Government reserves the right of unrestricted ingress and egress through the leased premises to access the Government's NEXRAD weather radar site. Any development proposed by Lessee on the parcel identified as "Lot 3 R/W, Tract 18308", more particularly described in **Attachment A**, which provides Government ingress and egress through Leased Premises to the NEXRAD weather radar site, is restricted without prior written approval of Government.

11 UTILITIES AND SERVICES Lessee and any sub-Lessee shall be responsible for obtaining utilities and services for the Leased Premises. In the event that Lessee shall request and Government shall furnish Lessee with any utilities and services maintained by Government, Lessee shall pay Government the agreed charges under separate agreement. Those charges and the method of payment shall be determined by Government or the appropriate supplier of the service, in accordance with applicable laws and regulations, on the basis that Government or the appropriate supplier may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. It is expressly agreed and understood that Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Leased Premises. Lessee shall have the right, subject to Paragraph 9, to install utilities, or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, that may be necessary for the operation of Lessee's equipment.

12 NONINTERFERENCE WITH GOVERNMENT OPERATIONS Lessee or any sub-Lessee shall not conduct operations or activities, or make any alterations, that would interfere with or otherwise restrict Government operations, environmental cleanup, or restoration actions by Government, U. S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by those entities shall take priority over Lessee's or any sub-Lessee's use of the Leased Premises in the event of any conflict. However, Government will take reasonable steps to prevent interference with Lessee's or the sub-Lessee's use of the Leased Premises.

13 PROTECTION AND MAINTENANCE OF LEASED PREMISES

13.1 Lessee shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises in at least as good condition as when Lessee received it as reflected in the JIIR, **Attachment D**, normal wear and tear, and damage by insurable events, and Acts of Nature excepted. Lessee's responsibilities shall include, but not be limited to, removal of trash, litter, broken glass, and other hazards or obstructions from the Leased Premises that are generated by Lessee, its agents, contractors, or employees. Lessee shall ensure that the Leased Premises is maintained free of any noxious or nuisance-causing condition. Lessee is responsible for the maintenance and repair of all buildings or structures built or placed on the Leased Premises by Lessee.

13.2 Exterior Utility Systems. Lessee is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely support Lessee's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than Lessee. These systems include but are not limited to heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, and similar items.

13.3 Refuse Removal. Debris, trash, and other undesirable materials shall be promptly removed from the Leased Premises by Lessee, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease term, Lessee shall remove all containers, equipment not belonging to Government, and other undesirable materials, and leave the Lease Premises in a clean condition that is acceptable to the Government.

13.4 Security Protection. Lessee shall keep the Leased Premises secure and safe. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-exclusive legislative jurisdiction areas) and to Government as property owner.

13.5 Lessee shall ensure that only trained, experienced, and qualified persons perform the maintenance and protections services specified in this Paragraph.

13.6 Lessee shall, at its own expense, protect the Leased Premises through construction of a perimeter fence as identified by the Government to ensure that operation of a Public Hospital and Medical Campus does not interfere with U.S. Government's activities at the NEXRAD.

14 ENVIRONMENTAL PROTECTION PROVISIONS

14.1 Compliance with Law. Lessee shall comply, at its sole cost and expense, with the Federal and state laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.

14.2 Permits. Lessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits.

14.3 Environmental Indemnification. Lessee shall, to the extent permitted under applicable law, indemnify and hold harmless Government from, and defend Government against, any damages, costs, expenses, liabilities, fines, or penalties (including without limitation reasonable attorney's fees or costs associated with investigations of environmental conditions) resulting from any releases, discharges, emissions, spills, storage, treatment, disposal or any other act or omissions by Lessee, its officers, agents, employees, or contractors, or licensees, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Federal, State, or Local Environmental Laws, which occurs after the first day of the Lessee's occupation or use of the Leased Premises or the Effective Date, whichever occurs first. This Paragraph shall survive the termination of this Lease, and Lessee's obligations under this Paragraph.

14.4 Inspection. Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with Environmental Laws, whether or not Government is responsible for enforcing them. Those inspections may be made without prejudice to the right of duly constituted enforcement officials to make them. Government shall give Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. Any claims by Lessee or sublessee against Government for damages arising from such entry shall be governed by the Federal Tort Claims Act. Notwithstanding the foregoing, Government agrees to take into consideration alternatives and reasonable steps consistent with the inspection required to minimize interference with the Lessee's (including Lessee's officers, agents, employees, or contractors, or licensees) use of the Leased Premises. In addition, when Government enters the Leased Premises in accordance with this Paragraph 14.4, Government shall comply with the Safety and Security Protocols, provided adherence to the Safety and Security protocols by the Government is consistent with Federal, state, and local laws and regulations and Government policy and guidance documents.

14.5 Asbestos. Except as provided in Paragraph 14.6, Government is not responsible for any abatement, removal, or containment of asbestos. If Lessee intends to make any Improvements that require the abatement, removal, or containment of asbestos, an appropriate asbestos management plan must be incorporated in the alterations plan to be submitted to the Commander/Commanding Officer under Paragraph 8. The asbestos management plan will identify the proposed disposal site for the asbestos.

14.6 Abatement of Asbestos. Government shall be responsible for the removal or containment of asbestos or asbestos-containing material (collectively, "ACM") existing in the Leased Premises on the term beginning date as identified in the ECP attached to this Lease when that ACM is damaged or deteriorated to the extent that, through normal use, it is a source of airborne fibers in quantities that pose a threat to human health ("damaged or deteriorated ACM"). Government agrees to abate all that existing damaged or deteriorated ACM as stated in this Paragraph 14.6. Government may choose the most economical means of abating damaged or deteriorated ACM, which may include removal or containment, or a combination of removal and containment. The foregoing Government obligation does not apply to ACM that is not damaged or deteriorated at the time Lessee takes possession of the Leased Premises and that may become damaged or deteriorated by Lessee's activities. ACM that during the period of this Lease becomes damaged or deteriorated through the passage of time, or as a consequence of Lessee's activities under this Lease, including but not limited to any emergency, shall be abated by Lessee at its sole cost and expense. Notwithstanding Paragraph 14.4, in an emergency, Lessee shall notify Government as soon as practicable of its emergency ACM responses. Lessee shall be responsible for monitoring the condition of existing ACM on the Leased Premises for deterioration or damage and accomplishing repairs pursuant to this Lease.

14.7 Environmental Liability of Lessee/Government. Lessee shall be responsible for any environmental contamination arising from or caused by its use or occupation of the Leased Premises, whether under CERCLA, RCRA, or any other Federal, State, or local law pertaining to environmental contamination. Notwithstanding any other provision of this Lease, Lessee does not assume any, and Government shall retain all, liability or responsibility for any environmental response, remediation, or cleanup required as a result of environmental impacts or damage arising from or occurring during Government's past use, storage or release of any Hazardous Substances on any portion of the installation, including the Leased Premises. Government does not assume any, and Lessee shall retain all, liability or responsibility for any environmental response, remediation or cleanup required as a result of environmental impacts or damage arising from Lessee's use, storage, or release of Hazardous Substances on any portion of the Leased Premises, which occur after the commencement of the term of this Lease. Lessee has no obligation under this Lease and shall not assume any obligations or liabilities, and Government shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, to the extent arising out of the Government's use, storage or release of any Hazardous Substances on, or from any part, of the installation, including the Leased Premises, which occurred prior to the first day of the Lessee's occupation or use of the Leased Premises. Government has no obligation under this Lease and shall not assume any obligations or liabilities, and Lessee shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, to the extent arising out of the Lessee's use, storage or release of any Hazardous Substances on, or from any part, of the installation, including the Leased Premises, which occurred after the first day of the Lessee's occupation or use of the Leased Premises. Further, Lessee has no obligation under this Lease and shall not assume any obligations or liabilities, and Government shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, or conducting environmental response, investigation, remediation, or cleanup actions, arising from the Government's use, storage or release of Hazardous Substances. Government has no obligation under this Lease and shall not assume any obligations or liabilities, and Lessee shall retain all such obligations and liabilities related thereto, regarding the undertaking of defense of any claim or action (including without limitation those made by third-parties), whether in existence now or brought in the future, or conducting environmental response, investigation, remediation, or cleanup actions, arising from the Lessee's use, storage or release of Hazardous Substances. In addition, Lessee does not assume any, and Government shall retain all, liability or responsibility for any non-compliance with or violations of Environmental Laws occurring with respect to the Leased Premises or the Government installation, which arose prior to the term of this Lease or resulted from Government acts or omissions. By contrast, Government does not assume any, and Lessee shall retain all, liability or responsibility for any non-compliance with or violations of Environmental Laws occurring on the Leased Premises, which were caused by Lessee and arose after the commencement of the term of this Lease, or resulted from Lessee's acts or omissions. Notwithstanding any other provision of this Lease, the environmental liability apportionment provisions of this Paragraph 14 shall be sole and exclusive terms in this Lease Agreement governing the environmental liability of Lessee and Government, and it shall survive the term of this Lease.

14.8 For the purposes of this Paragraph, "defense" or "environmental response, remediation, or cleanup" include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupation or use" shall mean any activity or presence (including preparation and construction) in or upon such portion of, or such building, facility, or other improvement on, the Leased Premises.

14.9 Except as otherwise expressly provided therein, this Paragraph 14 does not relieve Lessee of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law as a result of, or exacerbated by, Lessee's activities during the term of this Lease.

14.10 This Paragraph 14 shall survive the expiration or termination of this Lease and Lessee's and/or its transfers' or assigns' obligations under this paragraph shall apply whenever Government incurs costs or liabilities for Lessee's actions of the types described in this Paragraph 14.

14.11 <u>No Liability for Interference</u>. The Government represents through NEPA and ECP documentation any portions of the Installation, including the proposed action site that are placed on the National Priorities List, regulated under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly referred to as Superfund. If such areas are identified, petroleum contaminated soil and groundwater is likely to be encountered in these areas and excavation in these areas must be handled in accordance with procedures established by Joint Region Marianas. Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken by the Government with regard to CERCLA (as defined below), if applicable, or the Installation Restoration Program (IRP), may impact Lessee's quiet use and enjoyment of the Leased Premises. Lessee agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Lessee should implementation of said response authority, or other cleanup requirements, whether imposed by law, regulatory agencies, or the Navy or the Department of Defense, interfere with Lessee's use of the Leased Premises. Lessee shall have no claim against the United States or any of its officers, agents, employees, or contractors on account of any interference, whether due to entry, performance of remedial or removal actions, or exercise of any right with regard to the said response authority, or under this Lease or otherwise reasonable steps consistent with the remedy, to minimize interference with the Lessee's (including Lessee's officers, agents, employees, contractors, licensees) use of the Leased Premises. In addition, if Government enters the Leased Premises in accordance with this Paragraph 14, Government shall adhere to the Installation Safety and Security Protocols consistent with Federal, State, and Local laws and regulations and Government policy and guidance documents.

14.12 <u>Response or Remedial Actions</u>. Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken by the Government may be in compliance with a Federal Facilities Agreement (FFA). The general purpose of the FFA is to ensure that the environmental impacts associated with past and present Navy activities within the Installation boundaries are investigated and appropriate remedial action is taken by the Navy with respect to contamination resulting from those Navy activities in order to protect human health and environment. This Lease does not alter the rights and obligations of the parties (Navy, EPA, and DOH) under the FFA. Lessee agrees to comply with the provisions of any health or safety plan in effect under an FFA or any Hazardous Substance remediation or response agreement with environmental regulatory authorities entered into after the effective date of this Lease during the course of any of the above-described response or remedial actions. The Government shall, to the extent practicable, attempt to minimize the impacts of any such health or safety plan under an FFA or any Hazardous Substance remediation or response agreement on Lessee's use of the Leased Premises. The Government also will, the extent practicable, coordinate any inspection, survey, investigation, or other response or remedial action under this provision with representatives designated by Lessee. Government agrees, consistent with any emerging obligations to implement required remedial or response actions as described in Paragraph 8, to consider alternatives and reasonable steps consistent with the response requirements to minimize interference with the Lessee's (including Lessee's officers, agents, employees, or contractors, licensees, or invitees) use of the Leased Premises. In addition, when Government enters the Leased Premises in accordance with this Paragraph 14 and Paragraph 8, Government shall comply with the safety and security protocols by the Government consistent with Federal, state, and local laws and regulations and Government policy and guidance documents. Any claims by Lessee or sublessee against Government for damages arising from such actions shall be governed by the Federal Tort Claims Act.

14.13 Storage of Hazardous Wastes. Lessee must comply with all applicable environmental laws, regulations and other requirements relating to environmental safety and health, the handling and storage of Hazardous Substances, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of Hazardous Wastes or Hazardous Substances. Lessee shall not treat, store, transport, or dispose of Hazardous Waste or Hazardous Substances unless Lessee is inpossession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended (RCRA). Lessee shall not treat, store, transport, or dispose of any Hazardous Waste or Hazardous Substances under, pursuant to, or in reliance upon any permit issued to Government. Lessee shall be liable for the cost of proper disposal of any Hazardous Waste or Hazardous Substances generated by its approved sub-Lessees in the event of failure of the sub-Lessees to dispose properly of those wastes.

14.14 Environmental Records. Lessee must maintain and make available to Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of Hazardous Waste or Hazardous Substances relevant to the Leased Premises, as well as all other environmental records required to be maintained by Lessee in connection with its use and activities on the Leased Premises by applicable environmental laws, regulations and requirements. Government reserves the right to inspect the Leased Premises and Lessee's records for compliance with Federal, state, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment, and disposal of Hazardous Waste or Hazardous Substances, as well as to the discharge or release of Hazardous Substances. When Government enters the Leased Premises for compliance inspections in accordance with Paragraph 8 and 14, Government will consider alternatives and reasonable steps to minimize interference with Lessee's use of the Leased Premises. Violations will be reported by Government to appropriate regulatory agencies, as required by applicable environmental laws and regulations. Lessee shall be liable for the payment of any fines and penalties that may accrue as a result of the actions ofLessee.

14.15 Spill Plans. If Hazardous Waste, fuel, chemicals, or other regulated Hazardous Substances will be present on the Leased Premises, Lessee shall prepare a completed and approved plan prior to commencement of operations on the Leased Premises for responding to Hazardous Waste or Hazardous Substances, fuel, and other chemical spills. The plan shall comply with all applicable environmental laws and regulations and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements, and where required, shall be approved by all agencies having regulatory jurisdiction over the plan. The plan shall be independent of Government spill prevention and response plans. Lessee shall not rely on use of the installation's personnel or equipment in execution of its plan. Lessee shall file a copy of the approved plan and approved amendments thereto with the Commander/Commanding Officer within fifteen (15) days of approval. Notwithstanding the foregoing, should Government provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of Lessee, or because Lessee was not, in the reasonable discretion of Government, conducting timely cleanup actions as required of Lessee under applicable environmental laws and regulations, Lessee agrees to reimburse Government for its costs in accordance with all applicable environmental laws, regulations and this Lease.

14.16 RCRA Compliance. Lessee shall comply with the Hazardous Waste permit requirements under the RCRA or its state equivalent and any other applicable hazardous waste laws, rules, and regulations pertaining to Hazardous Waste or Hazardous Substances that apply to Lessee's use or activities on the Leased Premises. Lessee must provide at its own expense Hazardous Waste storage facilities that comply with all environmental laws and regulations that it may need for storage. Government Hazardous Waste storage facilities will not be available to Lessee. Any violation of the requirements of this Paragraph 14 shall be deemed a material breach of this Lease.

14.17 Accumulation Points. Government accumulation points for Hazardous Wastes and Hazardous Substances, along with other non-hazardous wastes shall not be used by Lessee, and Lessee shall not permit its Hazardous Wastes to be commingled with Hazardous Waste or Hazardous Substances or any discarded material generated by the Government.

14.18 Discharge of Fill. Lessee shall not discharge, or allow the discharge of, any dredged or fill material into any waters or wetlands on the Leased Premises except in compliance with the express written consent of the Government.

14.19 Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Lessee shall prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, state, and local pesticide requirements. Lessee shall store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

14.20 National Pollutant Discharge Elimination System (NPDES) Permit. Lessee shall comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If Lessee discharges wastewater to a publicly owned treatment works, Lessee must submit an application for its discharge prior to commencement of project. Lessee shall be responsible for meeting all applicable wastewater discharge permit standards. Lessee shall not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the installation. Lessee shall make no use of any septic tank installed on the installation without the prior written consent of Government.

14.21 Radioactive Materials. Lessee must notify Government of its intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act, as amended, and its implementing regulations; of Lessee's intent to possess, use, or store radium; and of Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the installation. Upon notification, Government may impose requirements, including prohibition of possession, use, or storage that is deemed necessary to adequately protect human health and the human environment. Thereafter, Lessee must notify Government of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that Lessee need not make either of the above notifications to Government with regard to source and byproduct material that is exempt from regulation under the Atomic Energy Act. Lessee shall not, under any circumstances, use, own, possess, or allowthe presence of special nuclear material on the Leased Premises.

14.22 Improvements and Environmental Cleanup. Lessee further agrees that it shall give Government prior written notice accompanied by a detailed written description of all proposals for any Improvements that may impede or impair any activities under the ERP, or the FFA if applicable. The notice and accompanying written description of those proposals shall be delivered to Government sixty (60) days in advance of the commencement of any Improvements. In addition, Improvements shall not commence until Lessee has complied with the provisions of Paragraph 8. The detailed written description must include the effect that planned Improvements may have on site soil and groundwater conditions and the cleanup efforts contemplated under the ERP and the FFA, if applicable. Notwithstanding this Paragraph 14, Lessee shall be under no obligation to give advance written notice of any Improvements that will be undertaken totally within any structure located on the Leased Premises, provided that the work will not impede or impair any activities under the ERP or the FFA, if applicable. However, any work below the floor of any structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater, or will impede or impair any activities under the ERP or the FFA, if applicable, will be subject to the sixty (60) day notice requirement imposed by this Paragraph 14, except to the extent that such below floor structure work is required as part of an emergency response action undertaken by Lessee to address release or a threat of release of any Hazardous Substances under applicable environmental laws and regulations. All emergency responses undertaken pursuant to this paragraph by the Lessee to address a release or a threat of release of any Hazardous Substance must be conducted in accordance with the terms of any future FFA and require immediate notice to the Government.

14.23 Environmental Access. Government, EPA, and the state and their respective officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee (for which the Government agrees to provide a 24-hour's notice prior to the entry in question) to enter upon the Leased Premises for the purposes enumerated in this subparagraph, and for other purposes consistent with any provision of an FFA, if applicable:

14.23.1 To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the ERP or the FFA, if applicable;

14.23.2 To inspect field activities of Government and its contractors and subcontractors in implementing the ERP or the FFA, if applicable. When the Lessee has notice of an EPA or State Regulatory visit or inspection, the Lessee shall notify the Government as soon as practical;

14.23.3 To conduct any test or survey required by the EPA or the state relating to the implementation of the FFA, if applicable, or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or state by Government relating to those conditions;

14.23.4 To conduct, operate, maintain, or undertake any other response or remedial action as required or necessary under the ERP or the FFA, if applicable, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

14.23.5 Whether applicable now or in the future, to monitor any environmental restrictive use covenants and the effectiveness of any other land use or institutional control established by the Government on the Leased Premises, either by itself, by its contractor, by any public entity, including the state, or by a private entity registered in the state to monitor environmental covenants.

14.24 Environmental Protective Measures. Lessee shall comply with the Environmental Protective Measures provided in **Attachment** E, ECP.

14.25 Definitions. For the purposes of the "Environmental Protection Provisions" in this Paragraph 14 of this Lease, the following terms shall have the meaning provided as follows:

14.25.1 The term "Environmental Laws" shall mean any and all federal, state, or local laws (including without limitation any and all legally binding requirements or obligations imposed by any governmental entity, body, or subdivision thereof, including administrative, legislative, or judicial entities, with jurisdiction over the Leased Premises) relating to, either, the protection of the environment or natural resources, including without limitation soils, groundwater or surface water resources, subsurface strata, flora and fauna, or ambient air; the release, investigation, remediation, management, storage, or registration of Hazardous Substances; or work-place or occupational health or safety, industrial hygiene, or employee hazard prevention.

14.25.2 The term "Hazardous Substances" shall mean any and all solid or liquid materials, wastes or other discarded material, or substances of any kind whatsoever subject to regulation or designated as either "toxic," "hazardous," "dangerous," "harmful," "pollutants," or "contaminants," pursuant to Environmental Laws, including without limitation the definition of Hazardous Substances contained in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 9601 et seq, and the National Contingency Plan, 40 C.F.R. Part 300, as well as petroleum or any fraction thereof, asbestos or any asbestos containing material, or any material constituting a "toxic or hazardous material" as defined in 48 C.F.R. § 252.223-7006.

14.25.3 The term "Hazardous Waste" shall have the meaning ascribed to the term "Hazardous Waste" in 42 U.S.C. § 6903, the Resource Conservation and Recovery Act and in 40 C.F.R. Part 260.

15 TERMINATION

15.1 Termination for Non-Use. This Lease will terminate and be considered a material breach under Paragraph 15.4 of this Lease upon Lessee abandonment of the rights granted herein; or upon non-use of those rights for a period of two (2) consecutive years.

15.2 Termination by Government. Government shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by Lessee of any of the terms and conditions of this Lease upon ninety (90) day notice to Lessee. The Government will relinquish its right under this Lease to terminate at the convenience of the Government, upon written request from the Lessee and the provision by the Lessee of substantiating documentation evidencing the approval to enter into financing contracts, such written request and documentation shall be a part of this Lease as **Attachment G** by modification.

15.3 National Emergency. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the leased premises. Nothing in this Lease shall prevent Lessee from pursuing any rights it may have for reimbursement from Government.

15.4 Breach of Terms by Lessee. Subject to the cure provisions below, in the event of breach by Lessee of any of the terms, conditions, or obligations of this Lease, including but not limited to failure to provide IKC in accordance with this Lease and the IKC Memorandum of Agreement (MOA), or for Lessee's use of the Leased Premises not consistent with operation of a Public Hospital and Medical Campus, Government shall have the right to terminate for breach. Unless Government determines that immediate notice of termination, or shorter period of time for cure is required for safety, environmental, operational, or security purposes, Government shall afford Lessee sixty (60) calendar days from Lessee's receipt of Government's notice of such breach to cure such breach to complete the performance obligation or otherwise cure the breach and avoid notice of termination of this Lease. If Lessee has commenced action within said sixty (60) day period to cure breach, is diligently pursuing action to completion, and the Government determines that the breach is not reasonably achievable to cure within said sixty (60) days or such other time period granted by the Government, Government shall have the right to terminate this Lease by issuing a notice of termination, and Government shall be entitled to recover, and Lessee pay the Government, any damages incurred by Government resulting from the Lease termination for breach. For the purpose of clarity, it is noted that the use of the terms default and breach are used synonymously to mean violation of a contractual obligation.

15.5 In the event that Government shall elect to terminate this Lease because of the breach by Lessee and such breach has not been cured during the applicable cure period, Government will issue a written notice of termination to Lessee, Government shall be entitled to recover, and Lessee shall pay to Government actual damages as set forth below. In addition to rent due, the remedies and damages set forth below shall be Government's sole and exclusive remedies for Lessee's breach of this Lease as set forth in this Paragraph:

15.5.1 The reasonable costs incurred by Government in resuming possession of the Leased Premises; and

15.5.2 The reasonable costs incurred by Government in performing any outstanding obligation on the part of Lessee existing prior to or upon termination; and

15.5.3 In the event that a notice of termination for breach is disputed and it is later determined that Lessee was not in breach or that the breach was excusable, the notice of termination shall be effective as a notice of termination under Paragraph 15.2 and the rights and obligations of the parties shall be the same as if the termination had been issued upon any required notice in accordance with Paragraph 15.2.

15.6 ~~Sale or Transfer of the Property. Lessee agrees that nothing in this Lease shall be construed to prevent Government from selling, assigning or otherwise transferring all or any part of Government's fee simple interest in the Leased Premises subject to this Lease. Government shall have the right to terminate this Lease if Government sells the Leased Premises in accordance with applicable law governing the disposal by the Government during the term of this Lease. If the lease is terminated to allow the Government to sell the property, Lessee shall have the first right to buy the Leased Premises on terms no less favorable to the Government than offered to a third party. Lessee shall submit an offer to buy the property within ninety (90) days following such termination. If Government transfers~~

~~all of Government's fee simple interest in the Leased Premises subject to this Lease and the transferee assumes the same, Lessee agrees that any and all obligations of Government under this Lease not then accrued shall terminate with respect to Government upon the effective date of such transfer and Lessee hereby releases Government from any obligations or covenants under this Lease which have not accrued prior to such effective date except as expressly set forth in this Paragraph 15. The transferee of Government's interest shall have the obligation to perform all of the obligations and covenants of Government under this Lease including those obligations and covenants that shall have accrued with respect to the Government prior to the effective date of such transfer.~~

15.7 Federal Requirement. In the event all or any part of the Leased Premises is required for Federal use, or if Lessee's use of it is not consistent with Federal program purposes, Government may terminate the Lease, or any needed part of the Leased Premises, if it is practical to terminate only a part, upon ninety (90) days' written notice to Lessee. The Government will modify its right under this Lease, upon written request from the Lessee and the provision by the Lessee of substantiating documentation evidencing the approval to enter into financing contracts, such request and documentation shall be a part of this Lease as **Attachment G** by modification.

15.8 Termination by Lessee. Lessee may terminate this Lease at any time upon ninety (90) business day's written notice to the RECO. Lessee shall, in consultation with the Government, either restore the property to its original condition, as appropriately documented by both parties, or ensure that any improvements are fully functional for their intended purposes, to include if necessary, rebuilding, altering, installing or repairing said facilities in accordance with the original plans and specifications and Government shall have the option to cause title to all Improvements to be vested in the United States.

15.9 Rights retained by Lessee. Nothing in this Paragraph 15 is intended to limit Lessee's right to bring claim for compensation or dispute, pursuant to existing Federal Law and as described in Paragraph 24.

16 INDEMNIFICATION

16.1. Indemnification by Lessee. Lessee shall indemnify and hold Government harmless from, and shall defend Government against, and shall pay, all costs (including the costs of experts and investigators), expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability, and causes of action of every nature arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands, and causes of action of every nature that may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission, or non-performance of any term, covenant, or condition of this Lease on the part of Lessee, its employees, servants, agents, guests, invitees, or contractors. However, this indemnity shall not extend to any loss, damage, destruction to property, injuries or death to persons, fines, claims, demands and causes of action, or damages of every nature caused by the acts or omissions of the Government or its officers, agents, employees or contractors, which shall be the responsibility of the Government to the extent not covered by insurance required to be carried by Lessee under this Lease and to the extent authorized under Applicable Law, including the Federal Tort Claims Act. This covenant shall survive the termination of this Lease.

16.2. Release of Government. Lessee releases the Government and its employees from liability from death or injury to persons caused by water, ice, snow, sleet, frost, steam, hail, wind, cold, dampness, electricity, rust, falling plaster or other materials, fire, explosion, sewer or sewage, gas, vapors, odors, aircraft noise, toxic or hazardous wastes, substances, or materials, the bursting or leaking of pipes or plumbing, or faulty wiring, or by any equipment or fixtures, or any act of Nature, or objects of any nature moved or propelled by water, ice, snow, sleet, steam, hail, or wind, at the Leased Premises, unless caused by the willful act or gross negligence of the Government or its employees, agents, servants, guests, invitees or contractors.

16.3. Environmental Exclusions. Notwithstanding any other provision in this Lease, the indemnification, defense, and hold harmless provisions in this Paragraph 16 shall not apply to any liabilities, obligations, or other costs addressed by Paragraph 14 of this Lease, Environmental Protection Provisions. Paragraph 14 shall be the sole and exclusive provisions in this Lease concerning any and all liabilities, obligations, or other costs arising under Environmental Laws or otherwise concerning Hazardous Wastes and Hazardous Substances."

17. INSURANCE. Risk of Loss or Damage; Required Insurance. Except as otherwise provided in this Lease, Lessee shall, without prejudice to any other rights of Government, bear all risk of loss or damage or destruction to the Leased Premises, including any buildings, improvements, fixtures, or other property on it, beginning the first day of the Lessee's occupation or use of each portion of, or any building, facility, or other improvement on the Leased Premises arising from any causes whatsoever, with or without fault by Government or its officers, agents, employees, contractors, and subcontractors. During the entire period this Lease shall be in effect, Lessee, at no expense to Government, agrees to carry and maintain, or cause to be carried and maintained, in effect at all times during the term of this Lease the following insurance coverages:

17.1. Property insurance coverage against loss or damage by perils covered by Insurance Services Office ("ISO") special cause of loss form or a functionally equivalent form in an amount not less than One Hundred Percent (100%) of the full replacement cost of the Government buildings, building improvements, improvements to the land, fixtures, and personal property as described by the Leased Premises in **Attachment A**. The policies of insurance carried in accordance with this condition shall contain a "Replacement Cost Endorsement." Property insurance shall also be provided for loss or damage due to earthquake, flood, windstorm, and rainstorm as commercially available. Deductibles for losses insured under a property insurance policy, including earthquake losses and flood losses shall be subject to approval by Government and such approval should not be unreasonably withheld, conditioned, or delayed. The full replacement cost shall be determined every five (5) years, except in the event of substantial changes or alterations to the Leased Premises undertaken by Lessee as permitted under the provisions of this Lease.

17.2. Reserved.

17.3. Commercial general liability insurance (including excess umbrella liability insurance) using the most recent ISO occurrence form or a functionally equivalent form, covering bodily injury, premises, operations, products, completed operations, and independent contractors and for the contractual liability assumed by Lessee under Paragraph 16, and shall afford immediate protection at the time that the term of this Lease begins, and at all times during the term of this Lease, with single limit bodily injury coverage of $2 million each occurrence, with a limit of $2 million each occurrence, $5 million aggregate for products and completed operations, and $5 million general aggregate limit.

17.4. If Lessee owns or leases business vehicles that will be operating on, to, or from the Leased Premises or military land, those vehicles must be registered in accordance with installation requirements. Business automobile insurance shall be provided with a minimum limit for bodily injury and property damage of $1,000,000 each accident and $1,000,000 each occurrence with respect to any and all vehicles of Lessee, whether owned, hired, leased, borrowed, or non-owned, assigned to or used in connection with the Lease.

17.5. If and to the extent required by law, workers' compensation in form and amounts required by law.

17.6. Employer's liability insurance with limits of at least $1,000,000 per accident for bodily injury by accident, $1,000,000 per employee for bodily injury by disease, and $1,000,000 policy limit for bodily injury by disease.

17.7. Insurance to be carried by Lessee and/or Contractors. During the entire period this Lease shall be in effect, Lessee shall either carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain the following at no expense to Government:

17.7.1. The property insurance coverage required under Paragraph 17.1 above, which shall include the general property form that provides coverage in connection with any construction or work permitted under this Lease.

17.7.2. Damage to rented premises, fire and any other applicable insurance provided for in this Paragraph 17, which, if not then covered under the provisions of existing policies, shall be covered by special endorsement related to any Improvements (as defined in Paragraph 9), including all materials and equipment incorporated in, on, or about the Leased Premises (including excavations, foundations, and footings) under an ISO special cause-of-loss, completed value, builder's risk form or its equivalent.

17.7.3. Business automobile insurance coverage required under Paragraph 17.4

17.7.4. Workers' compensation for Lessee and any contractor of Lessee.

17.8. Policies; Self-Insurance; Additional Insured; Cancellation of Coverage. All policies of insurance that this Lease requires Lessee or any contractor to purchase and maintain, or cause to be purchased and maintained under this Paragraph, shall be underwritten by insurers authorized to underwrite insurance in the state where the Leased Premises are located, and that have a rating of at least B+ by the most recent edition of Best's Key Rating Guide or a rating of at least A by Standard & Poors, or such other rating as reasonably acceptable to Government. In all policies, Government shall be named as additional insured and loss payee for its interest in, but not limited to, the Leased Premises and any personal property included with the Leased Premises (under ISO forms CG 2011 and CG 2028 or their equivalents), except for the workers' compensation insurance contemplated in Paragraph 17.3 above. Government shall appear in all policies as "The United States of America", and payments for losses shall be made to "Treasurer of the United States." All commercial insurance policies shall (a) state that no cancellation, reduction in amount, or material change in coverage shall be effective until at least sixty (60) business days after receipt by Government of written notice; (b) state that the insurer shall have no right of subrogation against Government; and (c) be reasonably satisfactory to Government in all other respects, including, without limitation, the amounts of coverages and deductibles from time to time. In the case of self-insurance for requirements of this Lease, Lessee shall provide at least sixty (60) business days written notice to the Government prior to any reduction in coverage, cancellation of self-insurance, or change to the percentage of self-insurance to commercial insurance to be applied to requirements of this Lease. In no circumstances will Lessee be entitled to assign to any third-party rights of action that Lessee may have against Government. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon thirty (30) business days' written notice to Government. Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by it or contractor under this Paragraph 17 will constitute a failure to comply with the terms of this Lease, and Government shall have the right to terminate this Lease upon receipt of any cancellation notice, but only if Lessee fails to cure noncompliance to the extent allowed under Paragraph 15.

17.9. Certificate of Insurance. Lessee shall deliver, or cause to be delivered to Government upon the earlier of the execution of this Lease, PRIOR TO ENTRY on or occupancy of the Leased Premises, or the commencement of any Improvements (and thereafter not less than ten business (10) days prior to the expiration date of each policy furnished under this Paragraph 17), a certificate or certificates of insurance (or in the event Lessee self-insures, a self-insurance letter in lieu thereof) evidencing the coverages and deductibles required by this Paragraph 17. If certificate of insurance is not available prior to the expiration date of the last policy, a binder would be accepted as evidence until the new policy took effect.

17.10. Notice of Casualty. In the event that any item or part of the Leased Premises shall be damaged or destroyed, the risk of which is assumed by Lessee under Paragraph 17.1, Lessee shall promptly give notice to Government. Lessee shall, as soon as practicable after the casualty, restore damaged or destroyed Government property as nearly as possible to the condition that existed immediately prior to the loss or damage, subject to Paragraphs 9 and 13. All repair and restoration work under this Paragraph shall comply with the provisions of this Lease, including any notice and approval requirements.

17.11. Self-Insurance Requirements. Notwithstanding any other provision of this Lease, Lessee may, with the prior consent of the RECO, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if Lessee's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, Lessee shall obtain commercial coverage that is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any self-insurance. In order to obtain the consent of Government to self-insure, prior to entry Lessee shall deliver to Government a writing setting forth the limitations and impediments, if any, to which Lessee's self-insurance is subject, Lessee's source of funds to pay any claim from any risk for which insurance is required under this Lease (including its most recent audited financial statement), and any other information that Government may require to assess Lessee's request. If commercial insurance is required for any purpose, the provisions of Paragraph 17.3 shall apply; however, the total amount of commercial insurance and self-insurance shall meet the dollar limitations contained in this Paragraph 17.

17.12. Determination of Insufficient Coverage by Government. If Government at any time reasonably determines in good faith that the limits or extent of coverage or deductibles for any of the insurance required in this Lease are insufficient, it may determine the proper and reasonable limits and extent of coverage and deductibles and deliver notice of that coverage or deductibles to Lessee. Lessee shall thereafter carry insurance with the limits and extent of coverage and deductibles as determined by Government until further change.

18. LABOR PROVISIONS

18.1. Equal Opportunity. During the term of this Lease, Lessee and each sub-Lessee agree as follows with regard to all employees located at, or involved with, the Leased Premises:

18.1.1. Lessee and each sub-Lessee shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. Lessee and each sub-Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. That action shall include, but not be limited to, employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Lessee and each sub-Lessee agree to post in conspicuous places available to employees and applicants for employment notices furnished by Government containing the provisions of this nondiscrimination clause.

18.1.2. Lessee and each sub-Lessee shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of Lessee and each sub-Lessee, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

18.1.3. Lessee and each sub-Lessee shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4. Lessee and each sub-Lessee shall comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967 (the "Executive Order'), and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

18.1.5. Lessee and each sub-Lessee shall furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant to it, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of ascertaining compliance with those rules, regulations, and orders.

18.2. In the event of Lessee's or any sub-Lessee's noncompliance with this Equal Opportunityclause or with any of the applicable rules, regulations, or orders, this Lease or any sublease may be canceled, terminated, or suspended in whole or in part and Lessee or any sub-Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Order, and other sanctions may be imposed and remedies invoked, all as contained in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.3. Lessee shall include the provisions in Paragraph 18.1 in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued under section 204 of the Executive Order, so that those provisions will be binding upon each sub-Lessee. Lessee will take whatever action against any sub-Lessee that Government may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event Lessee becomes involved in, or is threatened with, litigation with a sub-Lessee as a result of the direction by Government, Lessee may request Government to join, or the Government at its discretion may elect to join, the litigation to protect the interests of Government.

18.4. Contract Work Hours and Safety Standards Act (40 U.S.C.§§ 3701-3708) (the "Act"). This Lease and each sublease, to the extent that it is a contract of a character specified in the Act and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) or the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), is subject to the following provisions and exceptions of the Act and to all other sections and exceptions of that law as they apply to employment at the Leased Premises:

18.5. Lessee and each sub-Lessee shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours on work subject to the contents provisions of the Act unless the laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for those excess hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of affording fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

18.6. In the event of any violation of the preceding subparagraph, Lessee or sublessee shall be liable to any affected employee for any amounts due, and to Government for liquidated damages. The liquidated damages shall be computed for each individual laborer or mechanic employed in violation of Paragraph 18.5 above, in the sum of $200 for each calendar day on which the employee was required or permitted to be employed in excess of the standard workweek of forty (40) hours without payment of the required overtime wages.

18.7. Acquisition Regulation. Unless specifically required by other terms contained in this Lease, neither the Federal Acquisition Regulation (FAR), nor the Defense Federal Acquisition Regulation Supplement (DFARS) apply to this outgrant lease, which is executed under the authority of 10 U.S.C. §2667.

18.8. Convict Labor. In connection with the performance of work required by this Lease or any sublease, Lessee or any sub-Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18.9. Davis-Bacon Act. All construction workers, laborers, and mechanics employed by Lessee or Lessee's contractor(s), and each of its subcontractors and sub-subcontractors, who perform work under Paragraph 9, or in-kind work under Paragraph 4, are covered by the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141-3148, and the implementing regulation at, 29 C.F.R. pt. 5, (together, the "Davis-Bacon Act"), and shall be paid wages and rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. To the extent that there is not a prevailing wage for a particular labor category and the Davis- Bacon Act permits a negotiated wage to be paid, the negotiated wage may be paid. Lessee shall cause its general contractor(s) to comply and assure compliance by its subcontractors andsub-subcontractors.

19. NOTICES

19.1. Notices shall be sufficient under this Lease if made in writing and submitted in the case of:

Lessee:
Government of Guam
Department of Land Management
ATTN: Director
Box 2950
Hagatna, Guam 96932

Government:
Department of the Navy
Naval Facilities Engineering Systems Command, Marianas
ATTN: Code RE (Real Estate Contracting Officer)
PSC 455 Box 195
FPO AP 96540

19.2 Those persons shall serve as the representatives of the Parties and the points of contact during the term of this Lease. Any notice shall be deemed to have been given if sent by (i) United States certified or registered mail, return receipt requested, postage prepaid; (ii) a nationally recognized overnight delivery service; or (iii) personal delivery. Notices sent by (i) the United States Postal Service shall be deemed delivered two (2) days after being deposited with the United States Postal Service; (ii) notices delivered by a nationally recognized overnight delivery service shall be deemed delivered one day after depositing with such carrier; and (iii) hand delivered notices shall be deemed delivered upon actual delivery to the recipient. Notice shall be addressed to the Party's address set forth above or to such other persons or addresses as the Parties may hereafter direct by written notice.

20. AUDIT This Lease and any sublease shall be subject to audit by any authorized Government agency, as coordinated by RECO. Upon twenty-four (24) hours prior notice, Lessee and each sub-Lessee shall make available to the RECO for use in those audits, all records that it maintains that are related this Lease or any sublease and copies of all reports required to be filed under this Lease.

21. INTEREST Notwithstanding any other provision of this Lease, unless paid within thirty (30) business days, all amounts that become payable by Lessee to Government under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury under the Debt Collection Act of 1982 (31 U.S.C. § 3717). Amounts shall be due upon the earliest of (a) the date fixed by this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount

22. AGREEMENT This Lease shall not be modified, except in writing, and signed by both Lessee and the RECO. No oral statements or representation made by, or for, on behalf of either Lessee or Government shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment to it, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

23. FAILURE TO INSIST ON COMPLIANCE The failure of either Party to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of such Party's right to the future performance of any of those terms, covenants, or conditions and other Party's obligations for its future performance shall continue in full force and effect.

24. DISPUTES

24.1. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7112) (the "Disputes Act").

24.2. Except as provided in the Disputes Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Disputes Act.

24.3. "Claim", as used in this clause, means a written demand or written assertion by Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that includes the relief sought by the claimant. However, a written demand or written assertion by Lessee seeking the payment of money exceeding $100,000 is not a claim under the Disputes Act until certified as required by Paragraph 24.4. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Disputes Act. The request may be converted to a claim under the Disputes Act by complying with the submission and certification requirements of this clause if it is disputed either for liability or amount or is not acted upon in a reasonable time.

24.4. A claim by Lessee shall be made in writing and submitted to the RECO (as defined in Paragraph 3 above) within six (6) years after accrual of the claim. A claim by Government against Lessee shall be subject to a written decision by the RECO.

24.5. Lessee shall deliver the certification stated in Paragraph 24.5.2.2 when submitting any claim:

24.5.1. Exceeding $100,000; or

24.5.2. Regardless of the amount claimed, when using:

24.5.2.1. Arbitration conducted pursuant to 5 U.S.C. §§ 575-580; or Any other alternative means of dispute resolution ("ADR") technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act ("ADRA").

24.5.2.2. "I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of Lessee's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which Lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of Lessee."

24.5.3. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

24.5.4. The certification may be executed by any person duly authorized to bind Lessee for the claim.

24.6. For Lessee claims of $100,000 or less, the Government must, if requested in writing by Lessee, render a decision within sixty (60) business days of the request. For Lessee-certified claims over $100,000, the Government must, within sixty (60) business days decide the claim or notify Lessee of the date by which the decision will be made.

24.7. The decision of the Government shall be final unless Lessee appeals or files a suit as outlined in the Disputes Act.

24.8. At the time a claim by Lessee is submitted to the RECO, or a claim by Government is presented to Lessee, the Parties may agree to use alternative means of dispute resolution. When using arbitration conducted under 5 U.S.C. §§ 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 24.5.2.2. and executed in accordance with Paragraph 24.5.4.

24.9. Government shall pay interest on the amount found due and unpaid by it from (1) the date the Government point of contact designated in Paragraph 19 received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in the Federal Acquisition Regulation (48 C.F.R. § 33.201), interest shall be paid from the date that the Government point of contact designated in Paragraph 19 initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as stated in the Disputes Act, which is applicable to the period during which the Government receives the claim and then at the rate applicable for each six (6) month period as fixed by the Secretary of the Treasury during the pendency of the claim.

24.10. Notwithstanding anything in this Paragraph, Lessee shall proceed diligently with the performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under this Lease, to include Paragraph 24, and comply with any decision of the Government,

25. <u>COVENANT AGAINST CONTINGENT FEES</u> Lessee warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for

the purpose of obtaining business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion to require Lessee to pay, in addition to the rent or consideration, the full amount of the commission, percentage, brokerage, or contingent fee.

26. LIENS Except for any liens, security interests or other encumbrances granted or to be granted to any lender of Lessee in connection with the financing of In-Kind Consideration Project, Lessee and each sublessee shall promptly discharge, or cause to be discharged, a valid lien, right in rem, claim, or demand of any kind, except one in favor of Government that at any time may arise or exist regarding the Leased Premises or materials or equipment furnished to it, or work done on it, or to any part of it, by Lessee's or any sublessee's use of the Leased Premises. If the lien, right, claim, or demand against the Leased Premises shall not be promptly discharged by Lessee or any sublessee, or should a petition be filed by or against Lessee or any sublessee in bankruptcy (and in the event of an involuntary petition, should the same not be dismissed within ninety (90) business days), or should Lessee or any sublessee file for liquidation or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in obtaining clear title to its property due to their acts or omissions clouding the title.

27. TAXES Both Lessee and the Government are exempt from taxes payable to the state and its political subdivisions. If and to the extent that the property owned by the Government is later made taxable by State or local Governments under an Act of Congress, the lease shall be renegotiated.

28. SUBJECT TO EXISTING AND FUTURE EASEMENTS This Lease, and each sublease, is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for the location of any type of facility over, across, in, and upon all or any part of the Leased Premises, and to the right of Government to grant additional easements over, across, in and upon the Leased Premises for the public interest. However, Government shall coordinate with Lessee to minimize any impact to Lessee's operations, and any additional easement shall be conditioned on the assumption by its grantee of liability to Lessee for damages that Lessee shall suffer for property destroyed or rendered unusable on account of the grantee's exercise of its easement rights. There is hereby reserved to the holders of outstanding easements or which may be granted later, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the easement area, and to any Federal, state, or local official engaged in the official inspection of that work, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities, subject to Paragraph 10.

29. INGRESS, EGRESS, PARKING AND SECURITY

29.1. Reasonable Access. Lessee and any sublessees, and their employees, agents, contractors, vendors, and invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, Lessee and sublessees, and their employees, agents, contractors, vendors, and invitees, agree to adhere to all base rules and regulations regarding installation security, ingress, egress, safety and sanitation that may be prescribed from time to time by the Commander/Commanding Officer. Lessee and any sublessee and their employees, vendors, and business invitees, shall coordinate parking with the appropriate office of the installation. Lessee and its invitees and contractors agree to absorb all costs, including time and expense, associated with gaining access to the installation under the DBIDs or similar program.

29.2. Installation Security. The Leased Premises is located on a secure Department of Navy installation and Lessee and any sublessee(s) are required to comply with all applicable security rules, regulations, and procedures issued by the installation Commander/Commanding Officer. All employees of Lessee or sublessee(s) that are required by the installation to do so, shall obtain appropriate clearance from the installation ("Clearance") to access the Leased Premises. Failure to obtain the required Clearance shall result in denial of access to the Leased Premises of Lessee's or sublessee'(s) employees. Lessee and any sublessee(s) agree(s) to hold harmless Government from any liability of any nature for financial or other losses incurred by Lessee or any sublessees(s) by reason of Lessee's or any sublessee'(s) employees failure to obtain Clearance for access to the Leased Premises. The prior sentence shall survive the termination of this Lease.

30. ADMINISTRATION Except as otherwise stated in this Lease, the RECO shall have complete charge of the administration of this Lease, including granting any consents and approvals hereunder, and shall exercise full supervision and general direction insofar as the interests of Government are affected, in accordance with notifications in Paragraph 19.

31. DAMAGE TO THE LEASED PREMISES Except for Lessee-owned property brought onto the Leased Premises, in the event all or any part of the Leased Premises is damaged either directly or indirectly as a result of Lessee's use or occupancy, whether during the construction, operation, maintenance, or replacement, or removal of improvements or otherwise, due to acts or omissions of Lessee, its agents, contractors, or employees, Lessee shall, upon demand, either compensate Government for the loss or damage, or rebuild, replace, or repair the item or items of the Leased Premises or facilities so lost or damaged, as Government may elect. For the avoidance of doubt, the parties hereto agree and acknowledge that the construction and operation of the Improvements in accordance in all material respects with **Attachment B** shall not result in any damages to the Leased Premises.

32. APPLICABLE RULES AND REGULATIONS

32.1. Compliance with Applicable Laws and Regulations. Lessee and any sub-Lessee shall comply with all Federal, state, and local laws, regulations, ordinances and restrictions that are applicable, or may become applicable, to Lessee's or sub-Lessee's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. Lessee and any sub-Lessee is responsible for obtaining and paying for permits required for its operations under this Lease.

32.2. Activities Subject to Installation Rules, Regulations, and Procedures. Further, all activities authorized under this Lease shall be subject to rules, regulations, and procedures regarding installation security, supervision, or otherwise, that may, from time to time, be prescribed by the installation Commander/Commanding Officer.

33. SUBCONTRACTORS AND AGENTS FOR LESSEE All Work involving Lessee facilities must be performed by skilled tradesmen who are bonded against loss due to damages resulting directly or indirectly from work performed.

34. SURRENDER Upon the expiration of this Lease or its prior termination, and subject to the election of Government under Paragraph 9, Lessee shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender possession to Government. However, in the event Government shall terminate this Lease upon less than thirty (30) days' notice, Lessee shall be allowed a reasonable period of time, as determined by the RECO, but in no event less than thirty (30) days from receipt of notice of termination, in which to remove all of personal property from, and terminate its operations on, the Leased Premises. During the period prior to surrender, all obligations assumed by Lessee under this Lease shall remain in full force and effect; provided, however, that if Government shall in its sole discretion, determine that any action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent, if any, or maximum amount to be expended between the date of termination of this Lease and the date of final surrender of the Leased Premises. Government may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination as abandoned upon an additional ninety (90) days' notice.

35. MUTUAL USE AGREEMENT Government acknowledges and consents to the execution of a Mutual Use Agreement by and between the Lessee and Sub-Lessees. In the event of any conflict between the Mutual Use Agreement and this Lease, this Lease prevails.

36. FEDERAL FUNDS This Lease does not obligate any appropriated funds.

37. FORCE MAJEURE

37.1. No Default. Either Party shall not be in default under this Lease if either Party's performance is delayed or prevented by or due to events of Force Majeure.

37.2. Definition. "Force Majeure" shall mean any delay in completing or performing any obligation under this Lease (other than a monetary obligation) which arises from causes beyond the reasonable control and without the fault or negligence of the Party claiming such delay.

37.3. Extension of Time for Performance. In the case of delay due to Force Majeure, the time within which the claiming Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the claiming Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay, Lessee shall have notified Government of the existence of such cause of delay.

38. HEADINGS The headings of paragraphs in this Lease are used solely for ease of reference. They may not be used to construe the meaning of all or any part of a paragraph.

39. ATTACHMENTS Attachments to this Lease are set forth below:

A. The Leased Premises
B. Lessee Medical Campus Projects
C. Rent Schedule
D. Joint Inspection and Inventory Report (JIIR)
E. Environmental Condition of Property Document
F. Memorandum of Agreement
G. Evidentiary Documents related to Financing

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

IN WITNESS WHEREOF, the Parties have, on the respective dates set forth below, duly executed this Lease as of the day and year first above written.

LESSOR:

WITNESS:	THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy
By: ______________________	By: ______________________ KARIANNE C. R. CAMACHO Real Estate Contracting Officer (RECO) Naval Facilities Engineering Systems Command, Marianas (NAVFACENGSYSCOM MAR)
Printed Name: ______________________	
Title: ______________________	Date: ______________________
Date: ______________________	

LESSEE:

WITNESS:

By: ______________________

Printed
Name: ______________________

Title: ______________________

Date: ______________________

GOVERNMENT OF GUAM

By: ______________________
Lourdes Leon Guerrero
Governor of Guam

Date: ______________________

WITNESS:

By: ______________________

Printed
Name: ______________________

Title: ______________________

Date: ______________________

By: ______________________

Printed
Name: ______________________

Title: ______________________

Date: ______________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: ______________________
Douglas B. Moylan
Attorney General of Guam

Date: ______________________

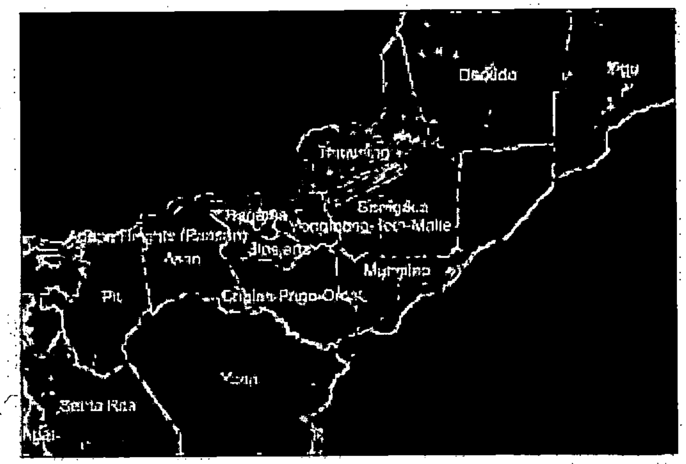
ATTACHMENT A to Lease No. N40192-23-RP-00002

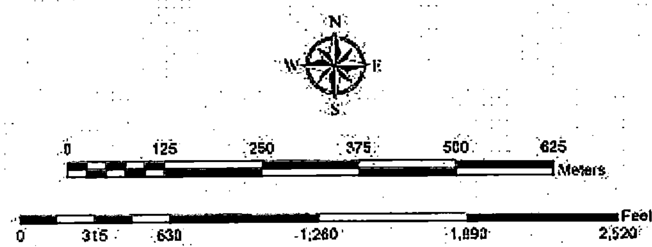
LEASED PREMISES SURVEY AND LEGAL DESCRIPTION

[To be updated and amended to this lease through bilateral modification within 60 days of lease execution]

US GOVT ______

LESSEE ______



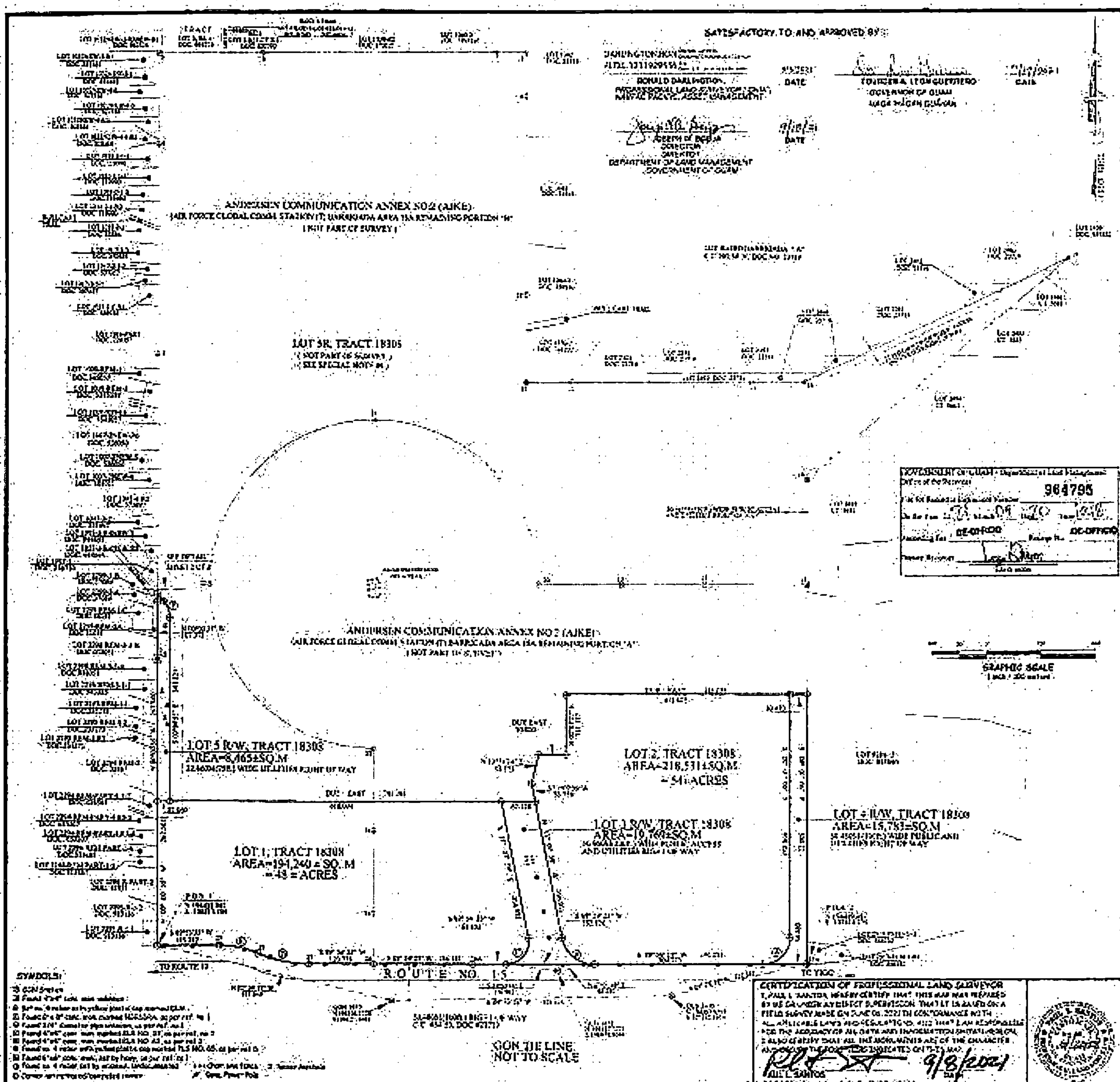


1 inch = 250 feet

MUNICIPALITIES OF BARRIGADA AND MANGILAO | TERRITORY OF GUAM

NSA ANDERSEN BARRIGADA MEDICAL COMPLEX SURVEY

RE 21-95



VICINITY MAP (NOT DRAWN TO SCALE)

NOTES:

1. SURVEY WAS BASED ON FOUND CORNERS AS SHOWN.
2. ALL DISTANCES ARE IN METERS UNLESS OTHERWISE NOTED.
3. BEARINGS AND DISTANCES WITHIN PARENTHESES ARE RECORD. ALL OTHERS ARE 1993 GRID VALUES.

SPECIAL NOTES:

REFERENCES: SEE SHEET 2 OF 2

CERTIFICATIONS AND APPROVALS

SEE PLAN.

CHECKED BY: _______ DATE

PLANNER CLU

EDUARDO A. TAITANO ____ DATE

CARTOGRAPHIC SUPV. TR.II

CERTIFICATION OF GUAM CHIEF PLANNER

9.9.21

DATE

GUAM CHIEF PLANNER

CERTIFICATION OF GUAM CHIEF SURVEYOR/CHIEF OF CADASTRE

PAUL L. SANTOS, PLS NO. 68

GUAM CHIEF SURVEYOR / CHIEF OF CADASTRE

REVISIONS	DESCRIPTION	BY	APPROVED BY	DATE

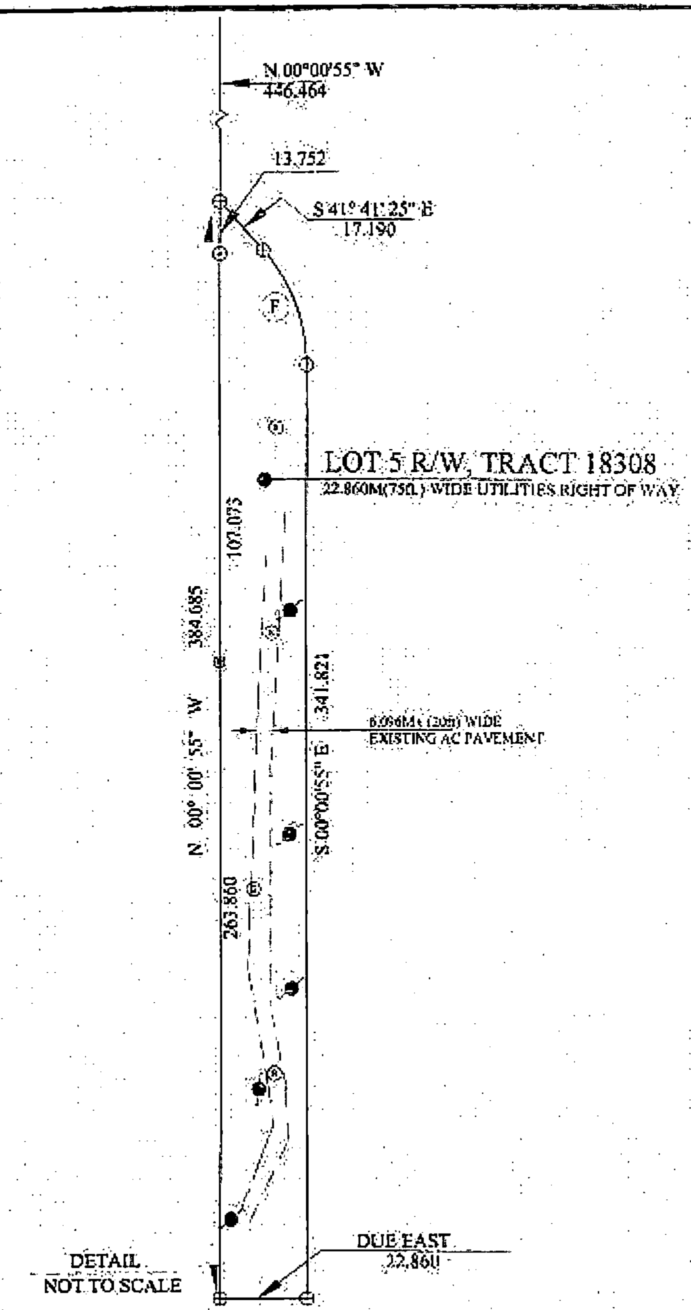
LOT PARCELING SURVEY MAP
OF
TRACT 18308

SURVEY DATA		BASIC LOT DATA
JOB NO.	DATE	
COMPUTED BY		CERTIFICATE OF TITLE NO.
DRAWN BY		
CHECKED BY		ESTATE NO.
SHEET 1 OF 2		IN THE NAME OF: THE NAVAL GOVERNMENT OF GUAM FOR AND IN BEHALF OF THE UNITED STATES OF AMERICA

GOVERNMENT OF GUAM

DEPARTMENT OF LAND MANAGEMENT

S-16236 1/2



SEE SHEET 1 OF 2

964795

CURVE DATA					
CURVE	Δ	R	L	C	CH. BEARING
A	[illegible]	46.903	78.535	78.735	[illegible]
B	70° 52' 56"	60.781	63.682	77.227	N 53° 34' 08" W
C	101° 07' 03"	41.137	72.682	63.920	S 37° 25' 53" W
D	22° 56' 23" (22° 56' 23")	243.840 (243.840)	97.608 [illegible]	96.975 (96.075)	N 75° 21' 52" W (N 75° 52' 30" W)
E	37° 55' 47" [illegible]	113.400 (113.420)	75.530 (73.430)	73.898 (72.993)	N 78° 57' 03" W (N 78° 32' 43" W)
F	41° 40' 36"	45.105	32.842	32.137	S 23° 51' 11" E

REVISIONS | DESCRIPTION | BY | APPROVED BY | DATE

LOT PARCELING SURVEY MAP
OF
TRACT 18308

MUNICIPALITY OF BARRIGADA and MANGILAO

SURVEY DATA | BASIC LOT DATA

GOVERNMENT OF GUAM
GUBETNAMENTON GUAHAN
DEPARTMENT OF LAND MANAGEMENT
DIPATTAMENTON MINANEHAN TANO'

PAUL L. SANTOS
9/13/2021

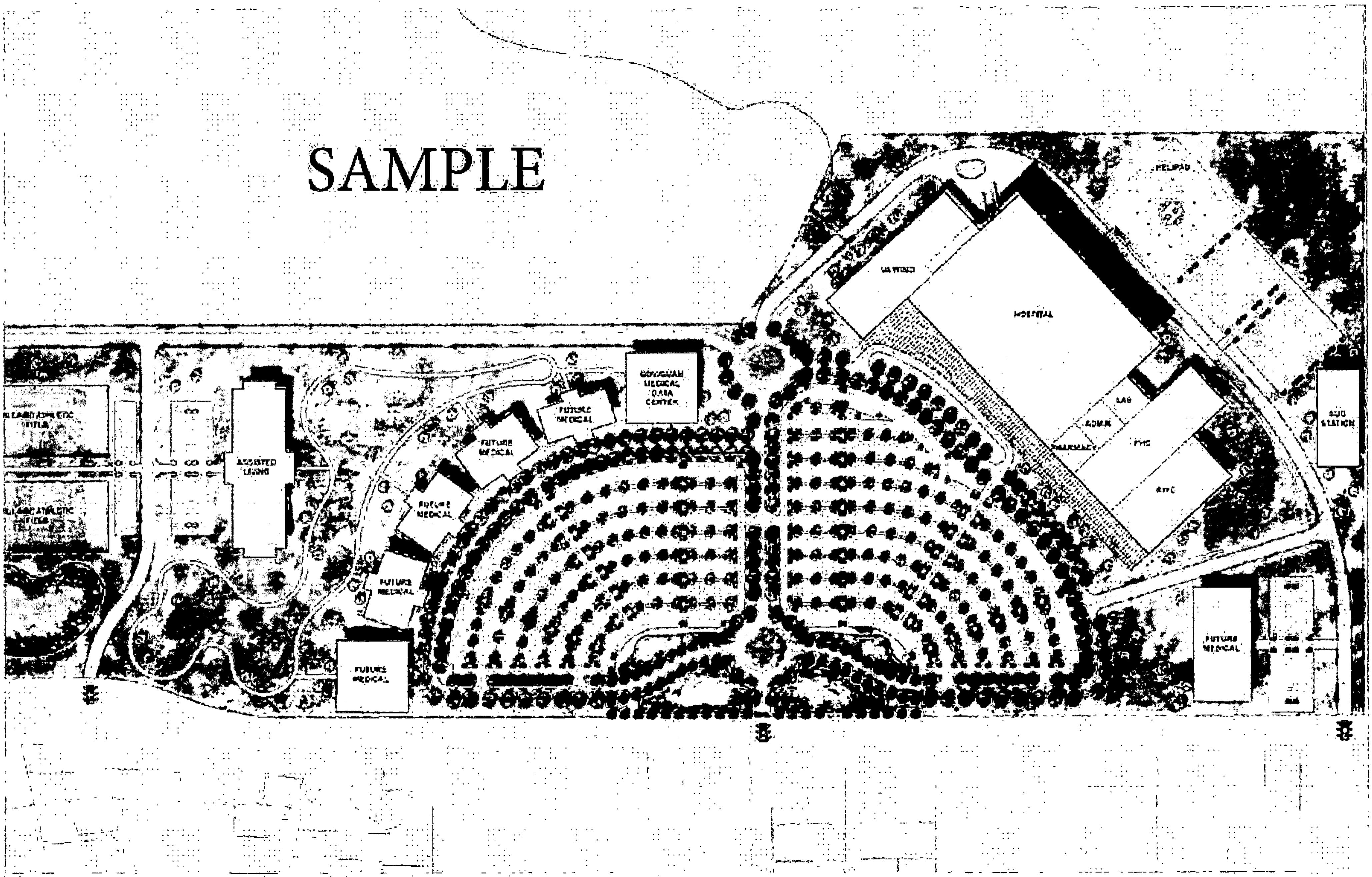
S-16236 2/2

ATTACHMENT B to Lease No. N40192-23-RP-00002

PLACEHOLDER SAMPLES

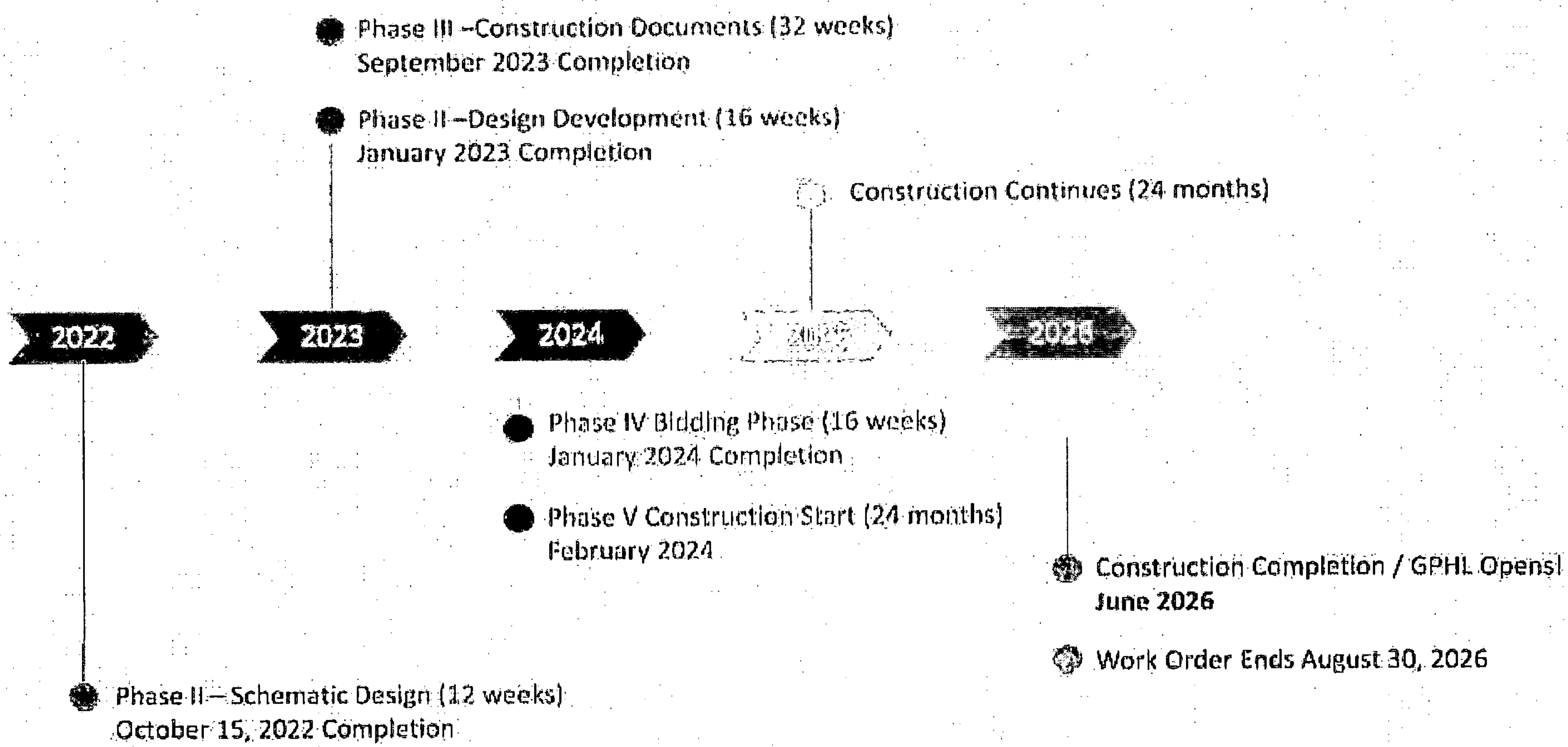
[Medical Campus Construction Phasing Plan and Medical Campus Design to be amended to this Lease by bilateral modification within accrual period)

US GOVT______ LESSEE ______


SAMPLE
HELIPAD
HOSPITAL
LAB
ADMIN
PHARMACY
ASSISTED LIVING
FUTURE MEDICAL
FUTURE MEDICAL
FUTURE MEDICAL
FUTURE MEDICAL
FUTURE MEDICAL
FUTURE MEDICAL
FUTURE MEDICAL
SUB STATION

SAMPLE

PRELIMINARY PROJECT SCHEDULE



Attachment C to Lease No. N40192-23-RP-00002

RENT SCHEDULE			
Lease Year	Lease Period	Total Annual Market Rent	NOTE
1-2	Accrual	$913,600.00	*Deferred
2-10	Construction	$913,600.00	*Deferred
10-20	Performance	$941,000.00	**IKC
20-30	Performance	$969,000.00	**IKC
30-40	Performance	$998,000.00	**IKC
40-50	Performance	$1,028,000.00	**IKC

*Rental consideration during accrual period may be deferred IAW Article 3.

**Rental consideration may be paid through IKC IAW Article 3 and Attachment F.

US GOVT ______ LESSEE ______

ATTACHMENT D to Lease No. N40192-23-RP-00002

Joint Inspection and Inventory Report

US GOVT ______ LESSEE ______

Lease Number: N40192-23-RP-00003
Address of Premises: Tract 18308 Lot 1, Lot 2, Lot 3 R/W, Lot 4 R/W, and Lot 5 R/W Municipality of Barrigada and Mangilao, Guam Naval Support Activity (NSA) Andersen, Barrigada Transmitter Site

Date of Report:	Anticipated Date of Possession:
March 6, 2023	TBD

Activity Location: Naval Support Activity (NSA) Andersen, Barrigada UIC: N41557-BA

Description of Premises:

Vacant, undeveloped land with a few temporary tin structures that previously supported the community youth sports fields

CONDITION OF LEASED PREMISES

- Subject Property is mostly undeveloped, with overgrown grass and jungle
- In the past, portions of the property were burdened by illegal dumping; Site has been cleaned up by volunteer organizations, led by the Mangilao Mayor, to remove household trash and white goods
- Lot 3 R/W Tract 18308 is currently maintained by Air Force because it is the main access to the Next Generation Radar Antenna (NEXRAD)

Attendees:

Joint Region Marianas:

- Daniel Guerrero, Joint Region Marianas
- Karianne Camacho, NavFac Marianas

Government of Guam:

- Sabino Flores, Community Defense Liaison Office
- Joseph Borja, Department of Land Management
- Paul Santos, Department of Land Management
- Edgar Taguiam, Department of Land Management
- Diego Mendiola, Guam Economic Development Agency

Item	Condition	Remarks
Above ground power poles & lines	Fair	n/a
Existing underground communication lines	Unknown	JRM will provide As-Builts to ensure no damage caused to communication lines during construction
Eagles sports field	Fair	The Eagles field currently consists of unused wooden power poles and temporary tin structures that supports recreation activities
NEXRAD gate	Good	Consists of approximately 15' wide gate supported by chain link fencing

Joseph M. Borja
Director, Department of Land Management
Government of Guam

Daniel Guerrero
Regional Community Plans & Liaison Officer
Joint Region Marianas

Karianne Camacho
Real Estate Contracting Officer
NavFac Marianas

Figure 1 - NEXRAD Gate

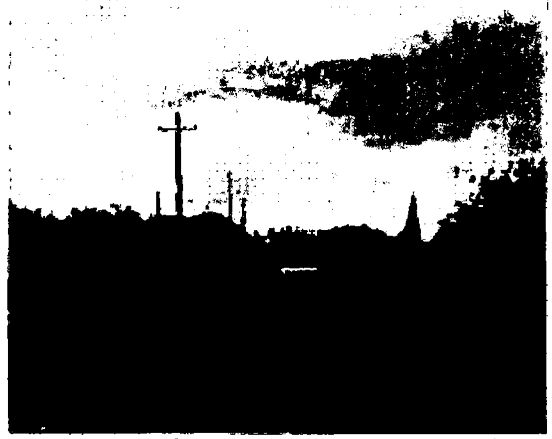


Figure 2- Lot 3R/W looking at Route 15 (48 AC portion to right, 54-AC portion to left)

Figure 3 - View of Eagles Field (portion of 48-AC side of hospital site) from Lot 3R/W

Figure 4 - Standing along Route 15, this temporary structure marks a corner of the 200' access and utilities R/W (Lot 3R/W)

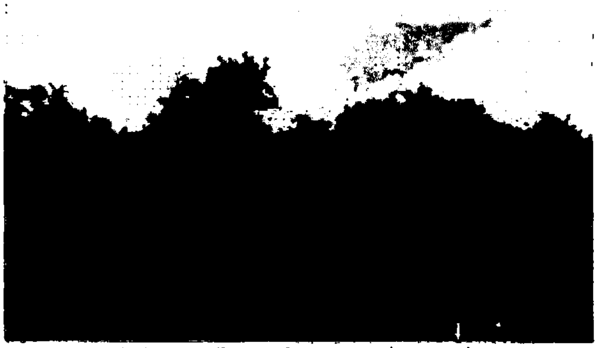


Figure 5 - Standing at SouthEast corner of Lot 2, looking at future Lab site

FINAL

ENVIRONMENTAL CONDITION OF PROPERTY

for

U.S. NAVAL SUPPORT ACTIVITY ANDERSEN (NSAA)

BARRIGADA, N41557-BA MANGILAO, GUAM

July 2022

Prepared for:

Department of the Navy
Naval Facilities Engineering Command, Marianas
PSC 455, Box 195
FPO, AP Guam 96540-2937

Prepared by:

Element Environmental, LLC
98-030 Hekaha Street, Unit 9
Aiea, HI 96701

Prepared under:

Environmental Technical Services
Contract Number N62742-17-D-1802
Delivery Order N4019221F4304, Amendment No. 72

EXECUTIVE SUMMARY

This Environmental Condition of Property (ECP) report was prepared for the Department of the Navy (DoN), Naval Facilities Engineering Command (NAVFAC) Marianas, to describe and document the environmental conditions (past and present) of real property Eagle's Field Site (48 acres) and the Hospital Site (54 acres) at the United States (U.S.) Naval Support Activity Andersen (NSAA) Barrigada Guam N41557-BA Mangilao, Guam located in the municipality of Mangilao, Guam. The site is currently unoccupied.

Based on information obtained from historical documents review, interviews, and visual site inspection, six areas of concern (AOCs), and one adjacent AOC (AAOC) were identified during this ECP for the NSAA Barrigada (Eagle's Field and Hospital Sites) property.

The six AOCs identified for the subject property are as follows:

1. The potential presence of solvents, metals, and pesticides/herbicides in the soil surrounding the former antennae and remaining antenna structures (concrete slabs), and in groundwater beneath the site.
2. The potential presence of elevated radon levels should structures be constructed on the site; the area is designated as having a "High Radon Potential."
3. The potential presence of transite, an asbestos-containing material, in underground cable conduits.
4. The potential presence of munitions and explosives of concern (MEC); the site is within an area identified as having a "moderate" probability of encountering MEC.
5. The potential presence of lead-based paint on utility structures and surrounding soils.

The one AAOC identified for the adjacent sites is as follows:

1. Multiple sites within ½-mile of the subject property were identified in the following databases: Superfund Enterprise Management System, Resources Conservation and Recovery Act (RCRA) very small quantity generator, and RCRA small quantity generator.

Table ES-1 identifies the classification for the NSAA Barrigada based on the findings of this ECP. Final Category Type Classification areas for the subject property are shown in Figure ES-1, included in Appendix A.

Table ES-1. Final Category Type Classification

Location	Final Category Type
NSAA Barrigada (Eagle's Field and Hospital Sites) – Area in vicinity of former antennae and the immediate vicinity soils.	7
NSAA Barrigada (Eagle's Field and Hospital Sites) – All other land area.	1

Notes: Category 1 = No release or disposal of hazardous substances has occurred.
Category 2 = Only the release or disposal of petroleum products or their derivatives has occurred.
[redacted] = Release, disposal, or migration of hazardous substances has occurred, but at concentrations that do not require removal or remediation actions.
Category 4 = Release, disposal, or migration of hazardous substances has occurred, and all remedial actions necessary to protect human health and the environment have been taken.
Category 5 = Release, disposal, or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required actions have not yet been taken.
Category 6 = Release, disposal, or migration of hazardous substances has occurred, but required response actions have not yet been initiated.
[redacted] = Unevaluated or requires evaluation.

Recommended Land Use Controls

The following land use control is recommended for the site:

- Any workers on the site shall be notified of the potential hazards (soil and groundwater contamination) and the potential presence of MEC at the site; appropriate precautions shall be taken should intrusive activities occur.

Subsurface Radon Mitigation equipment will be required for the Hospital as is all new construction where radon is a concern.

MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES GOVERNMENT, DEPARTMENT OF THE NAVY
AND
GOVERNMENT OF GUAM

[TO BE AMENDED TO LEASE THROUGH BILATERAL MODIFICATION]

ATTACHMENT G to Lease No. N40192-23-RP-00002

Evidentiary Documents Related to Financing

[TO BE AMENDED TO LEASE THROUGH BILATERAL MODIFICATION]

US GOVT ______ LESSEE ______

June 30, 2025

Honorable V. Anthony Ada
Vice Speaker, Chairperson, Committee on Rules
Chairperson, Committee on Land, Environment,
Housing, Agriculture, Parks, and Infrastructure
I Mina' Trentai Ocho na Liheslaturan Guåhan
Guam Congress Building
Hagatna, Guam 96910

Subject: Testimony in Support of Bill No.119-38(COR) – Protecting Public Assets and Taxpayer Interests

Håfa Adai Chairman Ada,

I am writing to express my support for Bill No.119-38(COR), which restores an important layer of legislative oversight over exceptional term contracts involving public land and facilities.

During my time in public service – both as a Senator and as Governor – I've seen the lasting consequences of decisions made without proper transparency or accountability. Long-term leases and special contracts involving public property must be held to the highest standard because they can shape Guam's future for decades. These are not just administrative decisions – they are decisions about the people's land, the people's opportunities, and often, the people's money.

Bill 119 puts back in place a mechanism that ensures large-scale agreements receive public scrutiny before they are finalized. That kind of check and balance is not obstruction – it's good governing. It ensures that the public sees exactly what they're getting in return for assets that belong to all of us.

The people of Guam deserve to know that their elected officials are watching closely when million-dollar contracts or century-long leases are proposed. Legislative oversight strengthens public confidence and helps prevent mistakes that could cost us down the road.

I commend the authors of this bill or stepping up to protect the public's interest, and I urge the Committee to move this legislation forward.

Si Yu'os Ma'åse',

Eddie Baza Calvo
Former Governor of Guam

RECEIVED
JUL 0 1 2025
T.K.
Office of the Vice Speaker
V. Anthony Ada

July 2, 2025

Honorable V. Anthony Ada
Vice Speaker
Chairperson, Committee on Land
38th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

RE: Amendment to Bill No. 119-38 on "Exceptional Term Contracts"

Hafa Adai Vice Speaker Ada:

This letter responds to the request by the Committee on Land for clarification and amendments to Bill No. 119-38, regarding restoring legislative oversight on Exceptional Term Contracts. The AG's Office recommends that Section 2 of the bill be amended as set forth in the attachment.

We believe that the revised language will clearly clarify the legislative intent both as to what is an "Exceptional Term Contract" *AND* that such contracts must be approved by the Legislature before that may go into effect and bind the Government of Guam. This change ensures that no Executive Branch agency may unilaterally bypass legislative review through prolonged or irregular contracting terms. Strong oversight protects both the People's trust and their taxpayer resources, and this amendment restores that vital check.

As always, my office stands ready to assist the Legislature in improving this legislation on behalf of our Client, the People of Guam.

Respectfully,

Douglas B. Moylan
Attorney General of Guam

Attachments (3)
CC: Hon. Telo T. Taitague, Senator & Main Author of Bill No. 119-38 (COR)

AG MOYLAN SUGGESTED AMENDMENTS

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 119-38 (COR)
As Amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure

Introduced by: Telo T. Taitague
Chris Barnett
Therese M. Terlaje
Sabina Flores Perez
Shelly V. Calvo
Frank F. Blas, Jr.

AN ACT TO *ADD* A NEW § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings & Intent. *I Liheslaturan Guåhan* finds that the protection and stewardship of public lands are among the most serious responsibilities entrusted to the Government of Guam. These lands are held in trust for the benefit of the people, and any long-term lease or encumbrance upon them must be executed with transparency, accountability, and public confidence.

I Liheslaturan Guåhan further finds that reforming leasing laws can provide much-needed flexibility for both government agencies and private businesses. Modernizing lease terms – such as allowing for extensions up to fifteen (15) years – can help attract investment, encourage development, and contribute to Guam's economy. While the Legislature strongly support these goals, the Legislature also believes that these economic opportunities must not come at the cost of public accountability.

I Liheslaturan Guåhan further finds that the recent repeal of § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated, through the enactment of Bill No.8-38(COR) into Public Law 38-1, removed a critical safeguard that previously required legislative review and approval for leases of government property exceeding the statutory maximum term. While Public Law 38-1 sets a new lease cap at fifteen (15) years, it simultaneously created a pathway for leases exceeding this term to be approved solely by the Governor or relevant board of Directors, without legislative oversight or public transparency.

I Liheslaturan Guåhan further finds that this change weakens the voice of the people in decisions about public land. Without legislative review, government agencies now have the authority to commit public lands to long-term leases – potentially for several decades – without requiring public input or the consent of the body elected to represent the people's interest. The absence of a statutory maximum term for such leases, and the lack of legislative check, increases the risk of long-term misuse or quiet privatization of public assets that should remain accountable to the people of Guam.

Therefore, it is the intent of *I Liheslaturan Guåhan* to restore the requirement for legislative review and approval of Exceptional Term Contracts to ensure that any lease agreement exceeding the statutory limit is subject to full legislative scrutiny and deliberation. Reinstating this oversight reinforces the role of the Legislature in protecting the public interests and promoting transparent governance in matters that have long-term implications for the people of Guam.

Section 2. A new § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated is hereby *added* to read:

"(d) Legislative Approval Required for Exceptional Term Contracts. Subsequent to satisfying the requirements of this § 5127, **any Exceptional Term Contract** ~~**the commercial contract, lease, permit, or license**~~ for use of public real property and related facilities shall be transmitted to *I Liheslaturan Guåhan* for approval or disapproval, in whole.

(1) *I Liheslaturan Guåhan* shall take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

(2) A public hearing shall be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60)-day review period, and said Committee shall report its findings and recommendations to *I Liheslaturan Guåhan*.

(3) The sixty (60) day period allowed for *I Liheslaturan Guåhan* to approve or disapprove the contract, lease, permit, or license shall be tolled from the time that a public hearing is noticed and until a Committee Report is completed.

(4) Legislative approval shall be by enactment into law.

For purpose of this Subsection, the term "Exceptional Term Contract" shall mean any commercial contract, lease, permit, or licensure that has a term in excess of fifteen (15) years."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. Effective Date. This Act shall be effective upon enactment.

Bill 119 -38

Bill 119-38 primary objective is to amend/ restore language to existing Bill 8-38 ensuring the legislature concurrence on long-term lease exceeding 15 years. We must have check and balance in governance.

Under the current framework established by Bill 8-38, lease extensions may be approved without requiring explicit concurrence from the legislature, potentially leading to decisions that lack comprehensive scrutiny. By mandating legislative approval for lease extensions over 15 years, Bill 119-38 aims to enhance transparency and ensure that such agreements align with the governments and publics best interest.

Bill 1119-38 recognizes the long-term implications of extended leases, which can affect community resources, financial commitments, and strategic planning for future development. By involving the legislature in the decision-making process, the bill seeks to a more democratic approach, allowing elected representatives to weigh in on leases exceeding 15 years.

Its imperative that legislative concurrence on leases over 15 years be evaluated by all

15 senators ensuring that they are justified and beneficial to the community. It also serves as a safeguard against potential mismanagement or misuse of public assets, reinforcing the principle of accountability and check and balances in government leases.

As was pointed out by Senator Duenas a defined description of what exceptional lease means must be obtain via the Attorney Generals legal opinion which the AG agreed to provide.

I submit this written testimony in support of Bill 119-38 and urge the senators of the 38th Guam legislature pass this bill.

Dave Duenas
Resident of Dededo

June 30, 2025

Honorable V. Anthony Ada
Vice Speaker, Chairperson, Committee on Rules
Chairperson, Committee on Land, Environment,
Housing, Agriculture, Parks, and Infrastructure
I Mina' Trentai Ocho na Liheslaturan Guåhan
Guam Congress Building
Hagatna, Guam 96910

Subject: Testimony in Support of Bill No.119-38(COR) – Protecting Public Assets and Taxpayer Interests

Håfa Adai Chairman Ada,

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Bill 119 puts back in place a mechanism that ensures large-scale agreements receive public scrutiny before they are finalized. That kind of check and balance is not obstruction – it's good governing. It ensures that the public sees exactly what they're getting in return for assets that belong to all of us.

The people of Guam deserve to know that their elected officials are watching closely when million-dollar contracts or century-long leases are proposed. Legislative oversight strengthens public confidence and helps prevent mistakes that could cost us down the road.

I commend the authors of this bill or stepping up to protect the public's interest, and I urge the Committee to move this legislation forward.

Si Yu'os Ma'åse',

Eddie Baza Calvo
Former Governor of Guam

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T.K.

Office of the Vice Speaker
V. Anthony Ada

OFFICE OF THE VICE SPEAKER
V. Anthony Ada

I Mina'trentai Ocho Na Liheslaturan Guåhan | 38th Guam Legislature

Chairperson - Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

COMMITTEE VOTE SHEET

Bill No. 119–38 (COR) – Telo T. Taitague, Chris Barnett, Therese M. Terlaje, Sabina Flores Perez, Shelly V. Calvo, Frank F. Blas, Jr. – "AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS."

As amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure

	SIGNATURE/ DATE OF SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
Vice Speaker V. Anthony Ada Chairperson				✓		
Senator Christopher M. Dueñas Vice Chairperson						
Speaker Frank F. Blas, Jr. Member	evote 09/02/25	✓				
Senator Sabrina Salas Matanane Member	evote 09/02/25			✓		
Senator Shelly V. Calvo Member	evote 09/02/25	✓				
Senator Vincent A.V. Borja Member	evote 09/02/25			✓		
Senator Sabina F. Perez Member	evote 09/02/25	✓				
Senator Chris Barnett Member	evote 09/02/25	✓				
Senator Tina Muña Barnes Member						
Senator Joe S. San Agustin Member	evote 09/02/25			✓		

Guam Congress Building • 163 Chalan Santo Papa, Hagåtña, Guam 96910
Tel: (671) 989-0855 • Email: vicespeakertonyada@guamlegislature.gov

REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov> Tue, Sep 2, 2025 at 2:52 PM
To: "Joe S. San Agustin" <senatorjoessanagustin@gmail.com>
Cc: "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>, Chris Duenas <senator.duenas@guamlegislature.gov>, "Speaker Frank F. Blas Jr." <speakerblas@guamlegislature.gov>, Office Senator Bri <office.senatorbri@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Office Senator Perez <office.senatorperez@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>

To do pass

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--

The Office of Senator Chris Barnett
I Mina'trentai Ocho Na Liheslaturan Guåhan
Suite 202 · Calvo- Arriola Building · 259 Martyr St. · Hagåtña, Guam 96910
(671)969-3586 · malafunkshun@guamlegislature.gov

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REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Speaker Frank Blas Jr. <speakerblas@guamlegislature.gov> Tue, Sep 2, 2025 at 3:35 PM
To: Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>
Cc: "Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>, Chris Duenas <senator.duenas@guamlegislature.gov>, Office Senator Bri <office.senatorbri@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Office Senator Perez <office.senatorperez@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>

To Do Pass

Speaker, Frank F. Blas, Jr.

I Mina'trentai Ocho na Liheslaturan Guåhan 38th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagatña

(671)969-6456
speakerblas@guamlegislature.gov

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REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Joe S. San Agustin <senatorjoessanagustin@gmail.com> Tue, Sep 2, 2025 at 2:51 PM
To: "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>
Cc: Chris Duenas <senator.duenas@guamlegislature.gov>, "Speaker Frank F. Blas Jr." <speakerblas@guamlegislature.gov>, Office Senator Bri <office.senatorbri@guamlegislature.gov>, Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Office Senator Perez <office.senatorperez@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>, Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>

To Report Out Only

The Office of Senator Joe S. San Agustin
I Mina'trentai Ocho na Liheslaturan Guåhan
38th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 989-5445 F: (671) 969-6737 E: senatorjoessanagustin@gmail.com
Website: www.senatorjoessanagustin.com

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REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Office Senator Perez <office.senatorperez@guamlegislature.gov> Tue, Sep 2, 2025 at 7:05 PM
To: Senator Sabrina Salas Matanane <office.senatorbri@guamlegislature.gov>
Cc: Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>, "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>, Chris Duenas <senator.duenas@guamlegislature.gov>, "Speaker Frank F. Blas Jr." <speakerblas@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>, Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>

To do pass.

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REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Senator Sabrina Salas Matanane <office.senatorbri@guamlegislature.gov> Tue, Sep 2, 2025 at 4:51 PM
To: Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov>
Cc: "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>, Chris Duenas <senator.duenas@guamlegislature.gov>, "Speaker Frank F. Blas Jr." <speakerblas@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Office Senator Perez <office.senatorperez@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>, Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>

To report out only.

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All the best,

Isaiah Aguon

Director of Communications & Policy

Office of Legislative Secretary
SENATOR SABRINA SALAS MATANANE
I Mina'trentai Ocho Na Liheslaturan Guåhan **| 38th Guam Legislature**
Chairperson, Committee on Health and Veterans Affairs
163 W. Chalan Santo Papa, Hagåtña, Guam 96910
office.senatorbri@guamlegislature.gov
671-989-2572

REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Office of Senator Shelly Calvo <officeofsenatorshellycalvo@guamlegislature.gov> Tue, Sep 2, 2025 at 4:33 PM
To: "Vice Speaker V. Anthony Ada" <vicespeakertonyada@guamlegislature.gov>
Cc: Chris Duenas <senator.duenas@guamlegislature.gov>, "Speaker Frank F. Blas Jr." <speakerblas@guamlegislature.gov>, Office Senator Bri <office.senatorbri@guamlegislature.gov>, Senator Vince Borja <vince.borja@guamlegislature.gov>, Office Senator Perez <office.senatorperez@guamlegislature.gov>, Senator Tina Muna Barnes <senator.munabarnes@guamlegislature.gov>, Senator Darrel Christopher Barnett <malafunkshun@guamlegislature.gov>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>

To Do Pass

Respectfully,

Office of the People • Senator Shelly V. Calvo

Majority Whip & Chairwoman

Committee on Child Welfare, Youth Affairs, Senior Citizens, Women's Affairs, Disability Services, the Arts, Culture, Historic Preservation & Hagåtña Restoration

38th Guam Legislature
163 Chalan Santo Papa, Hagåtña, Guam 96910

T +1 (671) 989-5682
E officeofsenatorshellycalvo@guamlegislature.gov

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REQUEST FOR EVOTE: Bill No. 119-38 (COR)

Senator Vince Borja <vince.borja@guamlegislature.gov> Tue, Sep 2, 2025 at 2:50 PM
Reply-To: Senator Vince Borja <vince.borja@guamlegislature.gov>
To: vicespeakertonyada@guamlegislature.gov
Cc: senator.duenas@guamlegislature.gov, speakerblas@guamlegislature.gov, office.senatorbri@guamlegislature.gov, officeofsenatorshellycalvo@guamlegislature.gov, office.senatorperez@guamlegislature.gov, senator.munabarnes@guamlegislature.gov, malafunkshun@guamlegislature.gov, senatorjoessanagustin@gmail.com

To report out only.

Respectfully,

Office of Senator Vincent A.V. Borja
Committee on Education, Libraries, & Public Broadcasting
38th Guam Legislature
Suite 502, DNA Bldg. 238 Archbishop Flores St.
Hagåtña, Guam 96910
T +1 (671) 969-8423
E contact@senatorvinceborja.com

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COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 119-38 (COR) was introduced on **April 14, 2025,** by Telo T. Taitague and was subsequently referred to the Committee on Rules to the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure on **April 29, 2025.**

The Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure convened a public hearing on **July 1, 2025**, at 2:00 pm at the Public Hearing Room of the Guam Congress Building.

Public Notice Requirements
Public Hearing notices were disseminated via **e-mail** to all senators and all main media broadcasting outlets on **June 24, 2025** (5-Day Notice), and again on **June 29, 2025** (48-Hour Notice).

Senators Present
Vice Speaker V. Anthony Ada, Chairperson – Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure
Senator Telo T. Taitague – Primary Sponsor
Senator Christopher M. Dueñas – Committee Vice Chairperson
Speaker Frank F. Blas, Jr. – Committee Member
Senator Joe S. San Agustin – Committee Member
Senator Sabina F. Perez – Committee Member
Senator Chris Barnett – Committee Member
Senator Therese M. Terlaje
Senator Eulogio S. Gumataotao

Written Testimony Provided by
Joseph Ada – Former Governor of Guam
Douglas B. Moylan – Attorney General of Guam
Eddie B. Calvo – Forner Governor of Guam

II. SUMMARY OF TESTIMONY & DISCUSSION

The **public hearing** was Called-to-Order at **2:00 PM.**

Vice Speaker V. Anthony Ada, Chairperson – Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure: Håfa adai and good afternoon. The public hearing conducted by the Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure is called to order, and the time is 2:00 p.m. Today's date is Tuesday, July 1st, 2025. Notice of the hearing was disseminated to all local media outlets on June 24th, 2025, with the second notice provided on June 30,

2025. Notice of the hearing was also made known on the Guam Legislature's website and the government of Guam public notice portal. This afternoon, uh, I will be arranging the rearranging the agenda as we will let bill 119-38 COR go prior to bill number 7-38 COR. I did uh confer with my committee members and they had no objection to that. So, we can get the uh attorney general's office and also the public auditor to uh testify and then they'll be able to conduct uh finish conducting their business. Bill 119-38 COR as introduced by Senator Taitague, Chris Barnett, Terresa Terlaje, Sabina Perez, Shelley Calvo, and Speaker Frank Blas Jr. - An Act to Reenact § 5127(D) of Sub article C, Article 2, Chapter 5, Title 5, Guam Code Annotated, as Repealed in Public Law 38-1, Relative to Restoring Legislative Oversight on Exceptional Term Contracts. And before we begin, I would like to go over the general rules of conduct. Individuals testifying shall first be recognized by the chair before speaking and shall state their name for recordkeeping purposes. Questions and testimony shall be confined to the subject or nature, substance or nature of the agenda. Personal interference as to the character or motive of any senator or individual testifying is not permitted. The chairperson of the committee may order the removal from the hearing any member of I Liheslaturan Guåhan who fails to observe proper decorum pursuant to the 38 Guam legislature standing rules. A violating a violation of this general rule of conduct will result in the removal from this public hearing room. We will now proceed to hearing testimony on Bill No. 119-38 (COR) and I invite the author Senator Taitague to give her opening statements.

Senator Telo T. Taitague, Primary Sponsor: Thank you, si Yu'os ma'åse' Mr. Chair, um thank you so much for allowing um my bill to go first because I know that uh, we have very busy individuals that are testifying today that need to get back. So greatly appreciate it. Um and I thank you to my colleagues who are here um this this afternoon for this bill. So, let's start with the truth. Public law 38-1 was a major step backwards for transparency and accountability. That law, which originated from Bill 8-38 CUR, stripped the Guam legislature of its long-standing authority to review and approve exceptional term contracts, deals involving public land and facilities that can span decades and impact generations. With the passage of this law, potentially connected individuals or entities can now quietly lock in sweetheart deals, 30, 50, or even a 100year contracts without a single public hearing and without the people's elected representatives ever see what that contract is. That's not efficiency. That's a step up for abuse. That's how we end up with outrageous deals leasing government lands. That's how we end up with more situations like YTK and the ITC lease. Bill 119-38 is an is our answer. It restores public law 30. It re restores what public law 381 recklessly removed. The legislature's oversight authority. This bill ensures that any exceptional term contract involving public property must be brought to this body for public review, legislative scrutiny and approval. And that is anything over 15 years. Bill 119 does not remove or lower the amount of years that we all agreed to in this body for 15 years. This is not about politics. It's about protecting the people of Guam from corruption, from backroom deals, and from being cheated out of the value of their land, the people's land. Even Governor Leon Guerrero in her decision to allow bill 67-38 to lapse into law acknowledged this very principle. She wrote, "The Organic Act vests in the legislature in the legislature the authority to define the procurement standards for airport concessions by statute authority. it has abandoned which abandoned in bill 67. She continues to say, "While the legislature may be willing to abdicate its organic act responsibility, I am not willing to abdicate mine." And I couldn't agree with her more on that. Transparency is not a burden. Oversight is not obstruction. These are tools we use to prevent insider deals and to make sure that every decision involving public assets is made in the open where the people can see it and speak on it. When oversight disappears, so does public trust. We're here to put a stop to that, to close the loophole, to shut the door on sweetheart deals, to bring back legislative oversight, and to restore the people's voice. Because public land is not p is not a private giveaway. It belongs to the people of Guam. And we and elected officials have a duty to defend it openly, honestly, and with full accountability. Mr. Chair, I have a couple of testimonies that I would It's not very long, sir. If I may, I'd like to read into the record. And this testimony is from Governor Joseph Ada who submit written testimony to this uh committee and it starts out:

[**Joseph Ada, former Governor of Guam** written testimony presented orally by **Senator Taitague**]

Then we received another testimony. Um, Mr. Chair, this testimony is from former Governor Eddie Baza Calvo. Mr. to chairman Ada.

[**Eddie Baza Calvo, former Governor of Guam** written testimony presented orally by **Senator Taitague**]

Thank you, Mr. uh chair for the opportunity to read these into testimony. Thank you.

Chairman Ada: You're welcome, Senator Taitague. Uh here to testify this afternoon we have the honorable Douglas Moylan, Attorney General of Guam, Attorney Lee Miller and uh former speaker and current Public Auditor uh BJ Cruz. Uh we'll go ahead and uh start with you. Would you like to begin or?

Benjamin J. Cruz, Public Auditor of Guam: I'll be fast. Thank you, sir. I'd like to just join the two statements by the two go former governors in support of this legislation. I don't think there's I need to say anything more. I think they said it plenty and very eloquently. So, if possible, I'll join them, but I would just want it on the record that I think it's imperative that the legislature reinstate its oversight over these um leases. Maybe you don't need to have the 90 days, but at least have it come back to you for 30 or 45 days. That's for you guys to compromise on. But you it's imperative that you have some oversight and some and approve it because it may not just be backroom deals. It may just be bad negotiating and you guys need to stop that. And so, um, I joined the two governors in, uh, in supporting the early passage of this piece of legislation. It's, it's imperative that you guys reinstate your oversight over the over the properties and have your um have the hearings and the and approval from this body. Thank you.

Chairman Ada: Thank you, public auditor, for your testimony this afternoon. Uh, Attorney General Doug Moylan.

Douglas Moylan, Attorney General of Guam [Written testimony presented orally.]

Chairman Ada: Mr. AG, if we can just stick to the to the core of the bill 119-38.

AG Moylan: Mr. Vice Speaker, this has been submitted. This is an open forum. This is pertaining to the bill because it's a check and balance upon the governor. With all due respect, if I may continue.

Chairman Ada: Continue but speak to the sir.

AG Moylan: [Continuation of AG Moylan's written testimony presented orally]

Chairman Ada: Thank you for your testimony, Attorney Doug. Attorney Miller, would you

Lee Miller – Office of the Attorney General: Nothing further to add to that.

Chairman Ada: Uh thank you, Attorney Miller. I'll go ahead and uh you know, it was my uh oversight the uh I didn't recognize my colleagues, the vice chair of my committee, uh Senator Chris Duenas, Senator Joseph Augustin, Senator Perez, and Senator Chris Barnett. Thank you all for being here and to the author of Bill 119-38. I'll go ahead and open up the panel for any questions that my colleagues may have, and I'll start off with the author of the legislation.

Chairman Ada recognized **Senator Taitague** who requested to go last. **Chairman Ada** then recognized **Senator Christopher M. Dueñas, Vice Chairman of the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure.**

Senator Dueñas referred to former Senator Tom Ada testifying in favor of the bill that would repeal exceptional term contract review of the legislature and that the reasoning behind his support is because when the bill with great intent to limit leases to five years when first introduced, it actually froze out basically any offers for lease of government property going forward. He asked General Moylan and Public Auditor Cruz if they read the original legislation as the fifteen years being exempt from the exceptional contract and requiring approval once the fifteen years has expired.

Chief Cruz said as he reads, it would mean that any leases of 15 years or less could be approved with a determination of need without the legislature's concurrence and that this legislation leaves the 15 years in place but adds the provision that the legislature has to concur in it. He said that even with 15 years, he doesn't think that's any prohibition against the 50 or 75- or 100-year leases. He said that if an agency can negotiate something with more than 15 years and bring it to the legislature, he thinks the body is authorized to approve an exceptional term longer. There's never been a prohibition against the legislature approving a lease of more than 15 years. He said the agency has to have enough foresight and planning to know that they're going to do that and write their determination of need and if they feel the only way they're going to be able to lease the property is for a term longer than 15 years is to write it up and present it to the legislature. He said the problem in the past is they bring to the legislature and say that nobody wants to least it because they want 50 years and had they presented a 50-year contract to the legislature earlier, maybe they might have been able to work on it and improve it.
Senator Dueñas asked if he concurs that 15 years is the deadline.

Chief Cruz said he doesn't think that the 15-year limit prohibits an agency from presenting it to the legislature or that they are prohibited from approving that.

Senator Dueñas asked that with the current law prohibiting anything past five years, would a notwithstanding provision be needed for agencies that have a plan that takes it beyond that and if that's the situation, if they were to get approval beyond five years, would they still have to come back and have the lease agreement ratified by the legislature.

Chief Cruz said that in the same way that they would do that with the bonds, the authorities come to ask for permission to float the $350 million bond, it's within the limit and they go out and float it and when it comes back, the legislature concurs.

Senator Dueñas said he thinks they would have to because of the law but that's not the way it was before prior to the five-year going in. He said he was a little surprised because after the became law, the issue was they have agencies and instrumentalities coming before the legislature saying that their options to lease property beyond five years for the benefit of the community and they couldn't do it. They said that no one would ever consider even approaching the government anymore because the five-year prohibition was not enough time to recoup their capital of millions of dollars.

Chief Cruz reiterated that he does not think there is a prohibition against the legislature entertaining a lease longer than that if the agency can prove it's in the best interest of the territory.

Senator Dueñas asked Chief Cruz if it was his opinion that five years was just an arbitrary number but not a barrier, so they don't even need legislation anymore.

Chief Cruz said they do not need legislation to concur in it.

Senator Dueñas is saying they don't need the five-year limit then and if an agency or instrumentality were to go before the legislature and say they need this term of lease to enter into going for procurement of use of property and the legislature could approve that notwithstanding, have them demonstrated their need and whatever lease executed, they would come back for that lease to be ratified.

Chief Cruz said there are always notwithstanding. They just have to plan ahead and come and say this is the kind of thing that needs a longer term. There was no need to raise it to 15 because they've always had the authority to say 'notwithstanding'. He said that the legislature should always approve. The number of years is something the legislature needs to look at and see whether or not it's in the best interest of the people and whether or not there's an escalator clause.

Senator Duenas asked General Moylan if he concurs that they're really going to be voting, in his opinion, whether or not we have legislative approval for leases or not.

General Moylan said that Public Law 38-1 increased the ceiling for the executive branch to enter into leases up to fifteen years. The public law as written will make anything above it void. If the executive branch tries to negotiate anything over 15 years and submits it to the legislature, it is by definition of the statute void. Any contract, lease, permit, or license made, renewed, or extended in violation of this law shall become void upon the 15th anniversary of the making of such contract, lease, permit, or license. He said that even under the scenario given, if they try to exceed the 15, just getting the legislature to approve it under this statutory scheme isn't going to be enough and that they're going to have to pass a bill to get past this because it puts a cap on it. He said that they need to put notwithstanding under the provision of law and actually pass a bill with that to get past this statute.

Senator Dueñas wanted to be clear within the confines of the law, when they say it's a 15-year law, it cannot be 50 or 100. It has to be 15.

General Moylan said that usually if that happens, the administration will send over a special bill for it and it would say that notwithstanding this statute, we have a 50-year package.

Senator Dueñas said so it would be concurrence. He said his final issue is if the legislature gets back to legislative approval because that's what General Moylan stating because that's what he wants to make sure that all 15 senators are sitting down and understanding what they're voting on whether they're voting on this repeal for 381 or whether they're just saying legislature get back to approving contracts.

Chief Cruz said he doesn't believe there's an attempt to repeal 381 and that it's to amend the 381 by reinstating a provision that was in there before. He said he thinks that it's imperative that they have legislative approval. He wants the power to always remain with the power of the people in this body to concur. So, they increased it to 15 and so up to 15 and you didn't have to come to you. I'm saying I really don't care how many years it is always it has to come back to this body to approve. He is saying not give up that authority.

Senator Dueñas said this is the representation that has come before the legislature, that they may as well just repeal both of the public laws and go for legislative approval.

Chief Cruz said yes, with proper planning.

Senator Dueñas asked General Moylan if he concurs that we don't even need to change the law just leave the law the way it is.

General Moylan said this is going to question of when contracts come before the legislature. Before it was five years and then it jumped to 15 years and there's less oversight. He said that the way this seems to be structured, it doesn't address that issue but says it's void if they negotiate over 15 years.

Senator Dueñas repeated that he's asking if General Moylan is concurring with former Speaker Cruz that regardless, every contract comes back to the legislature for legislative approval.

General Moylan said he sees it as a check in the system and the last bill that became law removed the legislature from all contracts below 15 years.

Senator Dueñas asked if he's saying that now then up to 15 years is okay without coming to the legislature.

General Moylan said the way it's worded it seems to say anything under 15 years doesn't have to go to the legislature.

Senator Dueñas said that what this bill proposed on 119 is to repeal it.

General Moylan said it didn't even touch that section. It's going to repeal the exceptional contracts which have to come back for approval. It restores what the old law was so put it at five years. If they have a lease over five years, it has to go before the legislature.

Senator Dueñas said he's saying that if it restores it back to five years, we don't even need the bill or public law anymore.

General Moylan said right now, it doesn't go to the legislature.

Senator Dueñas asked if he was okay with it being up to 15 years without legislative approval.

General Moylan said he was asked to testify as to the impact of restoring back to the old law. It gives the legislature the ability to control the money better than it is right now because the executive can create a least up to 15 years without the legislature's involvement and they can bind the people of Guam and taxpayers for up to 15 years without the legislature's say.

Senator Dueñas said the way this is worded and the way the OPA has interpreted this is to go back to the five-year limitation means anything over has to be approved by the legislature. He asked if that's the position of the AG's office and OPA's position that we're just saying that all contracts above five years comes back to the legislature for approval.

Senator Taitague said that they are talking about the same thing that happened on the session floor when legal was trying to explain that anything after 15 years will not have to go to the legislature. In the section of the law, it clearly states that they struck out a section of the law that's in the bill that she's trying to bring back on exceptional contracts.

Senator Dueñas said he doesn't think he can spin anything to a former chief justice. He asked Chief Cruz if he's testifying on a bill that he said he supports but the author just said that.

Chief Cruz said it does repeal 38-1 of a fifteen-year exceptional contract because they have to. He's saying he joined the former governors in their statement that the legislature should never abdicate authority to control and look at these contracts and these agencies just need to plan ahead.

Senator Dueñas confirmed that he didn't spin anything and that it does repeal 38-1.
Chief Cruz said that it doesn't use the word "repeal" but including the provision for legislative approval does and that's why he joined the previous governors in their statement and that he thinks that abdicating the additional ten years is dangerous.

Senator Dueñas asked if "restore the power of the legislature" is what they are saying and asked if the AG agrees.

General Moylan said he's looking at the current law and this doesn't affect the subsection. He said he will have to take a look at it more carefully because it does have a ten-year reference and a 15 and under current law. But this section being amended doesn't affect that section.

Senator Dueñas asked General Moylan for his opinion on exceptional term contracts. He said he thinks we need to be clear as even when they debated it on the floor, there was disagreement among the body. He said we need an opinion from the AG explain why an exceptional term contract is exceptional outside of a standard contract. He said he would like the AG to amend his testimony to give a legal opinion from the AG to define exceptional contract and why that's different from any other contract.

General Moylan said with the markup and as it's looked into further, there should be a clear definition of what exceptional term contracts include and that the decision on whether or not a safeguard should be put in is within the legislature's discretion.

Senator Dueñas said having delineated this on the floor and going back and forth with our legal counsel, he has two takeaways. He said his explanation is clear as the AG. He said what we need to clear up is the attempt to repeal exceptional term contract portion and if he can provide a definition so that they can be clear on what the differences in terms of contracts and leases are whether it be exceptional.

General Moylan said that they can provide an interpretation of what they are reading.

Senator Dueñas said he wanted to get the general's and OPA's opinion on if the legislation binds any legislature in the future. If we got to the 15 years and wanted to eliminate exceptional term contracts.
General Moylan said every legislature can do whatever it's going to do in the future.

Chairman Ada thanked **Senator Dueñas** and recognized **Senator Joe S. San Agustin**.

Senator San Agustin thanked the OPA and AG for being here. He said he believes that the intent of the bill is to restore the legislature's oversight after 15 years.

General Moylan said they will take a look at it and that the bill didn't touch subsection A, only D would be repealed. He said it doesn't give a clear number of years.

Chief Cruz said this is the reason he didn't appear or comment at the last debate and the authority remains with the legislature to make that decision and as a citizen, he is asking to please protect the power of the legislature.

Chairman Ada thanked **Senator San Agustin** and recognized **Senator Therese M. Terlaje**.
Senator Terlaje agreed that the legislature should not abdicate its power. 5127 B says that the purchasing agency may solicit for a term longer than otherwise allowed by the section which is now 15 yeas. Prior to that they send notice, have to make a written determination of need justifying a quantifiable sum and specifying the full term. The law has been adopted over her objection that we have 15-year contracts and if you want to go over 15 yeas you publish that information and you can go over 15 yeas. There was an amendment proffered to restore the language, but debate was cut off with a motion for previous question where almost all senators except for the sponsors of this bill supported the motion to cut off debate. She said she completely supports putting back legislative approval for exceptional term contracts in excess of 15 years.

Chairman Ada thanked **Senator Terlaje**, acknowledged **Senator Eulogio Shawn Gumataotao** and recognized Senator Chris Barnett.

Senator Barnett agreed with the retiring speaker and said he wishes they were there a lot more because his colleagues like to throw their names out there, especially the public auditor. He said he believes PL 38-1 gives agencies the ability to enter into leases up to 15 years and beyond because they struck out the legislature's authority completely. He said he agrees with the public auditor that all it takes is planning because the way these deals come about is people go off island to conferences and meet people and come back and realize they can't get what these people want through our procurement and go before the legislature to introduce special interest legislation. He said that it was his amendment that was proffered when a motion was made to kill the debate. He said he's not a party person and wants to clear the record that the people of Guam thought they elected more checks and balances but he's not sure that's the case. He said absolutely this bill reinstates the legislature's authority to review exceptional term contracts which according to his read is any contract over 15 years. They agreed to 15 years as a compromised down from 30 years. He said his colleagues are supposed to be the checks and balance of the executive branch and wanted to give 30-year leases with no scrutiny by the senators maybe because they're planning to run for governor and don't want scrutiny from the body. He asked his colleagues to remember testimony because they get to the session hall and forget.

Chairman Ada thanked **Senator Barnett** and recognized **Senator Sabina F. Perez**.

Senator Perez said she's happy to be cosponsor of the bill and it's about putting an important safeguard into having to deal with land leases. Land is one of our most valuable assets and it's critical to hold on to their responsibilities in looking after the public trust.

Chairman Ada thanked **Senator Perez** and acknowledged **Speaker Frank F. Blas, Jr.** before recognizing **Senator Gumataotao**.

Senator Gumataotao brought up public law 32-40 enacted on June 11, 2013, without the governor's signature. The law was to establish a standard for leasing Government of Guam real property that would have improved transparency and clarity in leasing property and ensure that exceptional contracts be scrutinized by the legislature. PL 32-40 provided that if the legislature takes no action in 60 days, the contract lease permit shall be deemed approved by the legislature. A public hearing shall be conducted by the legislature during the 60-day period. Among amendments authorized by public law 34-99 was the removal of a provision deeming a commercial contract, lease, permit or license to be approved if the legislature takes not action within 60 days. This bill does not apply to certain government properties, including CLTC properties and properties administer by the University of Guam. Bill 67-38 became public law in June 2025. Among its provisions includes authorization for the Guam International Airport Authority to lease any portion of its real property and facilities for a period of up to 50 years subject to FAA requirements and GIAA policies and procedures. When Bill 67 lapse into law without her signature, GIAA will be permitted to proceed with drafting policies and procedures for concession requirements or procurement and facilities contracts. Recognizing Bill 119 seeks to reestablish legislative guardrails for exceptional leases beyond 15 years. He asked what information is available regarding the executive order referenced in her in her message on public law 38-21 and asked what impact couple an executive order have in guiding the legislature's review of exceptional if this bill is approved and if the executive order ever happened.

General Moylan said he hasn't tracked that and his not aware of the history of what happened after the public law was passed and doesn't know if an executive order has been issued.

Senator Gumataotao said public law from the 34th Guam legislature included a provision allowing for exceptional term contracts to be deemed approved by the legislature if no action is taken within 60 days. He asked what policy ideas should senators consider as an amendment to Bill 119-38 as a way to require the legislature to accept or reject an exceptional term contract without unnecessary delays.

General Moylan said having served as a legislative council for six years, he doesn't think the delay being purported is a problem. He said it's within the legislative discretion what safeguards it wishes to make, and he'd lower it.

Chairman Ada thanked **Senator Gumataotao** and recognized **Speaker Blas.**

Speaker Blas said he agrees with the concern and need to be able to ensure that there are guardrails. His understanding is anything after 15 years is exceptional. He said they shouldn't abscond their responsibility to do this. For the sake of clarity and being succinct, he'd appreciate the interpretation that General Moylan's office will provide.

Vice Chairman Ada thanked **Speaker Blas** and recognized **Senator Taitague** for her closing remarks. **Senator Taitague** thanked the former governors for their testimony. She said there are senators who want the best for the people of Guam and want to do the checks and balances to make sure we get the most bang for the buck for the people of Guam. She thanked her cosponsors for understanding the importance of this measure of keeping the checks and balances. She said that the GCA says commercial leasing of public real property and related facilities and that's how the chapter begins, and it goes down to all the requirements needed. Any contract least permitted license may be extended in violation of the law shall become void. It goes further down and talks about all the dos and don'ts of a lease in property and says that legislative approval required for exceptional term contracts subject to the requirements of the section. She said she's here to place the exceptional term back in there. She said as a business owner, she knows how difficult it is to recover your initial investment, and you can't recover it in five years. She said it's just restoring the checks and balances in the government.

Chairman Ada said we had a public hearing as soon as possible on this bill and checks and balances goes both ways. He said he always tries to do the best he can to conduct public hearings on all bills in his committee and as long as we get the passage of going into the committee reports and markups and go to the COR meeting and get eight votes on the session floor, so be it.

[See testimony proceedings on Bill No. 7-38 (COR)]

Chairman Ada adjourned the public hearing at 5:27 pm

The public hearing was adjourned at **2:20 PM**.

III. FINDINGS & RECOMMENDATIONS

The Committee finds that all the testimony, both oral and written, for the public hearing on this bill were in support of the bill. Among the testimony the Committee received where from both elected government of Guam watchdog agencies' leaders; the Attorney General and the Public Auditor.

The section of law that is being added by this bill was repealed by PL 38-01 (Bill No. 8-37(COR)) earlier in the present term. If the bill is enacted, it would restore the law that requires legislative approval for *exceptional term leases*. The currently law indirectly defines *exceptional term leases* as those that exceed a term of 15 years.

The committee included an amendment to the bill, recommended by the Office of the Attorney General, that would expressly define exceptional term leases in the section of law proposed as 15 years. The section of law that was repealed by PL 38-01 did not expressly define the term as 15 years but rather as whatever the maximum lease allowed by law is. Under current law and in the event that this bill becomes law, there is no maximum lease term. The limitation is on the maximum lease that an agency of the government of Guam can be a party to without legislative approval. Although no government agencies testified on this bill, during the hearing on Bill No. 8-38(COR), many agencies expressed frustration with the length of time it takes for the Legislature to hear and report out bills to the full Legislature for a vote.

The Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure hereby reports out **Bill No. 119-38 (COR) As amended by the Committee on Land, Environment, Housing, Agriculture, Parks and Infrastructure –** Introduced by Telo T. Taitague – "AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS." with the recommendation to **REPORT OUT ONLY.**

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 119-38 (COR)

Introduced by:

Telo T. Taitague
Chris Barnett
Therese M. Terlaje
Sabina Flores Perez
Shelly V. Calvo
Frank F. Blas, Jr.

AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings & intent. ***I Liheslaturan Guåhan*** finds that the protection and stewardship of public lands are among the most serious responsibilities entrusted to the Government of Guam. These lands are held in trust for the benefit of the people, and any long-term lease or encumbrance upon them must be executed with transparency, accountability, and public confidence.

I Liheslaturan Guåhan further finds that reforming leasing laws can provide much-needed flexibility for both government agencies and private businesses. Modernizing lease terms – such as allowing for extensions up to fifteen (15) years – can help attract investment, encourage development, and contribute to Guam's economy. While the Legislature strongly support these goals, the Legislature also believes that these economic opportunities must not come at the cost of public accountability.

I Liheslaturan Guåhan further finds that the recent repeal of § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated, through the enactment of Bill No.8-38(COR) into Public Law 38-1, removed a critical safeguard that previously required legislative review and approval for leases of government property exceeding the statutory maximum term. While Public Law 38-1 sets a new lease cap at fifteen (15) years, it simultaneously created a pathway for leases exceeding this term to be approved solely by the Governor or relevant board of Directors, without legislative oversight or public transparency.

I Liheslaturan Guåhan further finds that this change weakens the voice of the people in decisions about public land. Without legislative review, government agencies now have the authority to commit public lands to long-term leases – potentially for several decades – without requiring public input or the consent of the body elected to represent the people's interest. The absence of a statutory maximum term for such leases, and the lack of legislative check, increases the risk of long-term misuse or quiet privatization of public assets that should remain accountable to the people of Guam.

Therefore, it is the intent of *I Liheslaturan Guåhan* to restore the requirement for legislative review and approval of Exceptional Term Contracts to ensure that any lease agreement exceeding the statutory limit is subject to full legislative scrutiny and deliberation. Reinstating this oversight reinforces the role of the Legislature in protecting the public interests and promoting transparent governance in matters that have long-term implications for the people of Guam.

Section 2. § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated is hereby *reenacted* to read.

"(d) Legislative Approval Required for Exceptional Term Contracts. Subsequent to satisfying the requirements of this § 5127, the commercial contract, lease, permit, or license for use of public real property and related facilities shall be transmitted to *I Liheslaturan Guåhan* for approval or disapproval, in whole.

(1) *I Liheslaturan Guåhan* shall take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

(2) A public hearing shall be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60)-day review period, and said Committee shall report its findings and recommendations to *I Liheslaturan Guåhan*.

(3) The sixty (60) day period allowed for *I Liheslaturan Guåhan* to approve or disapprove the contract, lease, permit, or license shall be tolled from the time that a public hearing is noticed and until a Committee Report is completed.

(4) Legislative approval shall be by enactment into law."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. Effective Date. This Act shall be effective upon enactment.

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 119-38 (COR)
As amended by the Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

Introduced by:

Telo T. Taitague
Chris Barnett
Therese M. Terlaje
Sabina Flores Perez
Shelly V. Calvo
Frank F. Blas, Jr.

AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings & intent. ***I Liheslaturan Guåhan*** finds that the protection and stewardship of public lands are among the most serious responsibilities entrusted to the Government of Guam. These lands are held in trust for the benefit of the people, and any long-term lease or encumbrance upon them must be executed with transparency, accountability, and public confidence.

I Liheslaturan Guåhan further finds that reforming leasing laws can provide much-needed flexibility for both government agencies and private businesses. Modernizing lease terms – such as allowing for extensions up to fifteen (15) years –

can help attract investment, encourage development, and contribute to Guam's economy. While the Legislature strongly support these goals, the Legislature also believes that these economic opportunities must not come at the cost of public accountability.

I Liheslaturan Guåhan further finds that the recent repeal of § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated, through the enactment of Bill No.8-38(COR) into Public Law 38-1, removed a critical safeguard that previously required legislative review and approval for leases of government property exceeding the statutory maximum term. While Public Law 38-1 sets a new lease cap at fifteen (15) years, it simultaneously created a pathway for leases exceeding this term to be approved solely by the Governor or relevant board of Directors, without legislative oversight or public transparency.

I Liheslaturan Guåhan further finds that this change weakens the voice of the people in decisions about public land. Without legislative review, government agencies now have the authority to commit public lands to long-term leases – potentially for several decades – without requiring public input or the consent of the body elected to represent the people's interest. The absence of a statutory maximum term for such leases, and the lack of legislative check, increases the risk of long-term misuse or quiet privatization of public assets that should remain accountable to the people of Guam.

Therefore, it is the intent of *I Liheslaturan Guåhan* to restore the requirement for legislative review and approval of Exceptional Term Contracts to ensure that any lease agreement exceeding the statutory limit is subject to full legislative scrutiny and deliberation. Reinstating this oversight reinforces the role of the Legislature in protecting the public interests and promoting transparent governance in matters that have long-term implications for the people of Guam.

Section 2. § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam

Code Annotated is hereby *reenacted* to read.

"(d) Legislative Approval Required for Exceptional Term Contracts; Subsequent to satisfying the requirements of this § 5127, any Exceptional Term Contract for use of public real property and related facilities shall be transmitted to *I Liheslaturan Guåhan* for approval or disapproval, in whole.

(1) *I Liheslaturan Guåhan* shall take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

(2) A public hearing shall be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60)-day review period, and said Committee shall report its findings and recommendations to *I Liheslaturan Guåhan*.

(3) The sixty (60) day period allowed for *I Liheslaturan Guåhan* to approve or disapprove the contract, lease, permit, or license shall be tolled from the time that a public hearing is noticed and until a Committee Report is completed.

(4) Legislative approval shall be by enactment into law.

For the purpose of this Subsection, the term "Exceptional Term Contract" means any commercial contract, lease, permit, or license that has a term in excess of fifteen (15) years."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. Effective Date. This Act shall be effective upon enactment.

COMMITTEE MARKUP

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 119-38 (COR)
As amended by the Committee on Land, Environment, Housing, Agriculture, Parks, and Infrastructure

Introduced by: Telo T. Taitague
Chris Barnett
Therese M. Terlaje
Sabina Flores Perez
Shelly V. Calvo
Frank F. Blas, Jr.

AN ACT TO REENACT § 5127(d) OF SUBARTICLE C, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, AS REPEALED IN PUBLIC LAW 38-1, RELATIVE TO RESTORING LEGISLATIVE OVERSIGHT ON EXCEPTIONAL TERM CONTRACTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings & intent. ***I Liheslaturan Guåhan*** finds that the protection and stewardship of public lands are among the most serious responsibilities entrusted to the Government of Guam. These lands are held in trust for the benefit of the people, and any long-term lease or encumbrance upon them must be executed with transparency, accountability, and public confidence.

I Liheslaturan Guåhan further finds that reforming leasing laws can provide much-needed flexibility for both government agencies and private businesses. Modernizing lease terms – such as allowing for extensions up to fifteen (15) years –

can help attract investment, encourage development, and contribute to Guam's economy. While the Legislature strongly support these goals, the Legislature also believes that these economic opportunities must not come at the cost of public accountability.

I Liheslaturan Guåhan further finds that the recent repeal of § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated, through the enactment of Bill No.8-38(COR) into Public Law 38-1, removed a critical safeguard that previously required legislative review and approval for leases of government property exceeding the statutory maximum term. While Public Law 38-1 sets a new lease cap at fifteen (15) years, it simultaneously created a pathway for leases exceeding this term to be approved solely by the Governor or relevant board of Directors, without legislative oversight or public transparency.

I Liheslaturan Guåhan further finds that this change weakens the voice of the people in decisions about public land. Without legislative review, government agencies now have the authority to commit public lands to long-term leases – potentially for several decades – without requiring public input or the consent of the body elected to represent the people's interest. The absence of a statutory maximum term for such leases, and the lack of legislative check, increases the risk of long-term misuse or quiet privatization of public assets that should remain accountable to the people of Guam.

Therefore, it is the intent of *I Liheslaturan Guåhan* to restore the requirement for legislative review and approval of Exceptional Term Contracts to ensure that any lease agreement exceeding the statutory limit is subject to full legislative scrutiny and deliberation. Reinstating this oversight reinforces the role of the Legislature in protecting the public interests and promoting transparent governance in matters that have long-term implications for the people of Guam.

Section 2. § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam

Code Annotated is hereby *reenacted* to read.

"(d) Legislative Approval Required for Exceptional Term Contracts~~.—~~; Subsequent to satisfying the requirements of this § 5127, any Exceptional Term Contract ~~the commercial contract, lease, permit, or license~~ for use of public real property and related facilities shall be transmitted to *I Liheslaturan Guåhan* for approval or disapproval, in whole.

(1) *I Liheslaturan Guåhan* shall take action to approve or disapprove the commercial contract, lease, permit, or license within sixty (60) calendar days from the date of filing with the Speaker.

(2) A public hearing shall be conducted by the Chairperson of the Legislative Committee having oversight jurisdiction during the sixty (60)-day review period, and said Committee shall report its findings and recommendations to *I Liheslaturan Guåhan*.

(3) The sixty (60) day period allowed for *I Liheslaturan Guåhan* to approve or disapprove the contract, lease, permit, or license shall be tolled from the time that a public hearing is noticed and until a Committee Report is completed.

(4) Legislative approval shall be by enactment into law.

For the purpose of this Subsection, the term "Exceptional Term Contract" means any commercial contract, lease, permit, or license that has a term in excess of fifteen (15) years."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or inorganic, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. Effective Date. This Act shall be effective upon enactment.

COMMITTEE ON RULES

Vice Speaker V. Anthony Ada, Chairperson

I Mina'trentai Ocho Na Liheslaturan Guåhan

38th Guam Legislature

April 30, 2025

To: **Rennae V. C. Meno**
Clerk of the Legislature

From: **Vice Speaker V. Anthony Ada**
Chairperson, Committee on Rules

Subject: **Fiscal Note Waiver for Bill No. 119-38 (COR)**

Håfa Adai!

Find the attached, Fiscal Note Waiver for the following bill:

Bill No. 119-38 (COR).

I also request that the same be sent to the respective Chairperson of the Standing Committee, to which this bill has been referred. Kindly copy the same to Management Information Services (MIS) for posting on our website.

BUREAU OF BUDGET & MANAGEMENT RESEARCH
OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LIEUTENANT GOVERNOR

LESTER L. CARLSON, JR.
DIRECTOR

APR 30 2025

Vice Speaker V. Anthony Ada
Chairperson, Committee on Rules
I Mina'trentai Ocho Na Liheslaturan Guåhan
38th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtnå, Guam 96910

Hafa Adai, Vice Speaker Ada:

The Bureau requests that Bill No. 119-38 (COR) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

Bill No. 119-38 (COR) is an act to reenact § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to restoring legislative oversight on exceptional term contracts. It is the intent of *I Liheslatura* to restore the requirement for legislative review and approval of Exceptional Term Contracts to ensure that any lease agreement exceeding the statutory limit is subject to full legislative scrutiny and deliberation. According to comments received from the Executive Director of the 38th *I Liheslaturan Guahan*, there is no additional cost to implement this Bill as it only seeks to reenact § 5127(d) of Subarticle C, Article 2, Chapter 5, Title 5, Guam Code Annotated, as repealed in Public Law 38-1.

The Bureau has determined that the Bill is administrative in nature and poses no additional fiscal impact upon any funds of the Government of Guam.

Senseramente,

LESTER L. CARLSON, JR.