

DETERMINATION OF NEED FOR EXCEPTIONAL TERM CONTRACT

Tiyan Cliff Line

1.0 OVERVIEW

This Determination of Need for Exceptional Term Contract is issued pursuant to Section 5127 Sub-Article C, Article 2, Chapter 5, Title 5 Guam Code Annotated wherein the Guam Ancestral Lands Commission hereby makes this “written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract, and specifying the full term, inclusive of extensions, options and renewals, for such contract, and provide a copy of such Determination of Need to the Speaker of *I Liheslaturan Guahan*.”

The Guam Ancestral Lands Commission (hereinafter referred to as “GALC”) via its property manager, the Guam Economic Development Authority (hereinafter referred to as “GEDA”), will issue a Request for Proposals (“RFP”) for an Exceptional Term Contract for the lease of property along the Tiyan Cliff Line, Municipality of Barrigada. The property consists of approximately 13,712 square meters in two contiguous parcels (the “Property”). The Property is located across from the Consolidated Transportation Services, Inc. (CTSI) freight forwarding facility, overlooking Tamuning and the Philippine Sea. The Property has potential for commercial or industrial use as it is located within proximity of the A.B. Won Pat Guam International Airport. If required, the offeror will be allowed to pledge the leasehold interest in the Property to secure financing.

GALC intends to award a lease of the Property for a term of up to fifty (50) years with options to renew for up to an additional forty-nine (49) years to allow a prospective developer(s) to invest in the Property and profit from its investments. Such terms will be subject to negotiations based primarily upon the amount of time required by the lessee to satisfy financing requirements and recover and profit from investments. If a term of more than five years including extensions is proposed, the lease will require approval as an Exception Term Contract by the Guam Legislature pursuant to Public Law 34-99 (Section 5127, Chapter 5, Title 5 Guam Code Annotated). In submitting a proposal in response to this RFP, offerors signify that they acknowledge and understand this requirement.

Smaller scale developments (investments in the tens to hundreds of thousands of dollars), have traditionally been pursued by smaller organizations and are met with a distinctly unique set of challenges. Smaller local corporations, partnerships and sole proprietorships that are common in Guam are very much dependent on local financing institutions to engage in almost any form of commerce. A commercial loan is dependent on various terms such as, the principal loan amount, interest, and primarily, the borrower’s ability to repay. While there may be some organizations or businesses that might be able to afford a loan from hundreds of thousands to the millions of dollars, and still able to repay it back in less than five years, there are also a large number of small local businesses that are unable to do so. For example, even a \$250K business loan at only 4% interest over a mere 5-year term would require monthly payments of almost \$5K a month for the loan itself, not to mention other standard overhead, operational, or costs of goods sold. To further understand the difficulties small businesses experience in obtaining financing, the table below provides actual loans awarded under the State Small Business Credit Initiative Program managed

by GEDA. From 2015 to 2024, loan amounts averaged \$230K at almost 8% interest with an average amortization of almost 7 years. On average, businesses would pay over \$3,000 per month. Since most GALC properties are undeveloped, a local business would have significant difficulty with making payments on a construction loan, GALC rent and operational costs under a five-year lease.

Actual Loans Under SSBCI Program

Date of Loan	Total Loan Amount	Term (years)	Interest Rate (%)	Monthly Payment
09/03/15	\$180,000	5	6.25	\$3,510.26
09/03/15	\$20,000	3	8.75	\$149.00
12/04/15	\$680,000	7	6.75	\$10,205.71
11/03/15	\$700,000	15	7.75	\$6,611.07
10/20/15	\$60,000	7	6.75	\$990.77
10/20/15	\$10,000	3	8.75	\$75.00
11/01/16	\$70,000	6	4.75	\$1,119.16
07/17/17	\$388,000	15	6.875	\$2,711.45
07/06/17	\$1,145,000	15	7.375	\$10,533.12
12/13/17	\$350,000	5	5.25	\$3,500.00
12/13/17	\$450,000	7	7.125	\$6,819.35
01/05/18	\$325,000	7	5.625	\$4,689.57
08/13/18	\$50,000	5	5.625	\$958.09
09/20/18	\$150,000	5	6.25	\$2,917.51
09/20/18	\$300,000	5	8.75	\$4,500.00
12/06/18	\$250,000	5	6.5	\$4,891.54
01/03/19	\$100,000	3	9.5	\$3,000.00
05/17/19	\$960,000	25	7.375	\$7,016.40
02/14/20	\$20,000	3	6.75	\$500.00
02/14/20	\$80,000	10	6.875	\$924.00
04/16/20	\$700,000	15	6.875	\$6,196.00
06/26/20	\$50,000	7	8.75	\$798.16
07/07/20	\$200,000	5	5.25	\$2,000.00
09/03/20	\$172,252	7	6.875	\$2,589.51
09/11/20	\$300,000	7	5.375	\$4,292.35
09/11/20	\$200,000	3	8.75	\$2,000.00
05/06/21	\$40,000	7	8.75	\$638.57
05/18/21	\$100,000	2	6	\$500.00
05/18/21	\$150,000	1	5.5	\$1,500.00
05/24/21	\$50,000	7	8.75	\$798.12
08/04/21	\$50,000	7	1.25	\$714.31

08/30/21	\$150,000	7	8.75	\$2,394.36
08/30/21	\$50,000	3	8.75	\$750.00
09/23/21	\$60,000	7	8.75	\$1,238.28
10/27/21	\$250,000	5	6.5	\$1,354.17
11/03/21	\$170,000	7	8.75	\$2,713.68
11/05/21	\$140,000	7	8.75	\$2,234.76
11/05/21	\$40,000	3	8.75	\$600.00
11/29/21	\$75,000	7	8.75	\$1,197.24
11/29/21	\$25,000	3	8.75	\$375.00
12/06/21	\$25,000	1	7.5	\$145.00
01/25/22	\$125,000	7	8.75	\$1,875.00
02/21/22	\$50,000	7	8.75	\$751.96
03/22/22	\$90,000	7	8.75	\$1,611.25
04/25/22	\$150,000	2	7.25	\$906.25
05/24/22	\$85,000	7	3	\$512.36
12/21/22	\$50,000	7	8.75	\$798.00
01/06/23	\$150,000	3	8.75	\$2,250.00
02/21/23	\$425,000	7	7.5	\$6,520.00
02/27/23	\$1,500,000	10	9.125	\$20,413.92
03/09/23	\$15,000	5	9.125	\$306.00
03/16/23	\$100,000	7	9.125	\$1,615.20
03/17/23	\$620,000	7	6.75	\$6,061.24
04/25/23	\$300,000	7	8.75	\$4,788.72
05/12/23	\$50,000	3	8.75	\$750.00
05/12/23	\$187,350	7	9.625	\$3,074.04
06/29/23	\$150,000	7	9.625	\$2,461.20
06/29/23	\$100,000	3	8.75	\$1,500.00
08/09/23	\$320,160	7	10.5	5,398.00
08/24/23	\$150,000	6	8.5	\$2,741.20
11/06/23	\$225,000	7	9.25	\$3,648.60
11/14/23	\$700,000	6.5	8.5	\$11,711.62
01/04/24	\$153,398	7.5	9.25	\$2,487.48
01/04/24	\$99,330	7.5	9.25	\$1,610.76
01/16/24	\$100,000	7	8.5	\$1,670.30
01/16/24	\$150,000	7	8.5	\$2,505.44
01/16/24	\$50,000	1	8.5	\$431.00
TOTAL	\$15,380,490	433.5	517.625	\$193,653.05
AVERAGE	\$229,559.55	6.470	7.726	\$2,890.34

Source: State Small Business Credit Initiative, GEDA

Limiting a lease term to 5 years would only add an additional hardship, or even exclusion, for most small local businesses to participate, employ local workers, or have any hope of success.

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

The amount of investment by the selected offeror will essentially be dictated by the proposed use of the property. Such use might involve the demolition of the 3 houses located on the two lots. The conditions of the houses and the possible presence of certain environmental contaminants left over from the Navy's use of the property such as asbestos in the floor tiles and lead based paint, may require a significant investment to allow reuse of the property as intended by the selected offeror. Coupled with today's higher construction and operating costs including rent payments, a five-year lease term would be insufficient to justify a significant investment.

A description of the property and the potential major components of a Request for Proposals follows, to provide preliminary but more detailed information on this development opportunity.

1.1 PROPERTY USE CONSIDERATIONS

1.1.1 Property Location. The Property is located off Route 20 and Lower East Sunset Boulevard and consists of two contiguous lots, Lot 5175-1REM consisting of 11,169 sm and Lot 5182-1REM consisting of 2,543 sm (see attached map). Two houses consisting of approximately 1,800 sf each are located on Lot 5175-1REM while a third house of approximately the same size straddles both lots.

1.1.2 Previous Land Use. The Property was formerly utilized by the U.S. Navy for enlisted family housing. Prior to transfer to the government of Guam and GALC, the property was cleaned by the Navy to industrial as opposed to residential use standards. However, the houses may contain non-friable asbestos in the floor tiles and lead-based paint. GALC utilized the houses for its office from fiscal year 2011 to 2012 and for storage from FY2011 to the present.

1.1.3 Current Zoning. The property is zoned Agriculture (A). If a change to this zoning designation is needed to implement the developer's plans, an explanation of the need for change must be included in the proposal submitted in response to this RFP. GEDA/GALC is committed to support designation of the appropriate zone for the property to accommodate the development plan, to the extent allowable by law. The Property is located in Census Tract 66010951800 which is a Qualified Opportunity Zone (QOZ) pursuant to Section 13823 of U. S. Public Law 115-97 which provides tax incentives for investments in QOZs.

1.1.4 Current Condition of Property. A public utility easement containing major powerlines is located to the rear of both lots along the cliff line. Lower East Sunset Blvd also cuts

through the property but the roadway is not located within a public easement. The property is overgrown with vegetation and the condition of the existing houses may be poor. The property is accessible through Route 20 and in the future, via the Laderan Tiyan Parkway once constructed.

1.1.5 Adjacent Properties. Depending on the Offeror's intended use and considering the Property is located in the vicinity of an international airport, Offerors may be required to consult with affected nearby property owner(s) and secure appropriate approval(s).

1.2 GALC and GEDA COMMITMENTS

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

1.3 OFFER RESPONSIBILITIES

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

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

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

1.3.3 Infrastructure. After execution of the lease, plan, implement and fund all infrastructure improvements needed for development plans.

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

1.3.5. Environmental Remediation (If Needed). Accept responsibility for performance and costs of any environmental remediation required to develop the Property as proposed.

Prospective lessees shall prepare a Phase I Environmental Site Assessment after the issuance of a lease agreement.

1.3.6. Insurance. After execution of the lease, obtain all required property, liability and workmen's compensation insurance, and indemnify GALC and GEDA from any liability arising from the development and use of the Property.

1.3.7 Survey/Retracement. After execution of the lease, prepare a property boundary survey/retracement map of the Property and obtain all required approvals. Survey monuments must be maintained and visible at all times for inspection by GALC/GEDA.

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

1.4 OFFEROR REQUIREMENTS

A primary consideration of the GALC and the Government of Guam is the benefits to be derived through the lease and development of this valuable asset. Traditional methods of generating revenue are addressed in subsections 4.4.1 and 4.4.2 below. However, GALC, GEDA and the Government of Guam recognize that significant public benefits can also be derived through public/private partnerships and other mechanisms that, considered as a whole, exceed the benefits derived from a traditional real property lease transaction. Should other non-traditional methods be proposed by the offeror, these methods will be given serious consideration, but offerors must still identify the benefits that would have been derived from a strict real estate lease transaction for comparative purposes. Offerors are required to address the following requirements in their proposals:

1.4.1. Rent. Rent shall be no less than ten percent (10%) of the appraised fair market value. The last appraisal for a portion of the Property was prepared in 2013 and reflected a value of \$36/sm inclusive of improvements. Prospective developers are required to identify the amount of ground rent to be paid annually/monthly over the term of the lease, taking into account GALC's objective of generating the highest amount of revenue. Rent shall escalate periodically and updated based upon appraisal of fair market value, at intervals to be negotiated but in no event shall rent be lower than the rent charged during the previous five (5) year period.

1.4.2. Participation Rent. Participation rent, which is a mutually agreed upon percentage of the revenues generated from the use of the property to be paid to GALC, will also be negotiated. Offerors must agree with this requirement, except as provided in Section 1.4.3 below.

1.4.3. Alternative Payment Mechanisms. Alternatives to property rent, participation rent, subtenant and other rents such as installation of utility infrastructure at GALC properties; survey and subdivision of GALC properties for residential development; clearing of access to GALC properties and other alternatives to rent may be proposed by offerors in their proposals, however, any proposal suggesting such alternatives must demonstrate how GALC's objective of generating the highest amount of revenue is achieved by comparing the suggested alternative to

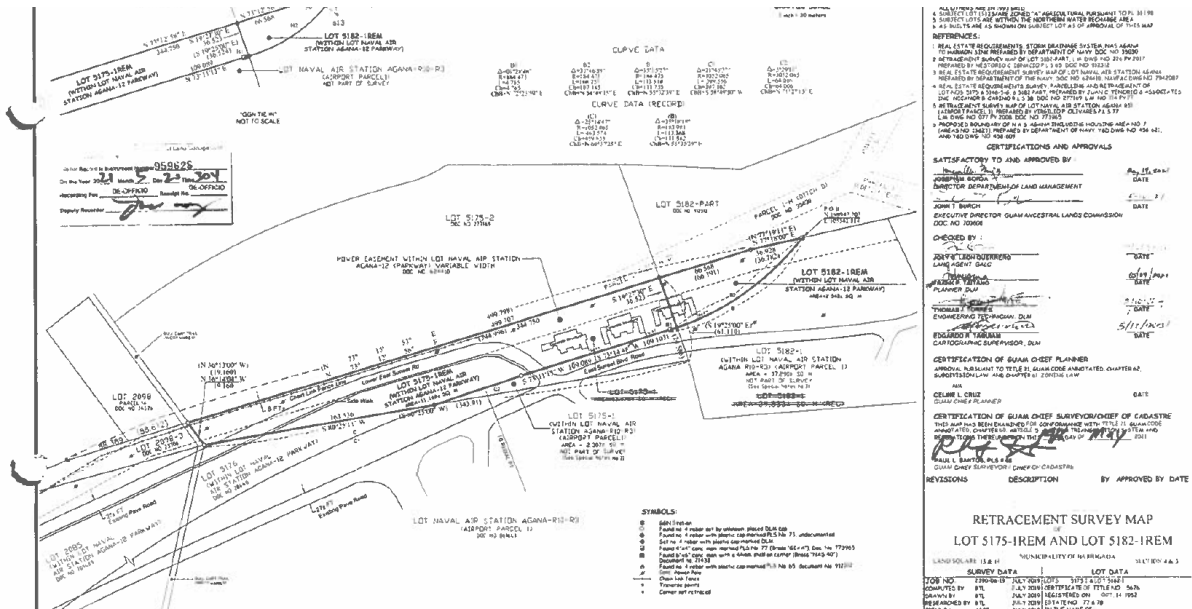
the property rent, participation rent, subtenant and other payments described above. Alternative payment schedules including rent deferrals may also be proposed but in no event will the total amount of rent be reduced. Interest may also be charged on any deferred rents.

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

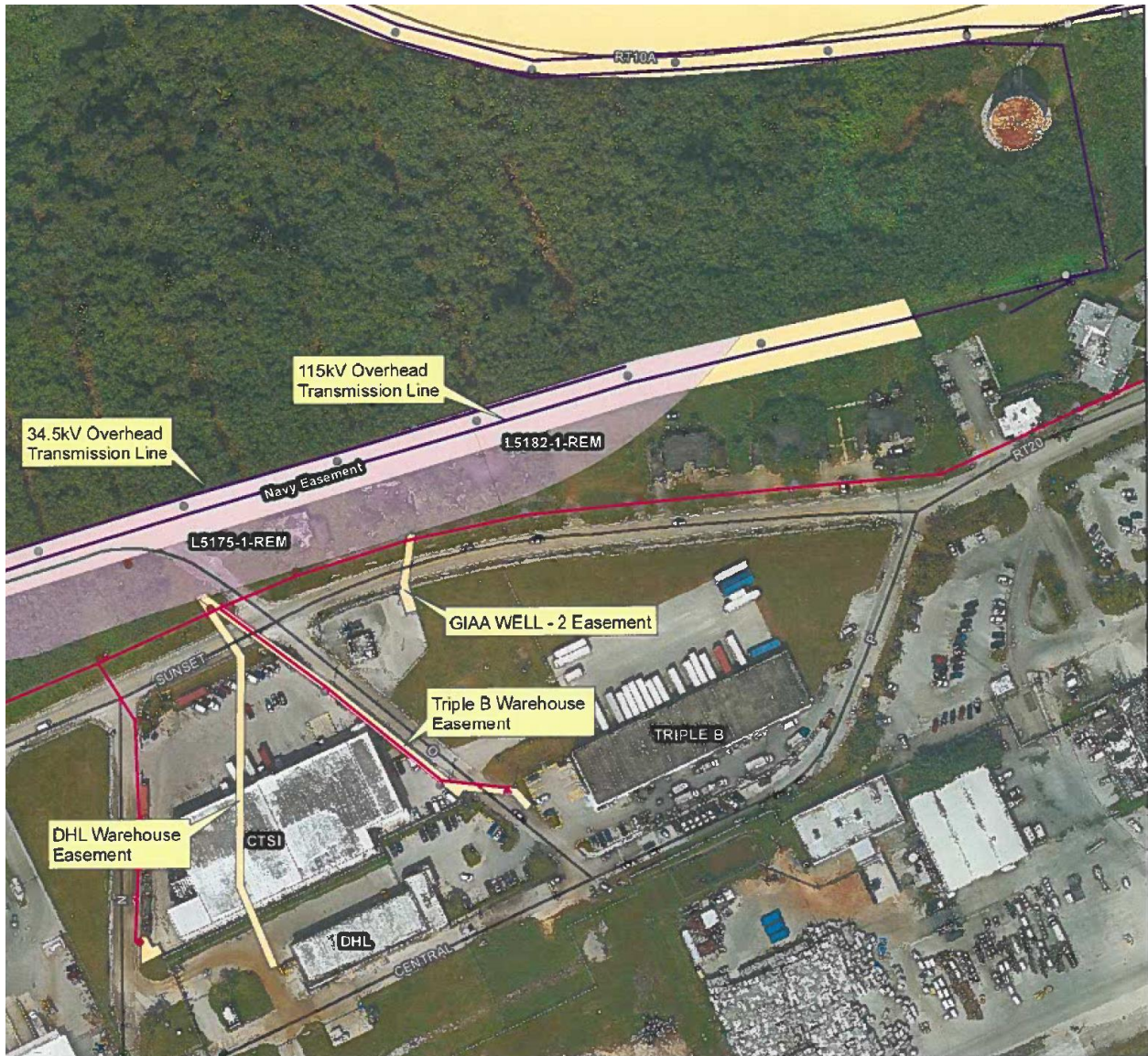
1.4.5. Sub-lessee Use of Property. Offerors must specify in their proposals whether or not subletting (or any form of third-party use) is intended for any or all portions of the property being leased. Should subletting be intended, offerors shall identify the percentage of sub-lessee rents to be paid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

1.4.6. Other Requirements. To ensure acceptability of the intended lease agreement by the public and the government of Guam, compliance with 21 GCA Section 75122 is required however, additional requirements may be imposed and/or negotiated that are not specifically identified in this RFP, at the discretion of the Government of Guam. In addition, Public Law 34-99 requires Legislative approval of all leases whose term exceeds five (5) years. Additional requirement(s) may be imposed by the Guam Legislature. By submitting a proposal in response to this RFP, prospective offerors understand and agree that additional requirements may be negotiated by the Executive and/or Legislative Branches of the Government of Guam.

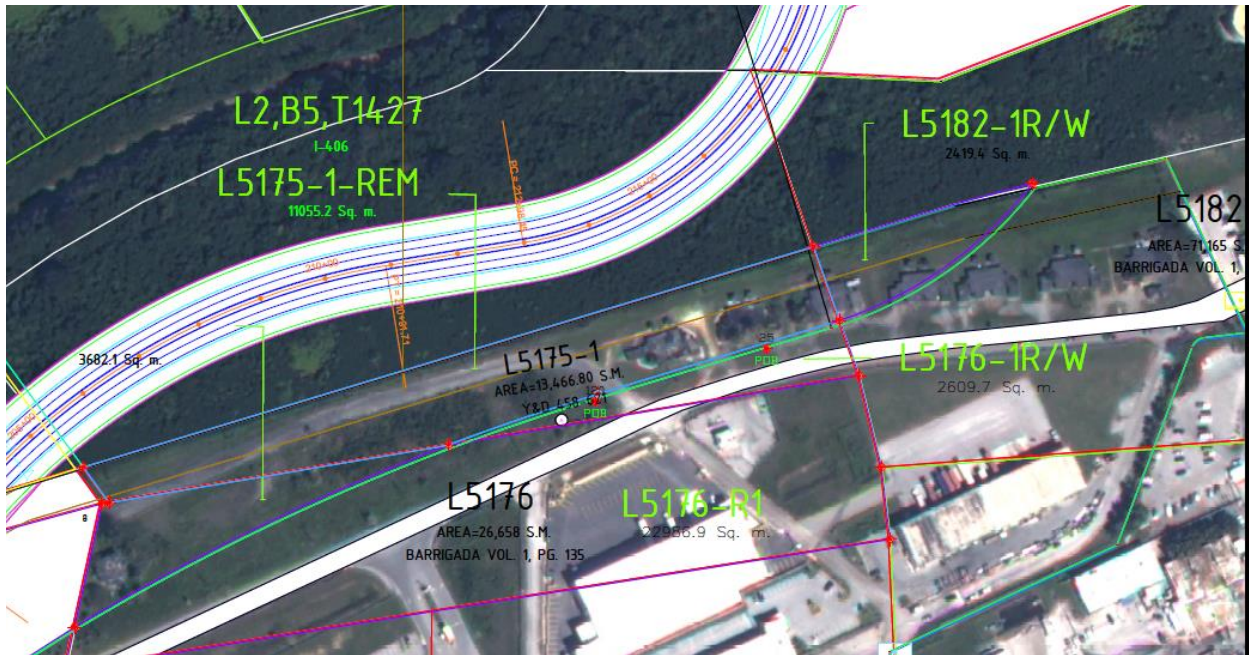
ATTACHMENT A: MAP



Retracement Survey Map of Lots 5175-1REM and 5182-1REM



Easements Affecting Lots 5175-1REM and 5182-1REM



Location of Proposed Laderan Tiyan Parkway



Photographs of Houses Located on Property (2/21/24)