

**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE
A.B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
Tuesday, July 18, 2023, 3:00 p.m.
GIAA CONFERENCE ROOMS 1 & 2**

1. CALL TO ORDER AND ATTENDANCE

The July 18, 2023 special meeting of the Board of Directors of the A.B. Won Pat International Airport Authority, Guam ("GIAA" or the "Authority") was called to order by Acting Chairman Sobti at 3:04 p.m. at the GIAA Terminal Conference Rooms 1 & 2, 355 Chalan Pasaheru, Tamuning, Guam, 96913.

Directors Present:

Gurvinder Sobti
Donald I. Weakley
Lucy M. Alcorn
Rosie R. Tainatongo
Jesse G. Garcia

Offices or positions:

Vice Chairman
Board Secretary

Directors Absent:

Brian J. Bamba (Excused)
Doyon A. Morato (Excused)

Chairman

GIAA Officials:

John M. Quinata
Artemio R. Hernandez, Ph.D.
Jean M. Arriola
Juan S.A. Reyes, A.C.E.
Danielle E. Camacho
Debbie Ngacta
Vince Naputi
Raymond Mantanona
Rolenda Faasuumalie
Joseph Javellana
Audie Artero
Jenielle Meno

Executive Manager
Deputy Executive Manager
Airport Services Manager
Air Terminal Manager
General Accounting Supervisor
General Accounting Supervisor
Airport Police, Chief
ARFF, Chief
Marketing Administrator
Property Management Office
Engineering Supervisor
Procurement Office

William Brennan
Eduardo A. Calvo
Janalynn C. Damian
Genevieve Rapadas
Frank R. Santos

Arriola Law Firm, GIAA Legal Counsel
Calvo Fisher & Jacob, LLP, GIAA Legal Counsel
Calvo Fisher & Jacob, LLP, GIAA Legal Counsel
Calvo Fisher & Jacob, LLP, GIAA Legal Counsel
TMG, GIAA Consultant

Acting Chairman Sobti welcomed Airport tenants, stakeholders, and members of the public who are noted in a sign-in sheet attached to these minutes.

2. APPROVAL OF AGENDA

Executive Manager Quinata announced that Management would like to make a recommendation to amend the agenda as follows: The proposed agenda would include the following changes: Proceed with agenda item 3A; move to item 4; return to regular session and proceed with agenda item 3B, followed by 5.

On motion duly made by Director Weakley, seconded by Director Tainatongo, the following resolution was unanimously passed:

Resolution No. 23-37

The Board hereby amends the agenda of the July 18, 2023 special meeting, to proceed with agenda item 3A; move to item 4; return to regular session and proceed with agenda item 3B, followed by 5.

3. NEW BUSINESS

A. Approval of Award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery – IFB No. GIAA-004-FY22

The next item on the agenda was the approval of the bid award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery under Invitation for Bid No. IFB-004-FY22. Ms. Jean Arriola provided background information to the Board on the referenced IFB. Eleven (11) firms and/or individuals purchased or downloaded the bid package and one (1) firm submitted a bid before the submission deadline. As required by Guam Procurement Regulations, the bid was publicly opened and read aloud by GIAA procurement staff in the presence of the bidder. The result of the bid price submittals are as follows in the order they were received and opened:

Bidder's Name	Bid Item No. 1 - Jet A-1 Aviation Turbine Combustible Liquid Bid Amount (price per gallon)	Bid Item No. 2 - #12 Grade Diesel Fuel Bid Amount (price per gallon)
IP&E Holdings, LLC dba IP&E Guam	\$4.8848** (price advice per usg as of 9/20/22)	\$7.1640** (price advice per usg as of 9/20/22)

****NOTE: Price per US Gallon may move upward or downward based upon market conditions****

The bid was determined to be responsive and was deemed to have met the standards of responsibility as set forth in the Guam Procurement Law & Regulations.

Funding for this contract is available under the Property & Facilities Division O&M Budget.

Management recommends the award of the contract for Invitation for Bid No. GIAA-004-FY22, Indefinite Delivery and Indefinite Quantity Jet A-1 and Diesel Fuel Supply and Delivery, to IP&E Holdings, LLC dba IP&E Guam who has been determined to have met the standards of responsibility and responsiveness outlined in the Guam Procurement Law and Regulations.

Ms. Arriola noted that in September 29, 2022, Management issued an initial award under a purchase order within its authority of \$100,000.00. As Management anticipates operational requirements to exceed the amount of \$100,000.00, Management requests approval from the Board for the period not to exceed a total contract period of five (5) years.

Acting Chairman Sobti inquired on the term. Ms. Arriola replied it is for a term of five (5) years. Acting Chairman asked for the last vendor contracted. Ms. Arriola replied IP&E and maybe Mobil. Ms. Arriola noted that as of today her understanding is that Jet A fuel is only supplied by Mobil and IP&E.

After further discussion, on motion duly made by Director Weakley, seconded by Director Alcorn, the following resolution was unanimously approved:

Resolution No. 23-38

The Board hereby approves the bid award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery under Invitation for Bid No. IFB-004-FY22 to IP&E Holdings, LLC dba IP&E Guam, as recommended by Management, subject to review by Legal Counsel.

4. EXECUTIVE SESSION

Upon written recommendation of Counsel, on motion duly made by Director Weakley, seconded by Director Tainatongo, and unanimously approved, the Board recessed to convene into Executive Session at 3:11 p.m.

Due to a conflict of interest, Director Garcia did not participate in the Executive Session.

A. DFS Guam L.P. related litigation to which GIAA is or may be a party.

The Board convened into Executive Session at 3:15 p.m. to discuss DFS Guam L.P. related litigation to which GIAA is or may be a party. Attending Executive Session were Directors Sobti, Weakley, Alcorn, and Tainatongo, Executive Manager Quinata, and GIAA Legal Counsels, Eduardo Calvo, Janalynn Damian, and Genevieve Rapadas. Also present was the court reporter who will prepare a transcript of the Executive Session. Executive Session adjourned at 3:34 p.m.

All Board members present in the conference room. Motion to return to regular session duly made by Director Weakley, seconded by Director Tainatongo; motion unanimously passed. Regular Session began at 3:40 p.m.

Based on discussions during Executive Session, there were matters requiring Board action.

After further discussion, on motion duly made by Director Weakley, seconded by Director Tainatongo, the following resolution was unanimously approved:

Resolution No. 23-39

The Board hereby authorizes legal counsel, Calvo Fisher & Jacob to represent current and former GIAA employees and Directors in the DFS v. GIAA procurement action.

Due to a conflict of interest, Director Garcia did not participate in the vote on Board Resolution No. 23-39.

After further discussion, on motion duly made by Director Tainatongo, seconded by Director Weakley, the following resolution was unanimously approved:

Resolution No. 23-40

WHEREAS, on April 12, 2013, the Antonio B. Won Pat International Airport Authority, Guam's (the "Authority") Board of Directors (the "Board") approved the award of the specialty retail concession to Lotte Duty Free Guam, LLC ("Lotte").

WHEREAS, in 2013, DFS Guam L.P. ("DFS") filed three protests challenging the award of the specialty retail concession to Lotte, and in 2014 filed various lawsuits appealing the Authority's denial DFS's protests (the "Protest Litigation").

WHEREAS, Lotte has been operating the specialty retail concession since July 2013 under a specialty retail concession agreement (the "Concession Agreement"). Under its Concession Agreement, Lotte is required to pay the Authority the greater of a Minimum Annual Guarantee ("MAG") amount of \$15.1 million (for its main space) or the sum of 30.1% of Lotte's on-site gross revenues for the main retail space and 25% of Lotte's on-site gross revenues for additional retail space. Under the Concession Agreement, when Lotte moved in on July 21, 2013, it paid annual rent of at least \$14.16 million. This amount increased to \$15.1 million in October 2014, when Lotte took over the remaining specialty retail space from DFS.

WHEREAS, prior to the Lotte Concession Agreement, the MAG under the prior concessionaire was \$5 million.

WHEREAS, the significant increase in concession revenues from the Lotte Concession Agreement supported the Authority's 2013 bond financing.

WHEREAS, the Lotte Concession Agreement resulted in significant capital improvements to the Airport—a complete upgrade to the retail space and refurbishment of the restrooms and food court, substantially enhancing the traveling customer's experience. Lotte has reported that its capital improvements at the Airport cost \$23 million.

WHEREAS, to date, the Authority has received more than \$115 million in rent payments from Lotte.

WHEREAS, in March 2020, the COVID-19 pandemic brought the world-wide travel industry to an abrupt and immediate halt and Guam tourism, which is our primary private industry, was devastated. Consequently, arrivals at the Antonio B. Won Pat International Airport (the "Airport") precipitously dropped by over ninety percent (90 %). This dramatically affected the Authority's revenues and financial stability.

WHEREAS, Typhoon Mawar, a Category 4 typhoon passed over Guam on May 23, 2023 causing catastrophic damage to our island. The Airport was not spared and with the damage suffered in Guam our travel and visitor industry has suffered another significant setback.

WHEREAS, as a result of the COVID-19 pandemic and Typhoon Mawar, Lotte's concession sales were impacted.

WHEREAS, the Lotte Concession Agreement provides that it expires on July 20, 2023, and Lotte has operated the specialty retail concession continuously since that time, except for closures due to COVID-19 and Typhoon Mawar.

WHEREAS, in light of the importance of the revenues generated from the concession agreements, to include the Lotte Concession Agreement, the Authority requested that the Legislature authorize it to negotiate extensions of its concession agreements.

WHEREAS, Bill 130-37 (COR), passed by *I Mina'trentai Siette Na Liheslaturan Guåhan* on July 3, 2023, recognizes that given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years, it is projected to take at least several years for the Territory's visitor industry and for the Authority to achieve the enplanement trajectory and financial stability—through the restoration of operating reserves and capital improvement funds—expected prior to the COVID-19 pandemic.

WHEREAS, *I Mina'trentai Siette Na Liheslaturan Guåhan* further found that the Authority's concession agreements are in the best interest of the Authority and the Territory and an extension of such concession agreements is in the best interests of the Authority and the Territory.

WHEREAS, Bill 130-37 was signed by *I Maga'hågan Guåhan* as Public Law 37-23 on July 5, 2023. *I Maga'hågan Guåhan* recognized that "[a]s our tourism industry recovers from the impacts of both Typhoon Mawar and the COVID-19 pandemic, it is critical that we work to ensure our only public airport's financial security. Due to current circumstances, it is impracticable for GIAA to negotiate long-term concession contracts. An extension of existing contracts represents a reasonable short-term measure that will give the airport more bargaining power and enable it to

enter into more favorable long-term concession agreements, ensuring its financial stability during this necessary recovery period, for the benefit of all the people of Guam.”

WHEREAS, pursuant to Public Law 37-23, the Board during the July 18, 2023 special meeting will consider an extension of the Lotte Concession Agreement on terms and conditions to be presented to the Board.

WHEREAS, it has been over ten (10) years since the 2012 specialty retail concession request for proposals resulting in the Lotte Concession Agreement, and the Protest Litigation has been ongoing for approximately ten (10) years as well.

WHEREAS, the Authority’s current Executive Manager and Deputy Executive Manager and all but one (1) of its current Directors were not with the Authority nor involved in the procurement or negotiations of the Lotte Concession Agreement, which occurred in 2012-2013.

WHEREAS, over the ten (10) year term of the Lotte Concession Agreement the Authority has defended the Agreement in the Protest Litigation and to date there has been no court ruling or other finding that the 2012 specialty retail concession request for proposals or the Lotte Concession Agreement is in violation of law nor has there been any ruling or finding that Lotte has acted fraudulently or in bad faith.

WHEREAS, the Executive Manager has presented his findings on the significant financial impact the Lotte Concession Agreement has had at the Airport and his determinations in accordance with § 5452 of the Procurement Law and § 9106 of the Procurement Regulations (1) that the Lotte Concession Agreement is in the best interests of the Authority and Guam and (2) to ratify the Lotte Concession Agreement and that ratification is in the best interests of the Authority and Guam. The Executive Manager’s determinations are attached hereto as Exhibit A.

WHEREAS, the trial in the Protest Litigation is scheduled to commence on August 2, 2023, and the Board desires to confirm the significant financial impact to and substantial financial need for the Lotte Concession Agreement and to support and affirm the Executive Manager’s determinations (1) that the Lotte Concession Agreement is in the best interests of the Authority and Guam and (2) to ratify the Lotte Concession Agreement and that ratification is in the best interests of the Authority and Guam.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Antonio B. Won Pat International Airport Authority, Guam, as follows:

Section 1. The Board of Directors adopts the Executive Manager’s findings and determinations relating to the Lotte Concession Agreement set forth in Exhibit A, attached hereto and incorporated herein. The Board of Directors finds that the Lotte Concession Agreement provides substantial non-airline revenue needed for the continued operation of the Airport, finds that the Lotte Concession Agreement is in the best interests of the Authority and

Guam, affirms and ratifies the Lotte Concession Agreement, and finds that ratification of the Lotte Concession Agreement is in the best interests of the Authority and Guam.

Section 2. Management is authorized to do all things necessary and proper to implement this resolution.

Section 3. This resolution shall take effect from and after its adoption.

Due to a conflict of interest, Director Garcia did not participate in the vote on Board Resolution No. 23-40.

3. NEW BUSINESS

B. Approval of Extension of Specialty Retail Merchandise Concession

Deputy Executive Manager Hernandez presented the extension of the recommendation to extend the Specialty Retail Merchandise Concession Agreement between Lotte Duty Free Guam, LLC (Lotte) and A.B. Won Pat International Airport Authority, Guam (GIAA) pursuant to the authorization provided in Public Law 37-23. Background and history were provided, stating that GIAA issued RFP No. GIAA010-FY12, soliciting proposals for specialty retail concession at the Airport. Lotte was selected as the best qualified proposer and entered into a Specialty Retail Merchandise Concession Agreement with GIAA on May 18, 2013 for a period of ten (10) years. Contract commenced on July 21, 2013 and will expire on July 20, 2023. Pursuant to Public Law 37-23, GIAA is authorized to negotiate extensions of its concession agreements including the Specialty Retail Merchandise Concession Agreement with Lotte due to the impact and uncertainty caused by the COVID-19 Pandemic and recent Typhoon Mawar to GIAA operations and flight activity. As a result, the parties desire to extend the Agreement as authorized by Public Law 37-23. Deputy Executive Manager Hernandez provided a number of items that were considered when negotiating the extension with Lotte, a to include projected enplanement levels for FY2023 being at 50% of pre-pandemic levels in FY2019 (highest enplanement levels in the GIAA history); and reasonable enplanement levels and estimates for subsequent years, among other things.

Deputy Executive Manager Hernandez went over a number of negotiated key terms of the extension, to include: Term: July 21, 2023 through July 20, 2026; Rent: Annual Concession Fee: \$2,640,000.00 paid in advance on July 21/contract year; Per Enplaned Passenger Fee: Based on cumulative enplaned passenger counts during the entire Term of the extended contract among other terms further described in Resolution No. 23-41.

Pursuant to Public Law 37-23, Board approval is required for extensions of concession agreements, therefore Management recommends that the Board approve Board Resolution No 23-41 including Exhibit A, Amendment No. 3 for the extension of the Specialty Retail Merchandise Concession Agreement between Lotte Duty Free Guam, LLC and GIAA for a period of three (3) years commencing July 21, 2023 through July 20, 2026.

After further discussion, on motion duly made by Director Alcorn, seconded by Director Tainatongo, the following resolution was unanimously approved:

Resolution No. 23-41

WHEREAS, the COVID-19 pandemic brought the world-wide travel industry to an abrupt and immediate halt and Guam tourism, which is our primary private industry, was devastated. Consequently, arrivals at the Antonio B. Won Pat International Airport, Guam (the "Airport") precipitously dropped by over ninety percent (90 %). This dramatically affected the Antonio B. Won Pat International Airport Authority, Guam's (the "Authority") revenues and financial stability.

WHEREAS, Typhoon Mawar, a Category 4 typhoon passed over Guam on May 23, 2023 causing catastrophic damage to our island. The Airport was not spared and with the damage suffered in Tumon our travel and visitor industry has suffered another significant setback.

WHEREAS, the Authority's concession revenues are its main source of non-airline revenue, and its concession agreements have or will soon expire. While these concessions may continue on a month-to-month holdover basis, under certain circumstances, they also must recover and cannot be expected to make the necessary improvements and investments needed as part of the recovery unless their concession terms are extended.

WHEREAS, in light of the importance of the revenues generated from the concession agreements, to include the Lotte Concession Agreement, the Authority requested that the Legislature authorize it to negotiate extensions of its concession agreements.

WHEREAS, Bill 130-37 (COR), passed by *I Mina'trentai Siette Na Liheslaturan Guåhan* on July 3, 2023, recognizes that given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years, it is projected to take at least several years for the Territory's visitor industry and for the Authority to achieve the enplanement trajectory and financial stability—through the restoration of operating reserves and capital improvement funds—expected prior to the COVID-19 pandemic.

WHEREAS, *I Mina'trentai Siette Na Liheslaturan Guåhan* further found that the Authority's concession agreements are in the best interest of the Authority and the Territory and an extension of such concession agreements is in the best interests of the Authority and the Territory.

WHEREAS, Bill 130-37 was signed by *I Maga'hågan Guåhan* as Public Law 37-23 on July 5, 2023. *I Maga'hågan Guåhan* recognized that "[a]s our tourism industry recovers from the impacts of both Typhoon Mawar and the COVID-19 pandemic, it is critical that we work to ensure our only public airport's financial security. Due to current circumstances, it is impracticable for GIAA to negotiate long-term concession contracts. An extension of existing contracts represents a reasonable short-term measure that will give the airport more bargaining power and enable it to

enter into more favorable long-term concession agreements, ensuring its financial stability during this necessary recovery period, for the benefit of all the people of Guam.”

WHEREAS, Public Law 37-23 authorizes the Authority to negotiate terms and conditions of the extension(s) and provides that the terms and conditions of the extension shall be in the best interests of the Authority, subject to the approval of the Board of Directors of the Authority.

WHEREAS, at this meeting, the Authority’s Management has presented and recommended an extension of the Lotte Concession Agreement with such terms and conditions as are set forth in the amendment attached hereto as Exhibit A (“Lotte Extension”).

WHEREAS, after review and consideration of the Lotte Concession Agreement and the terms and conditions of the Lotte Extension and the information provided by Management relating thereto, the Board desires to approve the terms and conditions of the Lotte Extension.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Antonio B. Won Pat International Airport Authority, Guam, as follows:

Section 1. The Board of Directors finds that the Lotte Extension is in the best interests of the Authority and Guam and the Board hereby approves and authorizes an extension of the Lotte Concession Agreement based on the terms and conditions set forth in amendment attached as Exhibit A.

Section 2. Management is authorized to do all things necessary and proper to implement this resolution.

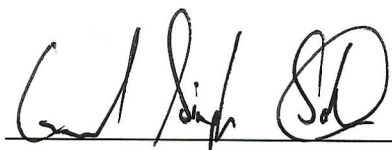
Section 3. This resolution shall take effect from and after its adoption.

Due to a conflict of interest, Director Garcia did not participate in the discussion on New Business item B.


5. ADJOURNMENT

Motion to adjourn duly made by Director Weakley, seconded by Director Alcorn; motion unanimously passed. The meeting was adjourned at 3:53 p.m.

Dated this 28th, day of July, 2023.


Gurvinder Sobti
Acting Chairman

Attest:


Donald I. Weakley
Board Secretary

Prepared and Submitted By:

A handwritten signature in black ink, appearing to read 'Amanda O'Brien', is written over a horizontal line.

Amanda O'Brien

Corresponding Secretary

Exhibit A to Resolution 23-40
Executive Manager's Findings and Determinations
Regarding the Lotte Concession Agreement (5 GCA § 5452 and 2 GARR Div. 4 § 9106)
(See Attached)

Email: official@guamairport.net


DATE: July 18, 2023

TO: Contract File

FROM: John M. Quinata, Executive Manager

NAME OF CONTRACT: Specialty Retail Merchandise Concession Agreement with Lotte Duty Free Guam, LLC

RE: **Written Determination Regarding Ratification of Contract (5 GCA § 5425 and 2 GAR Div. 4 § 9106)**



Based on the below, I make the following determinations:

- (1) The Specialty Retail Concession Agreement is in the best interests of the Antonio B. Won Pat International Airport Authority, Guam (the "Authority") and Guam, and
- (2) The Specialty Retail Concession Agreement is ratified and such ratification is in the best interests of the Authority and Guam,

Background

On July 19, 2012, the Authority issued Request for Proposal No. GIAA010-FY12 seeking proposals for the development, construction, operation and maintenance of a high-quality specialty retail concession at the Airport.

On April 12, 2013, the Authority's Board of Directors (the "Board") approved the award of the specialty retail concession to Lotte Duty Free Guam, LLC ("Lotte"). Thereafter, DFS Guam L.P. ("DFS") filed three protests challenging the award of the specialty retail concession to Lotte, and filed three lawsuits appealing the Authority's denial DFS's protests (the "Protest Litigation").

Lotte has been operating the specialty retail concession since July 2013 under a specialty retail concession agreement (the "Specialty Retail Concession Contract"), as amended.

It has been over ten (10) years since the 2012 specialty retail concession RFP, and the Protest Litigation has been on-going for approximately ten (10) years as well.

Over the ten (10) year term of the Specialty Retail Concession Contract the Authority has defended the Contract in the Protest Litigation and the Contract remains in effect, as amended, and there has been no ruling or finding that Lotte has acted fraudulently or in bad faith.

On July 5, 2023, Public Law 37-23 was enacted allowing the Authority to negotiate extensions of its concession agreements, including the Specialty Retail Concession Contract, for up to an additional three (3) years.

On July 17, 2023, I consulted with the Attorney General of Guam, Douglas Moylan, regarding ratification of the Specialty Retail Concession Contract as being in the best interest of the Authority and Guam.

GIAA – Specialty Retail Concession Contract Findings

Pursuant to 5 GCA § 5452 and 2 GAR, Div. 4 § 9106, I make the following determinations with regard to the above-referenced contract.

There are two separate scenarios provided for under the Procurement Law and regulations in determining whether to ratify or affirm a contract: 1) where there is no finding of fraud or bad faith by the contractor; and 2) where there is a finding of fraud or bad faith by the contractor. Each situation has different factors that must be considered in determining whether to ratify or affirm the contract.

Although the Superior Court had previously determined in 2018 that the solicitation and award were in violation of law because GIAA failed to adopt necessary concession criteria, there are no final findings or determinations in the Protest Litigation that the 2012 specialty retail concession RFP or the Specialty Retail Concession Contract is in violation of law. In fact, the Specialty Retail Concession Contract remains in full force and effect. Despite the Protest Litigation, the historical and current state of the Specialty Retail Concession Contract supports a finding that ratifying and affirming the Contract is in the best interests of Guam and the Authority. In fact, the Legislature and the Governor have already found that the Authority's current concession contracts, including the Specialty Retail Concession Contract, and the extensions thereof, are in the best interest of Guam and the Authority. See Public Law ("P.L.") 37-23.

A. Finding of a Violation of Law but No Finding of Fraud or Bad Faith by the Contractor

Under this scenario, if performance has begun and the violation cannot be waived without prejudice to other offerors, a contract may only be ratified and affirmed if there is a determination in writing that doing so is in the best interest of Guam and the Authority. The factors to be considered in determining whether it is in Guam's and the Authority's best interest to ratify or affirm are:

- **The costs to the Territory's or Authority's best interest**

As the Specialty Retail Concession Contract involves the payment of money to the Authority, I find that there is absolutely no cost to Guam's or Authority's best interest for ratifying and affirming the Contract.

To the contrary, under the Specialty Retail Concession Contract, when Lotte moved in on July 21, 2013, it paid annual rent of at least \$14.16 million. This amount increased to \$15.16 million in October 2014, when Lotte took over the remaining specialty retail space from the previous concessionaire DFS. This is the Airport's largest source of non-airline revenue. When the prior

concessionaire DFS occupied the same retail space at the Airport, DFS's minimum annual guaranteed rent was only \$5 million. To date, the Contract has paid more than \$115 million in rent payments and resulted in approximately \$23 million in capital improvements at the Airport.

Moreover, the Specialty Retail Concession Contract supported the \$247 million Airport bond issue in 2013, which was used to refinance debt and fund much needed capital improvements with \$109 million in new money, including, but not limited to, the new International Arrivals Corridor with Building Seismic Upgrades (an unfunded TSA mandate), the new Aircraft Rescue Fire Fighting Facility, and the relocation of the hold bag screening system.

The new Third Floor International Arrivals Corridor with Building Seismic Upgrades is the most significant of the Bond Projects. The Third Floor Project addresses long-needed seismic upgrades to the Airport terminal and the co-mingling of passengers issue that has impacted Airport operations since 9/11. The Authority initially allocated approximately \$70 million of the 2013 Bond funds for the Third Floor Project. However, due to unanticipated issues and delays, the Third Floor Project cost \$136 million and was completed in December 2021. The revenue from the Specialty Retail Concession Contract was vital to completion of this upgrade.

- **The possibility of returning supplies delivered under the contract and thus decreasing the costs of termination**

Given the nature of the Specialty Retail Concession Contract, I find that it would be impossible to return the money and benefits conferred upon the Authority without substantially interfering with the Airport's operations or doing significant harm to the Authority and the people of Guam.

- **The progress made toward performing the whole contract**

The initial 10-year term of the Specialty Retail Concession Contract is set to expire on July 20, 2023. However, pursuant to P.L. 37-23, the Legislature and the Governor have found that extending the Authority's concessions, including the current specialty retail concession, are in the best interest of the Authority and Guam, and have permitted the Authority to negotiate up to 3-year extensions for its current concession agreements, including the Specialty Retail Concession Contract. The Authority anticipates approving an extension of the current Specialty Retail Concession Contract for the full three (3) years on modified terms that take into account the impacts of the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen since 2020. Even with this extension, the term of the Specialty Retail Concession Contract is much closer to its end than its start. GIAA considers the Specialty Retail Contract to have been substantially performed.

- **The possibility of obtaining a more advantageous contract by resoliciting**

The 2012 RFP was the first time that the Authority received any competition for the specialty retail concession with four (4) large and well-established duty-free retailers submitting proposals – DFS, Lotte, JR Duty Free and Shilla Duty Free. As set forth above, it also resulted in the Authority's most beneficial concession contract ever.

Given the impact of the COVID-19 pandemic, international conflicts and economic downturns over the past ten (10) years coupled with the recent Typhoon Mawar, the Authority does not anticipate enplanements and overall businesses to return to pre-pandemic levels until 2025.

Additionally, since the Specialty Retail Concession Contract was executed in 2013, DFS's pursuit of multiple lawsuits against both the Authority and the winning proposer Lotte has led to a likely de-valuation of the concession, making it less attractive to international duty-free retailers. The Protest Litigation which has been ongoing for ten (10) years would likely have a chilling effect on any solicitation of the specialty retail concession.

Based on all these factors, I find that it is very unlikely that a new solicitation issued under the current circumstances would result in the submission of proposals that would be remotely close to the terms of the Specialty Retail Concession Contract.

B. Finding of a Violation of Law with a Finding of Fraud or Bad by the Contractor

After ten (10) years of contentious and hard-fought litigation with unprecedented discovery there have been no findings or determination of fraud or bad faith on the part of the Authority, nor any determination or findings of fraud or bad faith by concessionaire Lotte. The 2012 RFP ending with the award of the Specialty Retail Concession Contract to Lotte, resulted in the best and most beneficial concession contract the Authority has ever secured. However, long-time incumbent DFS, who came in third in the rankings, has lodged several meritless allegations against the Authority and Lotte concerning both fraud and bad faith. As such, the Authority believes it is necessary to address the factors under this scenario as well.

For this scenario, in order to ratify and affirm a contract, in addition to the best interest determination above, the agency must also make the following determinations in writing:

- **There is a continuing need for the supplies, services, or construction under the contract**

As set forth above, the Specialty Retail Concession Contract is the largest source of the Authority's non-airline revenue. As such, the Authority's 2013 bond issue and several of the Authority's large scale improvement projects are dependent on the revenue from the Contract.

Additionally, if the Authority is deprived of the revenue from the specialty retail concession, the Authority might be forced to seek alternative sources of revenue. One alternative to replace the specialty retail concession revenue could be to increase the fees and charges that Signatory Airlines would pay to the Authority. If the Authority is required to provide to the Signatory

Airlines a proposed Annual Budget that removes revenue from the Specialty Retail Concession Agreement with Lotte, and the Signatory Airlines agree to make up the revenue lost from the exclusion of Lotte from the premises, it would have negative impacts not only on the Authority but on the traveling public and Guam.

As such, I find that there is clearly a continuing need for the Specialty Retail Concession Contract for both the Authority and the people of Guam.

- **There is no time to reward the contract under emergency procedures or otherwise**

As set forth above, given the circumstances in the wake of the pandemic and other ongoing socio-economic issues, the re-issuance of a solicitation would certainly result in a contract far less beneficial for the Authority and Guam. Further, given the importance of this concession to the Authority, the Authority cannot rush the process and risk either loss of revenue or an inferior contract. Therefore, I find that resoliciting the contract under emergency procedures or otherwise would be highly detrimental to the Authority and Guam at this point.

- **The contract is being performed for less than it could be otherwise performed**

These determinations are typically meant to apply in procurements where the agency is spending money for goods or services and is therefore trying to get the lowest price possible. Since the Specialty Retail Concession Contract involves the Authority getting money from and improvements by the concessionaire, the Authority adapts this requirement to find that the Specialty Retail Concession Contract is currently being performed for more money and for a greater benefit than it could otherwise be performed.

As set forth above, I find that the current Specialty Retail Concession Contract is certainly being performed for more – in terms of money, improvements, and other benefits – than other contracts would be if a solicitation were to be reissued under the current circumstances.

Exhibit A to Resolution 23-41
Amendment No. 3 to Lotte Concession Agreement
(See attached)

AMENDMENT NO. 3
SPECIALTY RETAIL MERCHANDISE CONCESSION AGREEMENT

This **AMENDMENT NO. 3** is made and entered into by and between the **ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM** a public corporation and autonomous agency of the government of Guam, whose mailing address is P.O. Box 8770, Tamuning, Guam 96931 (the “Authority”), and **LOTTE DUTY FREE GUAM, LLC.**, a Guam limited liability company whose mailing address is P.O. Box 24893, Barrigada, Guam 96921 (“Concessionaire”).

WITNESSETH:

WHEREAS, on May 18, 2013, the Authority and Concessionaire entered into a Specialty Retail Merchandise Concession Agreement, as amended, (the “Agreement”); and

WHEREAS, the Agreement by its terms is to expire on July 20, 2023;

WHEREAS, Public Law 37-23, authorizes the Authority to negotiate extensions of its concession agreements, including the Agreement, given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years;

WHEREAS, the parties desire to amend the Agreement to extend the term of the Agreement as authorized by Public Law 37-23;

WHEREAS, Public Law 37-23 requires that the terms and conditions of the extension shall be in the best interests of the Authority and subject to the approval of the Board of Directors of the Authority;

WHEREAS, the Board of Directors has reviewed this Amendment No. 3 and has found that it is in the best interests of the Authority and approved this Amendment No. 3 during the [July 18, 2023] special meeting of the Board of Directors as Resolution No. _____.

NOW THEREFORE, for and in consideration of the terms and conditions and other valuable consideration exchanged, the parties agree as follows:

1. **Extension of Term.** The Term of the Agreement is hereby extended for an additional term of three (3) years commencing on July 21, 2023 and expiring on 11:59 p.m. on July 20, 2026 (“Extended Term”).

2. **Rent.** During the Extended Term, Concessionaire covenants and agrees to pay the Authority, Rent in an amount equal to the Annual Concession Fee described below plus the per Enplaned Passenger Fee described below.

a. **Annual Concession Fee.** The Annual Concession Fee shall be an amount equal to Two Million Six Hundred Forty Million U.S. Dollars (\$2,640,000).

- b. Per Enplaned Passenger Fee. The Per Enplaned Passenger Fee shall be the fee per Enplaned Passenger as provided below:

Per Enplaned Passenger Fee	Total Number of Enplaned Passengers for the period of July 21, 2023 to July 20, 2026 (on a cumulative basis)
\$4.00	Up to 1,000,000
\$4.50	1,000,001 million to 1.5 million
\$5.00	Over 1.5 million

- i. Enplaned Passenger shall mean (1) Departing Passengers and (2) in-transit passengers arriving at and departing from the Airport on the same flight, or making a connection with another flight; and shall include revenue and non-revenue passengers, including airline employees.
- ii. Departing Passenger shall mean airlines' revenue and non-revenue passengers, including airline employees, originating their journey in Guam.

3. **Payment of Rent.**

- a. The Annual Concession Fee shall be paid annually in advance on July 21 of each year of the Extended Term.
- b. The Per Enplaned Passenger Fee shall be paid in arrears on a monthly basis not later than the twentieth (20th) day following the end of the calendar month for which the Enplaned Passenger Fee relates. The Per Enplaned Passenger Fee shall be subject to an adjustment against the Enplaned Passengers data in the annual third-party audit of the Authority. If the monthly Enplaned Passenger data from the annual third-party audit differs from the monthly Enplaned Passenger data provided by the Authority to Concessionaire, then the previously paid Per Enplaned Passenger Fee shall be adjusted accordingly.

4. **Authority Held Harmless.** Pursuant to Section 14.1 of the Agreement, Concessionaire agrees that it is responsible for the Authority's attorneys' fees and costs for the Protest Litigation (Superior Court Consolidated Case Nos. CV0943-14, CV0094-15, and CV0198-15) and related litigation and Concessionaire agrees that it shall pay all the Authority's defense fees and costs invoices through July 20, 2023. Thereafter, Concessionaire's obligation to pay the Authority's defense fees and costs for the Protest Litigation (Superior Court Consolidated Case Nos. CV0943-14, CV0094-15, and CV0198-15) shall be capped at \$1,200,000 per Lease Year.

In the event the Authority's total defense fees and costs invoices for the Protest Litigation in any one Lease Year is less than the corresponding \$1,200,000 cap, the difference between the Authority's total defense fees and costs invoices for the Protest Litigation and the cap shall be paid by Concessionaire to the Authority, without offset or deduction, within five (5) business days of the end of each Lease Year. Except for the annual cap on Protest Litigation fees and costs, Concessionaire's obligations under Section 14.1 remain unchanged.

5. **Faithful Performance Guarantee.** During the Extended Term, Concessionaire's Faithful Performance Guarantee shall be no less than Eight Million U.S. Dollars (\$8,000,000). Within three (3) business days of the effective date of this Amendment, Concessionaire shall provide the Authority with the Faithful Performance Guarantee.

6. **Minimum Capital Investment.** Concessionaire covenants and guarantees that Concessionaire shall make a capital investment of no less than the amount of Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000), inclusive of the expansion of the Gucci boutique ("Minimum Capital Investment"). Concessionaire's Minimum Capital Investment obligation shall comply with all terms of the Agreement, including Section 8.6, except that approximately Two Million U.S. Dollars (\$2,000,000) of the Minimum Capital Investment shall be depreciated/amortized over a period of not more than the five (5) years, beginning on the date of beneficial occupancy of the Gucci boutique or January 20, 2024, whichever occurs first, on a straight-line basis with no salvage value. For the next competitive solicitation for the Specialty Retail Concession, any unamortized amount at July 20, 2026 shall be paid by the subsequent concessionaire.

7. **Guam Made Products.** Within ninety (90) days of the effective date of this Amendment, Concessionaire shall provide the Authority with its plan for the sale and marketing of Guam made products, to include a plan according to which Concessionaire shall mentor Guam small businesses interested in retail concessions at the Airport and shall allow local small businesses to display and sell Guam made products in various locations within the Retail Space. Such plan shall be implemented within one hundred twenty (120) days of the effective date of this Amendment.

8. **Sense of Place.** Concessionaire shall maintain the Retail Space so as to provide travelers with an atmosphere embodying the uniqueness of Guam and the Marianas.

9. This Amendment No. 3 shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. Except as amended herein, the provisions, terms, and conditions of the Agreement shall remain in full force and effect and all terms used herein shall have the same meanings as set forth in the Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 to be effective as of the date this Amendment No. 3 is executed by the Authority.

ANTONIO B. WON PAT INTERNATIONAL LOTTE DUTY FREE GUAM, LLC
AIRPORT AUTHORITY, GUAM

By: _____
JOHN M. QUINATA
Executive Manager

Date: July __, 2023

By: _____
DAE WOONG CHEN
Chief Executive Officer

Date: July __, 2023

APPROVED AS TO FORM:
CALVO FISHER & JACOB LLP

By: _____
JANALYNN CRUZ DAMIAN
GIAA Legal Counsel

Date: July __, 2023

BOARD OF DIRECTORS SPECIAL MEETING

3:00 p.m., Tuesday, July 18, 2023

GIAA CONFERENCE ROOMS 1 & 2

Videoconference and Live Streamed via: <https://www.guamairport.com> or
<https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

Public Notice

First Notice:

The Guam Daily Post - July 11, 2023
Notice to Media - July 11, 2023

Second Notice:

The Guam Daily Post - July 13, 2023
Notice to Media - July 13, 2023

Third Notice:

The Guam Daily Post - July 14, 2023
Notice to Media - July 14, 2023

AGENDA

1. Call to Order and Attendance
2. Approval of Agenda
3. New Business
 - A. Approval of Award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery - IFB No. GIAA-004-FY22
 - B. Approval of Extension of Specialty Retail Merchandise Concession
4. Executive Session
 - A. DFS Guam L.P. related litigation to which GIAA is or may be a party.
5. Adjournment

BOARD OF DIRECTORS SPECIAL MEETING
3:00 p.m., Tuesday, July 18, 2023
GIAA Terminal Conference Rooms 1 & 2

SIGN-IN SHEET

PRINT NAME

COMPANY/AGENCY

CONTACT NO./EMAIL

1. _____
2. R. Fua Seumolie GIAA M/LG
3. John LaRocca GWA 266
4. W. Muman ALF 4779730
5. Raymond ARTF 475-557
6. Danielle Caneda GIAA
7. DEBBIE HEATH GIAA
8. John Banks GIAA
9. Tony S6120 LAHIC 688-0600
10. VINCE NAPUTU ART
11. Letitia Law-Bjorkly Lotte DF 671-642-0228
12. Khyomara Santana Glimpses 671-687-6892
13. MENLO, JENKINS GIAA
14. Sclazar, Chanel GIAA
15. Dustin Grant GIAA 671-929-0366
16. _____
17. _____
18. _____
19. _____
20. _____

BERMAN LAW FIRM

Suite 503, Bank of Guam Bldg
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone No.: (671) 477-2778
Facsimile No.: (671) 477-4366
Email: guam@pacificlalawyers.law

Attorneys for Petitioner:
RICHARD CRUZ

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE OF
GEORGE CRUZ,
Decedent.**

PROBATE CASE NO. PR0091-18

NOTICE OF REMOTE HEARING

THIS NOTICE IS REQUIRED BY LAW, YOU ARE NOT
REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

1. NOTICE IS HEREBY GIVEN that RICHARD CRUZ has
filed a Petition praying for Letters of Administration and to
Reopen Probate of the Estate of George Cruz, deceased,
reference to which Petition is hereby made for particulars.

2. A hearing on the Petition will be heard by online
and/or telephonic remote appearance on **July 13, 2023**
at **2:00 p.m.** and all persons interested are hereby
notified to appear at the time and place set for said
hearing and show cause, if any they have, why the
Petition should not be granted.

3. To attend or to participate in the Hearing, go to:
Website (Zoom): <https://guamcourts-org.zoom.us/>
Zoom Meeting ID: **328 483 6667**
Passcode: **992379**

You may also call in for the hearing at the designated
time as follows:

Telephone Number: **671-969-7000**
Meeting ID: **116-7374-0337**

Dated: June 20, 2023.

SOPHIA SANTOS DIAZ
Clerk of Court, Superior Court of Guam
/S/ ROSALINE SALAS YELLOWHORSE
Deputy Clerk

MCDONALD LAW OFFICE, LLC

173 Aspinall Avenue, Suite 207A
Hagåtña, Guam 96910
Telephone: (671) 588-8866
Facsimile: (671) 472-9616
Email: guam@mcDonald.law

Attorneys for Petitioner

Charles H. McDonald II

IN THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATE

OF

MARY HELEN MILLER VALERA,

Deceased,

BY

CHARLES H. McDONALD II,

Petitioner.

IN THE MATTER OF THE ESTATE

OF

ORLANDO C. VALERA,

Deceased,

BY

CHARLES H. McDonald II,

Petitioner.

PROBATE CASE NO.

PR0125-22 / PR0229-22

**NOTICE OF HEARING ON PETITION FOR ORDER TO
CONFIRM SALE OF REAL PROPERTY**

NOTICE IS HEREBY GIVEN that on July 18, 2023, at
9:30 a.m., or soon thereafter as the matter can be heard,
Petitioner CHARLES H. McDONALD II, by and through the
undersigned counsel, will come before the court for a
hearing on the Petition for Order to Confirm Sale of Real
Property, at the Superior Court of Guam, Hagåtña, Guam.

MCDONALD LAW OFFICE, LLC

Attorneys for Petitioner

/s/ CHARLES H. McDONALD II

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A.B. WON PAT INTERNATIONAL
AIRPORT GUAM



**BOARD
OF DIRECTORS
SPECIAL MEETING**

Tuesday, July 18, 2023 at 3:00 PM in Terminal

Conference Rooms 1 & 2 and by

Videoconference and Live Streamed via GIAA

website: www.guamairport.com or

<https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

AGENDA

1. Call to Order and Attendance
2. Approval of Agenda
3. New Business
 - A. Approval of Award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery - IFB No. GIAA-004-FY22
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4. Executive Session
 - A. DFS Guam L.P. related litigation to which GIAA is or may be a party.
5. Adjournment

Parking is available in the Public Parking Lot.
Call the Board Office at (671) 642-4717/18 for special accommodations. This ad is paid for by GIAA.



Joseph T. Duenas
CCU Chairman

GUAM POWER AUTHORITY

ATURIDĀT ILEKTRESEDĀT GUĀHAN

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Telephone Nos. 671-648-3054/55 or Facsimile 671-648-3165



John M. Benavente, P.E.
General Manager

INVITATION FOR BID

**This notice is paid for by the GUAM POWER AUTHORITY REVENUE FUNDS
Public Law 26-12**

BID NO.:	DUE DATE:	TIME:	DESCRIPTION:
GPA-046-23	7/25/2023	10:00 A.M.	Extension Brackets and Cross Arms
GPA-047-23	7/25/2023	11:00 A.M.	Fuse Cutout, Open Type
GPA-049-23	7/26/2023	10:00 A.M.	Pole Mounted Transformers
GPA-051-23	7/27/2023	10:00 A.M.	Pad Mounted Transformers
GPA-053-23	7/27/2023	11:00 A.M.	LED Luminaire Units
GPA-063-23	7/26/2023	11:00 A.M.	Miscellaneous Electrical Supplies

Bid packages may be picked up at the GPWA Procurement Office, Room 101, 1st. Floor, Gloria B. Nelson Public Services Building, 688 Route 15, Mangilao, Guam 96913. All interested firms should register with our GPA's Procurement Division to be able to participate in the bid. Please call our office at (671) 648-3054 / 3055 to register. Registration is required to ensure that all "Amendments and Special Reminders" are communicated to all bidders throughout the bid process. Procurement instructions are posted on the Authority's web site at <https://go.opengovguam.com/bids/available/gpa>.

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occupied.

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RAZZANO WALSH & TORRES, P.C.

SUITE 100, 139 MURRAY BLVD.
HAGÄTÑA, GUAM 96910
TELEPHONE: (671) 989-3009
FACSIMILE: (671) 989-8750

Attorneys for Petitioner
Joseph C. Razzano

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE
OF
CHRISTINE A. LEE,
Decedent.**

PROBATE CASE NO. **PR0075-23**

**NOTICE OF HEARING ON VERIFIED PETITION FOR
PROBATE OF WILL AND FOR APPOINTMENT OF
ADMINISTRATOR WITH THE WILL ANNEXED**

NOTICE is hereby given that Joseph C. Razzano has filed a Verified Petition for Probate of Will and for Appointment of Administrator with the Will Annexed for the estate named above. A hearing on the petition is set before the Honorable Arthur R. Barcinas on July 18, 2023 at 11:00 am.

DATED at Hagätña, Guam on May 18, 2023.

Zoom ID: 752 425 5848
Passcode: JARB

SOPHIA SANTOS DIAZ
Clerk of Court
Superior Court of Guam
By: /s/ Yvonne L. Cruz
DEPUTY CLERK

**OFFICE OF MICHAEL J. GATEWOOD LLC
MICHAEL J. GATEWOOD**

michael@gatewoodllc.com
330 Hernan Cortez Avenue, Suite 300
Hagätña, GU 96910
Tel No. 671.473.6285
Cel No. 671.488.6285

Attorneys for Petitioner
Roland E. Okada

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE
OF
FRANCISCO BLAS CRUZ,
Deceased.**

PROBATE CASE NO. **PR0063-23**

NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN by Roland E. Okada, Administrator of the Estate of FRANCISCO BLAS CRUZ, deceased, to the creditors of, and all persons having claims against said Estate or against said Decedent, that within sixty (60) calendar days after the date of the first publication of this notice, they either file them with necessary vouchers in the Office of Clerk of the Superior Court of Guam, or exhibit them with the necessary vouchers to said Administrator or his attorneys of record, OFFICE OF MICHAEL J. GATEWOOD LLC, 330 Hernan Cortez Avenue, Suite 300, Hagätña, GU 96910, the same being the place for the transaction of the business of said Estate.

DATED: Hagätña, Guam, July 5, 2023

/s/ MICHAEL J. GATEWOOD

**Law Office of Louie J. Yanza
A Professional Corporation**

MVP Building
862 South Marine Corps Drive, Suite 203
Tamuning, Guam 96913
Telephone: (671) 477-7059
Facsimile: (671) 472-5487

Attorney for Petitioner BERTHA LIZAMA SABLAN

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE
OF
ANTHONY QUICHOCHO QUIDACHAY,
Deceased.**

PROBATE CASE NO. **PR0096-23**

**NOTICE OF HEARING ON PETITION FOR
LETTERS OF GENERAL ADMINISTRATION**

THIS NOTICE IS REQUIRED BY LAW, YOU ARE NOT REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

NOTICE IS HEREBY GIVEN that the Petitioner, BERTHA LIZAMA SABLAN, have filed herein a Petition for Letters of General Administration on the above referenced Estate, reference to which Petition is made for further particulars, that the time and place of hearing of the same has been set for **July 25, 2023** at the hour of **11:00 am.** at the Superior Court of Guam, 120 West O'Brien Drive, Hagätña, Guam, and that all persons interested are hereby notified to appear and show cause, if any they have, why the Petition should not be granted.

ZOOM INFO:
Meeting ID: 752 425 5848
Password: JARB

Dated: June 05, 2023.

SOPHIA SANTOS DIAZ
CLERK OF COURT, SUPERIOR COURT OF GUAM
BY: /s/ YVONNE L. CRUZ
DEPUTY CLERK

CAR FOR SALE**2004 Lexus GX470**

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BROOKS CONCEPCION LAW, P.C.

247 Martyr Street, Ste. 101
Hagätña, Guam 96910
(671) 472-6848
(671) 477-5790

Attorneys for Administratrix

**IN THE SUPERIOR COURT OF GUAM
IN THE MATTER OF THE ESTATE
OF**

**DOLORES MANIBUSAN SALAS,
Deceased.**

Probate Case No: **PR0094-23**

NOTICE TO CREDITORS

Notice is hereby given by the undersigned, Dolores M. Salas, Administratrix of the Estate of Dolores Manibusan Salas, deceased, to the creditors of, and all persons having claims against the said estate or against said deceased, that within sixty (60) days after the first publication of this notice, they either file them with necessary vouchers in the office of the Clerk of the Superior Court, Guam, or exhibit them with the necessary vouchers to Dolores M. Salas, Administratrix at the Law office of **BROOKS CONCEPCION LAW, P.C.**, at 247 Martyr Street, Ste. 101, Hagätña, Guam, the same being the place for the transaction of the said estate.

Dated: 07/06/23.

/s/ **Dolores M. Salas**
Administratrix for the Estate of
Dolores Manibusan Salas



Joseph T. Duenas
CCU Chairman

GUAM POWER AUTHORITY

ATURIDÄT ILEKTRESEDÄT GUÅHAN

P.O. BOX 2977 • HAGÄTÑA, GUAM U.S.A. 96932-2977

Telephone Nos. 671-648-3054/55 or Facsimile 671-648-3165

INVITATION FOR BID

This notice is paid for by the **GUAM POWER AUTHORITY REVENUE FUNDS**
Public Law 26-12



John M. Benavente, P.E.
General Manager

<u>BID NO.:</u>	<u>DUE DATE:</u>	<u>TIME:</u>	<u>DESCRIPTION:</u>
GPA-048-23	07/27/2023	2:00 P.M.	Wires
GPA-055-23	07/20/2023	2:00 P.M.	Pole Mounted Transformers (NOTE: In Support of Typhoon Mawar Restoration Efforts. EO-2023-05)
GPA-056-23	07/27/2023	9:00 A.M.	Arrester, Lightning, 12 kV
GPA-066-23	07/20/2023	10:00 A.M.	Pole Mounted Transformers (NOTE: In Support of Typhoon Mawar Restoration Efforts. EO-2023-05)
GPA-067-23	07/20/2023	11:00 A.M.	Fuse, Cutout, Open Type, 15 kV (NOTE: In Support of Typhoon Mawar Restoration Efforts. EO-2023-05)

Bid packages may be picked up at the GPWA Procurement Office, Room 101, 1st. Floor, Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913. All interested firms should register with GPA's Procurement Division to be able to participate in the bid. Please call our office at (671) 648-3054 / 3055 to register. Registration is required to ensure that all "Amendments and Special Reminders" are communicated to all bidders throughout the bid process. Procurement instructions are posted on the Authority's web site at <https://go.opengovguam.com/bids/available/gpa>.



Joseph T. Duenas
CCU Chairman

GUAM POWER AUTHORITY

ATURIDÄT ILEKTRESEDÄT GUÅHAN

P.O. BOX 2977 • HAGÄTÑA, GUAM U.S.A. 96932-2977

Telephone Nos. 671-648-3054/55 or Facsimile 671-648-3165



John M. Benavente, P.E.
General Manager

REQUEST FOR PROPOSAL

This notice is paid for by the **GUAM POWER AUTHORITY O&M FUNDS**
Public Law 26-12

<u>BID NO.:</u>	<u>DUE DATE:</u>	<u>TIME:</u>	<u>DESCRIPTION:</u>
Re-Solicitation GPA-RFP-23-002 (4)	08/10/2023	4:00 P.M.	Medical Review Officer (MRO) Services
Re-Solicitation GPA-RFP-23-005 (2)	08/10/2023	4:00 P.M.	Drug and Alcohol Collection and Testing Services

Copies of the general scope of work may be picked up at the GPWA Procurement Office, 1ST Floor, Room 101, Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913. All interested firms should register with GPA's Procurement Division to be able to participate in the RFP. Please call our office at 1 (671) 648-3054 / 3055 to register. Registration is required to ensure that all "Amendments and Special Reminders" are communicated to all proponents throughout the RFP process. Procurement instructions are posted on the Authority's web site at <https://go.opengovguam.com/bids/available/gpa>.

A.B. WON PAT INTERNATIONAL
AIRPORT GUAM



**BOARD
OF DIRECTORS
SPECIAL MEETING**

Tuesday, July 18, 2023 at 3:00 PM in Terminal Conference Rooms 1 & 2 and by Videoconference and Live Streamed via GIAA website: www.guamairport.com or <https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

AGENDA

- Call to Order and Attendance
- Approval of Agenda
- New Business
 - Approval of Award for Indefinite Delivery and Indefinite Quantity of Jet A-1 and Diesel Fuel Supply and Delivery - IFB No. GIAA-004-FY22
 - Approval of Extension of Specialty Retail Merchandise Concession
- Executive Session
 - DFS Guam L.P. related litigation to which GIAA is or may be a party.
- Adjournment

Parking is available in the Public Parking Lot. Call the Board Office at (671) 642-4717/18 for special accommodations. This ad is paid for by GIAA.

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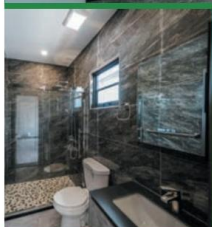
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CONTACT TO GET MORE INFORMATION
Miyuki(Yuki) Atsuta
Mobile & WhatsApp: (671)777-1021
miyuki@ellensrealtyguam.com

**BOARD
OF DIRECTORS
SPECIAL MEETING**

Tuesday, July 18, 2023 at 3:00 PM in Terminal
Conference Rooms 1 & 2 and by
Videoconference and Live Streamed via GIAA
website: www.guamairport.com or
<https://www.guamairport.com/corporate/about-our-airport/board-of-directors/airport-board-meeting>

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**ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
BOARD OF DIRECTORS**

EXECUTIVE SUMMARY

INVITATION FOR BID NO. GIAA-004-FY22
INDEFINITE DELIVERY AND INDEFINITE QUANTITY:
JET A-1 AND DIESEL FUEL SUPPLY AND DELIVERY

July 6, 2023

Purpose

Board action is requested to approve the bid award for Invitation for Bid No. GIAA-004-FY22, Indefinite Delivery and Indefinite Quantity for Jet A-1 and Diesel Fuel Supply and Delivery (the "IFB").

Project Background

The IFB Indefinite Delivery and Indefinite Quantity is for the supply and delivery of Jet A-1 and #12 Grade Diesel fuel to supply fuel on an as needed basis to generators in the main terminal and other airport properties, equipment and facilities that are vital to GIAA's operations, for a period not to exceed 5 years.

Procurement Background

On April 18, 2022, GIAA issued the IFB. The IFB was advertised in local newspapers on August 18, 20, 23, 26, September 5 and 14, 2022. The bid submission deadline was September 21, 2022 at 2:00 p.m. and bid opening took place on the same day at 2:15 p.m.

Eleven (11) firms showed their interest by obtaining the IFB and only one (1) firm submitted bid prior to the bid submission deadline. As required by the Guam Procurement Regulations, the bid was opened publicly and read aloud by GIAA procurement staff in the presence of the bidders.

Bid Analysis and Evaluation

The results of the submitted bid is as follows:

Bidder's Name	Bid Item No. 1 – Jet A-1 Aviation Turbine Combustible Liquid Bid Amount (price per gallon)	Bid Item No. 2 - #12 Grade Diesel Fuel Bid Amount (price per gallon)
IP&E Holdings, LLC dba IP&E Guam	\$4.8848** (price advice per usg as of 9/20/22)	\$7.1640** (price advice per usg as of 9/20/22)

*****NOTE: Price per US Gallon may move upward or downward based upon oil market conditions *****

The bid was determined to be responsive and was deemed to have met the standards of responsibility as set forth in the Guam Procurement Law & Regulations.

Legal Review

Upon Board approval, award will be processed through the issuance of a purchase order or contract, subject to legal review.

Financial Review

Funding is under the Properties & Facilities O&M budget.

Recommendation

Management recommends award of the contract for Invitation for Bid No. GIAA-004-FY22, Indefinite Delivery and Indefinite Quantity Jet A-1 and Diesel Fuel Supply and Delivery, to IP&E Holdings, LLC dba IP&E Guam who has been determined to have met the standards of responsibility and responsiveness outlined in the Guam Procurement Law and Regulations.

It is noted that Management issued an initial award within its authority of \$100,000 commencing September 29, 2022. As we anticipate operational requirements to exceed this amount, we request approval for the period not to exceed a total contract period of five years.



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Fax (671) 646-8823

EMAIL: official@guamairport.net

WE'RE ON IT
24/7

September 26, 2022

MEMORANDUM

TO: JOHN M. QUINATA
Executive Manager

FROM: Supply Management Administrator

SUBJECT: Bid Evaluation and Recommendation
IDIQ No. GIAA-004-FY22
Indefinite Delivery & Indefinite Quantity Jet A-1 &
Diesel Fuel Supply and Delivery

Procurement Background:

The above referenced Invitation for Bid was publicly announced through the local newspaper on August 18, 20, 23, 26, September 5 and 14, 2022. The bid submission deadline was September 21, 2022 at 2:00 p.m. and bid opening took place at 2:15 p.m. that same day.

Eleven (11) firms/individuals downloaded the bid package and only one (1) firm submitted bid before the bid submission deadline. The bid submittal was opened in the presence of GIAA representatives. The bid offer was read aloud by the Supply Management Administrator and tabulated by a Procurement staff.

The results of the bid price submittals are as follows in the order they were received and opened:

BIDDER'S NAME	Bid Item No. 1 - Jet A-1 Aviation Turbine Combustible Liquid Bid Amount (price per gallon)	Bid Item No. 2 – #2 Grade Diesel Fuel Bid Amount (price per gallon)
IP&E Holdings, LLC dba IP&E Guam	\$4.8848** (price advice per usg as of 9/20/22)	\$7.1640** (price advice per usg as of 9/20/22)

****Rates are subject to change pursuant to bid specifications.**

Bid Analysis and Evaluation:

Pursuant to Section 11 of the Instructions to Bidders, the contract is to be awarded as soon as possible to the responsible, responsive bidder. To determine the responsibility of bidders, the bid package specified the required documents that bidders must submit with their bid packages. The attached abstract illustrates the inventory of required documents and the bidder's submittal.

IP&E Holdings LLC: The bidder submitted a copy of their current Guam Business License. The Bidder's Qualification Statement form included a list of projects within the last five years similar to the services solicited with resumes attached. All other required documents were complete and in conformance with the Invitation for Bid. Their bid was found to be responsive and the bidder met the standards of responsibility as set forth in the Procurement Law and Regulations.

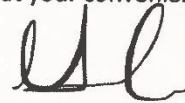


Recommendation:

Pursuant to the guidelines in Item 11 of the Instruction to Bidders, the award of a Fixed-Price Contract with Price Adjustment will be made to the **responsible, responsive bidder**. IP&E Holdings LLC has been determined to have met the standards of responsibility and responsiveness outlined in the Guam Procurement Regulations and has deemed to be responsible, responsive bidders.

Therefore, it is recommended that **IP&E Holdings LLC** be awarded for a total contract term of five (5) years for this project.

Should you have any questions or concerns, please call our office at your convenience.



HENRY M. CRUZ

APPROVED:






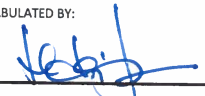
JOHN M. QUINATA
Executive Manager

Attachment

cc: Admin/Proc/Acct



Invitation for Bid. GIAA-004-FY22		<div><div></div><div>Antonio B. Won Pat International Airport Authority, Guam BID ABSTRACT DETERMINATION FOR BIDDER'S RESPONSIVENESS/RESPONSIBLENESS</div></div>										Bid Submission Deadline: 21-Sep-22 Opening Time: 2:15 PM		Page 1 of 2 pages No. of Packages Issued: 11 No. of Bids Received: 1	
IFB Name: INDEFINITE DELIVERY & INDEFINITE QUANTITY: JET A-1 AND DIESEL FUEL SUPPLY AND DELIVERY		<div>Special Reminder to Prospective Bidders</div>	<div>Acknowledgement of Receipt Form for receipt of IFB</div>	<div>Acknowledgement of Receipt Form for all issued Addenda for this IFB</div>	<div>Bid Form</div>	<div>Bid Security</div>	<div>Affidavit Disclosing Ownership and Commissions</div>	<div>Affidavit Regarding Non-Collusion</div>	<div>Affidavit Regarding No Gratuities of Kickbacks</div>	<div>Affidavit Regarding Contingent Fees</div>	<div>Affidavit Regarding Ethical Standards</div>	<div>Declaration - U.S. DOL Wage & Benefits</div>	<div>Designation of Contractors</div>		
DESCRIPTION OF SUPPLIES OR SERVICES: Jet A-1 and Diesel Fuel Supply and Delivery															
	BIDDER'S NAME														
1	IPTE	-	-	-	-	BB #CIC-SUB ID 15% 22-1025	-	-	-	-	-	-	-		
2															
3															
4															
5															
6															
7															
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9															
10															
I hereby certify that all bids received in response to this invitation were opened under my personal supervision, and that the names of all bidders have been entered hereon.		TABULATED BY: <div></div>													
SIGNATURE Henry M. Cruz, Supply Management Administrator		SIGNATURE Frank L. Taitano, Buyer II													

Invitation for Bid. GIAA-004-FY22				Antonio B. Won Pat International Airport Authority, Guam BID ABSTRACT DETERMINATION FOR BIDDER'S RESPONSIVENESS/RESPONSIBLENESS						Bid Submission Deadline: 21-Sep-22 Opening Time: 2:15 PM		Page 2 of 2 pages No. of Packages Issued: 11 No. of Bids Received: 1	
IFB Name: INDEFINITE DELIVERY & INDEFINITE QUANTITY: JET A-1 AND DIESEL FUEL SUPPLY AND DELIVERY													
DESCRIPTION OF SUPPLIES OR SERVICES: Jet A-1 and Diesel Fuel Supply and Delivery													
	BIDDER'S NAME	Bidder's Qualification Statement	Bidder's Financial Statement	Title VI Solicitation Notice	Local Procurement Preference Application	Service-Disabled Veteran Owned Business Application	Women-Owned Business Application	Others (Copy of Valid Business License)	Jet A-1 Fuel Bid Amount	Diesel Fuel Bid Amount	PROCUREMENT USE ONLY		
1	IPTE	-	-	-	-	-	-	-	4.8848 (4.88)	7.1640 (7.16)	<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
2											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
3											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
4											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
5											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
6											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
7											<input type="checkbox"/> MET ALL REQUIREMENTS DEEMED RESPONSIVE & RESPONSIBLE <input type="checkbox"/> DID NOT MEET ALL REQUIREMENTS DEEMED NON-RESPONSIVE & NON-RESPONSIBLE; THEREFORE, PROPOSAL IS REJECTED		
8													
9													
10													
I hereby certify that all bids received in response to this invitation were opened under my personal supervision, and that the names of all bidders have been entered hereon.		TABULATED BY: 											
SIGNATURE Henry M. Cruz, Supply Management Administrator		SIGNATURE Franklin L. Taitano, Buyer II											

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF TAMUNING)
) ss.
GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

☐ The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

☒ The offeror is a corporation, partnership, joint venture, or association known as *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
<u>Isla Petroleum & Energy Company Ltd.</u>	<u>Trident Trust Company (Cayman) Limited</u> <u>4th Floor, One Capital Place</u> <u>P.O. Box 847GT, Grand Cayman, KY1-1103</u> <u>Cayman Islands, British West Indies</u>	<u>74.99</u>
<u>Itochu Petroleum Co., (Singapore) Pte. Ltd</u>	<u>#33-01 Guoco Tower, 1 Wallich Street</u> <u>Singapore 078881</u>	<u>25.00</u>

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[If none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
<u>NONE</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

Signature of one of the following:

Offeror, if the bidder is an individual:
Partner, if the offeror is a partnership;
Officer, if the offeror is a corporation.

Subscribed and sworn to before me this 13th
day
of SEPTEMBER, 2022.
FARA J. DELROSARIO
NOTARY PUBLIC
My commission expires 07/14, 2025.


FARA J. DELROSARIO
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JULY 14, 2025**
328 Purple Heart Hwy
3E Agaña Oceanview Condominium Maite, Gu 96910

THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE BID.

RECOMMENDATION OF COUNSEL

TO: Board of Directors
ANTONIO B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM

CC: Mr. John M. Quinata
Executive Manager
ANTONIO B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM

FROM: Janalynn Cruz Damian 
CALVO FISHER & JACOB LLP

DATE: July 10, 2023

SUBJECT: Executive Session

Pursuant to 5 GCA § 8111(c)(1), I hereby recommend that the Board of Directors of GIAA conduct an Executive Session at the next Special Board meeting to discuss DFS Guam L.P. related litigation to which GIAA is or may be a party.

BOARD OF DIRECTORS OF THE
ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
RESOLUTION NO. 23-40

RESOLUTION REGARDING LOTTE CONCESSION AGREEMENT

WHEREAS, on April 12, 2013, the Antonio B. Won Pat International Airport Authority, Guam's (the "Authority") Board of Directors (the "Board") approved the award of the specialty retail concession to Lotte Duty Free Guam, LLC ("Lotte").

WHEREAS, in 2013, DFS Guam L.P. ("DFS") filed three protests challenging the award of the specialty retail concession to Lotte, and in 2014 filed various lawsuits appealing the Authority's denial DFS's protests (the "Protest Litigation").

WHEREAS, Lotte has been operating the specialty retail concession since July 2013 under a specialty retail concession agreement (the "Concession Agreement"). Under its Concession Agreement, Lotte is required to pay the Authority the greater of a Minimum Annual Guarantee ("MAG") amount of \$15.1 million (for its main space) or the sum of 30.1% of Lotte's on-site gross revenues for the main retail space and 25% of Lotte's on-site gross revenues for additional retail space. Under the Concession Agreement, when Lotte moved in on July 21, 2013, it paid annual rent of at least \$14.16 million. This amount increased to \$15.1 million in October 2014, when Lotte took over the remaining specialty retail space from DFS.

WHEREAS, prior to the Lotte Concession Agreement, the MAG under the prior concessionaire was \$5 million.

WHEREAS, the significant increase in concession revenues from the Lotte Concession Agreement supported the Authority's 2013 bond financing.

WHEREAS, the Lotte Concession Agreement resulted in significant capital improvements to the Airport—a complete upgrade to the retail space and refurbishment of the restrooms and food court, substantially enhancing the traveling customer's experience. Lotte has reported that its capital improvements at the Airport cost \$23 million.

WHEREAS, to date, the Authority has received more than \$115 million in rent payments from Lotte.

WHEREAS, in March 2020, the COVID-19 pandemic brought the world-wide travel industry to an abrupt and immediate halt and Guam tourism, which is our primary private industry, was devastated. Consequently, arrivals at the Antonio B. Won Pat International Airport (the "Airport") precipitously dropped by over ninety percent (90 %). This dramatically affected the Authority's revenues and financial stability.

WHEREAS, Typhoon Mawar, a Category 4 typhoon passed over Guam on May 23, 2023 causing catastrophic damage to our island. The Airport was not spared and with the damage suffered in Guam our travel and visitor industry has suffered another significant setback.

WHEREAS, as a result of the COVID-19 pandemic and Typhoon Mawar, Lotte's concession sales were impacted.

WHEREAS, the Lotte Concession Agreement provides that it expires on July 20, 2023, and Lotte has operated the specialty retail concession continuously since that time, except for closures due to COVID-19 and Typhoon Mawar.

WHEREAS, in light of the importance of the revenues generated from the concession agreements, to include the Lotte Concession Agreement, the Authority requested that the Legislature authorize it to negotiate extensions of its concession agreements.

WHEREAS, Bill 130-37 (COR), passed by *I Mina'trentai Siette Na Liheslaturan Guåhan* on July 3, 2023, recognizes that given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years, it is projected to take at least several years for the Territory's visitor industry and for the Authority to achieve the enplanement trajectory and financial stability—through the restoration of operating reserves and capital improvement funds—expected prior to the COVID-19 pandemic.

WHEREAS, *I Mina'trentai Siette Na Liheslaturan Guåhan* further found that the Authority's concession agreements are in the best interest of the Authority and the Territory and an extension of such concession agreements is in the best interests of the Authority and the Territory.

WHEREAS, Bill 130-37 was signed by *I Maga'hågan Guåhan* as Public Law 37-23 on July 5, 2023. *I Maga'hågan Guåhan* recognized that “[a]s our tourism industry recovers from the impacts of both Typhoon Mawar and the COVID-19 pandemic, it is critical that we work to ensure our only public airport's financial security. Due to current circumstances, it is impracticable for GIAA to negotiate long-term concession contracts. An extension of existing contracts represents a reasonable short-term measure that will give the airport more bargaining power and enable it to enter into more favorable long-term concession agreements, ensuring its financial stability during this necessary recovery period, for the benefit of all the people of Guam.”

WHEREAS, pursuant to Public Law 37-23, the Board during the July 18, 2023 special meeting will consider an extension of the Lotte Concession Agreement on terms and conditions to be presented to the Board.

WHEREAS, it has been over ten (10) years since the 2012 specialty retail concession request for proposals resulting in the Lotte Concession Agreement, and the Protest Litigation has been on-going for approximately ten (10) years as well.

WHEREAS, the Authority's current Executive Manager and Deputy Executive Manager and all but one (1) of its current Directors were not with the Authority nor involved in the procurement or negotiations of the Lotte Concession Agreement, which occurred in 2012-2013.

WHEREAS, over the ten (10) year term of the Lotte Concession Agreement the Authority has defended the Agreement in the Protest Litigation and to date there has been no

court ruling or other finding that the 2012 specialty retail concession request for proposals or the Lotte Concession Agreement is in violation of law nor has there been any ruling or finding that Lotte has acted fraudulently or in bad faith.

WHEREAS, the Executive Manager has presented his findings on the significant financial impact the Lotte Concession Agreement has had at the Airport and his determinations in accordance with § 5452 of the Procurement Law and § 9106 of the Procurement Regulations (1) that the Lotte Concession Agreement is in the best interests of the Authority and Guam and (2) to ratify the Lotte Concession Agreement and that ratification is in the best interests of the Authority and Guam. The Executive Manager's determinations are attached hereto as Exhibit A.

WHEREAS, the trial in the Protest Litigation is scheduled to commence on August 2, 2023, and the Board desires to confirm the significant financial impact to and substantial financial need for the Lotte Concession Agreement and to support and affirm the Executive Manager's determinations (1) that the Lotte Concession Agreement is in the best interests of the Authority and Guam and (2) to ratify the Lotte Concession Agreement and that ratification is in the best interests of the Authority and Guam.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Antonio B. Won Pat International Airport Authority, Guam, as follows:

Section 1. The Board of Directors adopts the Executive Manager's findings and determinations relating to the Lotte Concession Agreement set forth in Exhibit A, attached hereto and incorporated herein. The Board of Directors finds that the Lotte Concession Agreement provides substantial non-airline revenue needed for the continued operation of the Airport, finds that the Lotte Concession Agreement is in the best interests of the Authority and Guam, affirms and ratifies the Lotte Concession Agreement, and finds that ratification of the Lotte Concession Agreement is in the best interests of the Authority and Guam.

Section 2. Management is authorized to do all things necessary and proper to implement this resolution.

Section 3. This resolution shall take effect from and after its adoption.

[SIGNATURE PAGE FOLLOWS]

DULY AND REGULARLY ADOPTED BY THE BOARD OF DIRECTORS OF THE ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM AT THE JULY 18, 2023 SPECIAL BOARD MEETING.

BRIAN J. BAMBA, Chairman

GURVINDER SOBTI, Vice Chairman

DONALD I. WEAKLEY

LUCY M. ALCORN

ROSIE TAINATANGO

DOYON A. MORATO

JESSE G. GARCIA

ATTEST:

DONALD I. WEAKLEY, Secretary

Exhibit A
Executive Manager's Findings and Determinations
Regarding the Lotte Concession Agreement (5 GCA § 5452 and 2 GARR Div. 4 § 9106)
(See Attached)



Exhibit A Resolution No. 23-40

DATE: July 18, 2023

TO: Contract File

FROM: John M. Quinata, Executive Manager

NAME OF CONTRACT: Specialty Retail Merchandise Concession Agreement with Lotte Duty Free Guam, LLC

RE: **Written Determination Regarding Ratification of Contract (5 GCA § 5425 and 2 GAR Div. 4 § 9106)**

Based on the below, I make the following determinations:

- (1) The Specialty Retail Concession Agreement is in the best interests of the Antonio B. Won Pat International Airport Authority, Guam (the "Authority") and Guam, and
- (2) The Specialty Retail Concession Agreement is ratified and such ratification is in the best interests of the Authority and Guam,

Background

On July 19, 2012, the Authority issued Request for Proposal No. GIAA010-FY12 seeking proposals for the development, construction, operation and maintenance of a high-quality specialty retail concession at the Airport.

On April 12, 2013, the Authority's Board of Directors (the "Board") approved the award of the specialty retail concession to Lotte Duty Free Guam, LLC ("Lotte"). Thereafter, DFS Guam L.P. ("DFS") filed three protests challenging the award of the specialty retail concession to Lotte, and filed three lawsuits appealing the Authority's denial DFS's protests (the "Protest Litigation").

Lotte has been operating the specialty retail concession since July 2013 under a specialty retail concession agreement (the "Specialty Retail Concession Contract"), as amended.

It has been over ten (10) years since the 2012 specialty retail concession RFP, and the Protest Litigation has been on-going for approximately ten (10) years as well.

Over the ten (10) year term of the Specialty Retail Concession Contract the Authority has defended the Contract in the Protest Litigation and the Contract remains in effect, as amended, and there has been no ruling or finding that Lotte has acted fraudulently or in bad faith.

On July 5, 2023, Public Law 37-23 was enacted allowing the Authority to negotiate extensions of its concession agreements, including the Specialty Retail Concession Contract, for up an additional three (3) years.

On July 17, 2023, I consulted with the Attorney General of Guam, Douglas Moylan, regarding ratification of the Specialty Retail Concession Contract as being in the best interest of the Authority and Guam.

GIAA – Specialty Retail Concession Contract Findings

Pursuant to 5 GCA § 5452 and 2 GAR, Div. 4 § 9106, I make the following determinations with regard to the above-referenced contract.

There are two separate scenarios provided for under the Procurement Law and regulations in determining whether to ratify or affirm a contract: 1) where there is no finding of fraud or bad faith by the contractor; and 2) where there is a finding of fraud or bad faith by the contractor. Each situation has different factors that must be considered in determining whether to ratify or affirm the contract.

Although the Superior Court had previously determined in 2018 that the solicitation and award were in violation of law because GIAA failed to adopt necessary concession criteria, there are no final findings or determinations in the Protest Litigation that the 2012 specialty retail concession RFP or the Specialty Retail Concession Contract is in violation of law. In fact, the Specialty Retail Concession Contract remains in full force and effect. Despite the Protest Litigation, the historical and current state of the Specialty Retail Concession Contract supports a finding that ratifying and affirming the Contract is in the best interests of Guam and the Authority. In fact, the Legislature and the Governor have already found that the Authority's current concession contracts, including the Specialty Retail Concession Contract, and the extensions thereof, are in the best interest of Guam and the Authority. See Public Law ("P.L.") 37-23.

A. Finding of a Violation of Law but No Finding of Fraud or Bad Faith by the Contractor

Under this scenario, if performance has begun and the violation cannot be waived without prejudice to other offerors, a contract may only be ratified and affirmed if there is a determination in writing that doing so is in the best interest of Guam and the Authority. The factors to be considered in determining whether it is in Guam's and the Authority's best interest to ratify or affirm are:

- **The costs to the Territory's or Authority's best interest**

As the Specialty Retail Concession Contract involves the payment of money to the Authority, I find that there is absolutely no cost to Guam's or Authority's best interest for ratifying and affirming the Contract.

To the contrary, under the Specialty Retail Concession Contract, when Lotte moved in on July 21, 2013, it paid annual rent of at least \$14.16 million. This amount increased to \$15.16 million in October 2014, when Lotte took over the remaining specialty retail space from the previous concessionaire DFS. This is the Airport's largest source of non-airline revenue. When the prior concessionaire DFS occupied the same retail space at the Airport, DFS's minimum annual guaranteed rent was only \$5 million. To date, the Contract has paid more than \$115 million in rent payments and resulted in approximately \$23 million in capital improvements at the Airport.

Moreover, the Specialty Retail Concession Contract supported the \$247 million Airport bond issue in 2013, which was used to refinance debt and fund much needed capital improvements with \$109 million in new money, including, but not limited to, the new International Arrivals Corridor with Building Seismic Upgrades (an unfunded TSA mandate), the new Aircraft Rescue Fire Fighting Facility, and the relocation of the hold bag screening system.

The new Third Floor International Arrivals Corridor with Building Seismic Upgrades is the most significant of the Bond Projects. The Third Floor Project addresses long-needed seismic upgrades to the Airport terminal and the co-mingling of passengers issue that has impacted Airport operations since 9/11. The Authority initially allocated approximately \$70 million of the 2013 Bond funds for the Third Floor Project. However, due to unanticipated issues and delays, the Third Floor Project cost \$136 million and was completed in December 2021. The revenue from the Specialty Retail Concession Contract was vital to completion of this upgrade.

- **The possibility of returning supplies delivered under the contract and thus decreasing the costs of termination**

Given the nature of the Specialty Retail Concession Contract, I find that it would be impossible to return the money and benefits conferred upon the Authority without substantially interfering with the Airport's operations or doing significant harm to the Authority and the people of Guam.

- **The progress made toward performing the whole contract**

The initial 10-year term of the Specialty Retail Concession Contract is set to expire on July 20, 2023. However, pursuant to P.L. 37-23, the Legislature and the Governor have found that extending the Authority's concessions, including the current specialty retail concession, are in the best interest of the Authority and Guam, and have permitted the Authority to negotiate up to 3-year extensions for its current concession agreements, including the Specialty Retail Concession Contract. The Authority anticipates approving an extension of the current Specialty Retail Concession Contract for the full three (3) years on modified terms that take into account the impacts of the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen since 2020. Even with this extension, the term of the Specialty Retail Concession Contract is much closer to its end than its start. GIAA considers the Specialty Retail Contract to have been substantially performed.

- **The possibility of obtaining a more advantageous contract by resoliciting**

The 2012 RFP was the first time that the Authority received any competition for the specialty retail concession with four (4) large and well-established duty-free retailers submitting proposals – DFS, Lotte, JR Duty Free and Shilla Duty Free. As set forth above, it also resulted in the Authority's most beneficial concession contract ever.

Given the impact of the COVID-19 pandemic, international conflicts and economic downturns over the past ten (10) years coupled with the recent Typhoon Mawar, the Authority does not anticipate enplanements and overall businesses to return to pre-pandemic levels until 2025.

Additionally, since the Specialty Retail Concession Contract was executed in 2013, DFS's pursuit of multiple lawsuits against both the Authority and the winning proposer Lotte has led to a likely de-valuation of the concession, making it less attractive to international duty-free retailers. The Protest Litigation which has been ongoing for ten (10) years would likely have a chilling effect on any solicitation of the specialty retail concession.

Based on all these factors, I find that it is very unlikely that a new solicitation issued under the current circumstances would result in the submission of proposals that would be remotely close to the terms of the Specialty Retail Concession Contract.

B. Finding of a Violation of Law with a Finding of Fraud or Bad by the Contractor

After ten (10) years of contentious and hard-fought litigation with unprecedented discovery there have been no findings or determination of fraud or bad faith on the part of the Authority, nor any determination or findings of fraud or bad faith by concessionaire Lotte. The 2012 RFP ending with the award of the Specialty Retail Concession Contract to Lotte, resulted in the best and most beneficial concession contract the Authority has ever secured. However, long-time incumbent DFS, who came in third in the rankings, has lodged several meritless allegations against the Authority and Lotte concerning both fraud and bad faith. As such, the Authority believes it is necessary to address the factors under this scenario as well.

For this scenario, in order to ratify and affirm a contract, in addition to the best interest determination above, the agency must also make the following determinations in writing:

- **There is a continuing need for the supplies, services, or construction under the contract**

As set forth above, the Specialty Retail Concession Contract is the largest source of the Authority's non-airline revenue. As such, the Authority's 2013 bond issue and several of the Authority's large scale improvement projects are dependent on the revenue from the Contract.

Additionally, if the Authority is deprived of the revenue from the specialty retail concession, the Authority might be forced to seek alternative sources of revenue. One alternative to replace the specialty retail concession revenue could be to increase the fees and charges that Signatory Airlines would pay to the Authority. If the Authority is required to provide to the Signatory Airlines a proposed Annual Budget that removes revenue from the Specialty Retail Concession Agreement with Lotte, and the Signatory Airlines agree to make up the revenue lost from the exclusion of Lotte from the premises, it would have negative impacts not only on the Authority but on the traveling public and Guam.

As such, I find that there is clearly a continuing need for the Specialty Retail Concession Contract for both the Authority and the people of Guam.

- **There is no time to reward the contract under emergency procedures or otherwise**

As set forth above, given the circumstances in the wake of the pandemic and other ongoing socio-economic issues, the re-issuance of a solicitation would certainly result in a contract far less beneficial for the Authority and Guam. Further, given the importance of this concession to the Authority, the Authority cannot rush the process and risk either loss of revenue or an inferior contract. Therefore, I find that resoliciting the contract under emergency procedures or otherwise would be highly detrimental to the Authority and Guam at this point.

- **The contract is being performed for less than it could be otherwise performed**

These determinations are typically meant to apply in procurements where the agency is spending money for goods or services and is therefore trying to get the lowest price possible. Since the Specialty Retail Concession Contract involves the Authority getting money from and improvements by the concessionaire, the Authority adapts this requirement to find that the Specialty Retail Concession Contract is currently being performed for more money and for a greater benefit than it could otherwise be performed.

As set forth above, I find that the current Specialty Retail Concession Contract is certainly being performed for more – in terms of money, improvements, and other benefits – than other contracts would be if a solicitation were to be reissued under the current circumstances.

**GIAA BOARD OF DIRECTORS
REGULAR MEETING – July 18, 2023
Executive Summary**

**Extension of Specialty Retail Merchandise Concession Agreement
Lotte Duty Free, Guam LLC**

Purpose

To approve the extension of the Specialty Retail Merchandise Concession Agreement between Lotte Duty Free Guam, LLC (Lotte) and A.B. Won Pat International Airport Authority, Guam (GIAA).

Background and History

GIAA issued a Request for Proposal No. GIAA010-FY12 soliciting proposals for the development, construction, operation and maintenance of a high-quality specialty retail concession at the Airport. Lotte was selected as the best qualified proposer and entered into a Specialty Retail Merchandise Concession Agreement with GIAA on May 18, 2013 for a period of ten (10) years commencing, July 21, 2013 through July 20, 2023.

Pursuant to Public Law 37-23, GIAA is authorized to negotiate extensions of its concession agreements including the Specialty Retail Merchandise Concession Agreement with Lotte in light of the impact and uncertainty caused by the Covid-19 Pandemic and coupled with the more recent Typhoon Mawar to GIAA operations and flight activity. As a result, the parties desire to extend the Agreement as authorized by Public Law 37-23 to reflect the following negotiated key terms of the Agreement:

- **Term:** July 21, 2023 through July 20, 2026
- **Rent**
 - **Annual Concession Fee:** \$2,640,000.00 paid in advance on July 21/contract year
 - **Per Enplaned Passenger Fee:** Based on cumulative enplaned passenger counts during the entire Term of the extended contract.
 - \$4.00 per enplaned passenger up to One Million (1,000,000) enplaned passengers.
 - \$4.50 per enplaned passenger from One Million and One (1,000,001) to One Million Five Hundred Thousand (1,500,000) enplaned passengers.
 - \$5.00 per enplaned passenger over one million five hundred thousand and one (1,500,001) enplaned passengers.
- **Indemnity:** Defense Fees and costs for Protest Litigation shall be capped at One Million Two Hundred Thousand Dollars (\$1,200,000) per lease year. In the event defense fees and costs in any lease year is less than the cap, the difference shall be paid to the Authority. Except for this cap, all other obligations under this section remain unchanged.
- **Performance Guarantee:** No less than Eight Million Dollars (8,000,000) per year.

- **Minimum Capital Investment:** Two Million Five Hundred Thousand Dollars (\$2,500,000) with approximately Two Million Dollars (\$2,000,000) dedicated to the Gucci Boutique which shall be depreciated over a period of five (5) years, commencing the earlier of (a) the Date of Beneficial Occupancy (DBO) or (b) January 20, 2024.
- **Guam Made Products:** Lotte shall provide a plan within ninety (90) calendar days of the effective date of the extended contract, for the sale and marketing of Guam Products which shall be implemented within one hundred twenty (120) calendar days upon submission.
- **Sense Of Place:** Continue to maintain the retail space and provide travelers with an atmosphere embodying the uniqueness of Guam and the Marianas.
- **Other Terms and Conditions:** All other terms and conditions of the Agreement remain unchanged.

Negotiations with Lotte considered the following:

1. There is continued uncertainty of the speed of recovery to pre-pandemic levels. A projected level of enplanements for Fiscal Year (FY) 2023 at approximately 50% of pre-pandemic FY 2019 levels (the highest enplanement level in GIAA's history) and reasonable enplanement estimates for subsequent years.
2. Extension is authorized for up to a three (3) year period which limits potential re-investments for capital improvements by the concessionaire as compared to previous term of ten (10) years with a longer re-investment potential.
3. Concession markets have shifted from the pre-pandemic models. Risk tolerance of the concession industry has shifted from Minimum Annual Guarantee (MAG) arrangements to the sharing of risk with airport operators. Traditionally, concessionaires assumed traffic (passenger throughput) risk and performance (concession/sales/revenues) risk. The key terms represents this market shift.
4. Stated Lotte losses from the COVID-19 impacted periods and increasing the concession value due to doing business partnership in the tough times.

Legal Review:

All documents included as part of this extension shall be subject to legal review and concurrence.

Financial Obligation:

The financial arrangements as noted above may generate on average for the contract period based on reasonable estimates of enplanements up to Ten Million Dollars (\$10,000,000) per year.

Recommendation

Pursuant to Public Law 37-23, GIAA Board approval is required for extensions of concession agreements. Management recommends that the GIAA Board of Directors approve Amendment No. 3 for the extension of the Specialty Retail Merchandise Concession Agreement between Lotte Duty Free Guam, LLC and GIAA for a period of three (3) years commencing July 21, 2023 through July 20, 2026.

BOARD OF DIRECTORS OF THE
ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM
RESOLUTION NO. 23-41

RESOLUTION REGARDING EXTENSION OF THE LOTTE CONCESSION AGREEMENT

WHEREAS, the COVID-19 pandemic brought the world-wide travel industry to an abrupt and immediate halt and Guam tourism, which is our primary private industry, was devastated. Consequently, arrivals at the Antonio B. Won Pat International Airport, Guam (the “Airport”) precipitously dropped by over ninety percent (90 %). This dramatically affected the Antonio B. Won Pat International Airport Authority, Guam’s (the “Authority”) revenues and financial stability.

WHEREAS, Typhoon Mawar, a Category 4 typhoon passed over Guam on May 23, 2023 causing catastrophic damage to our island. The Airport was not spared and with the damage suffered in Tumon our travel and visitor industry has suffered another significant setback.

WHEREAS, the Authority’s concession revenues are its main source of non-airline revenue, and its concession agreements have or will soon expire. While these concessions may continue on a month-to-month holdover basis, under certain circumstances, they also must recover and cannot be expected to make the necessary improvements and investments needed as part of the recovery unless their concession terms are extended.

WHEREAS, in light of the importance of the revenues generated from the concession agreements, to include the Lotte Concession Agreement, the Authority requested that the Legislature authorize it to negotiate extensions of its concession agreements.

WHEREAS, Bill 130-37 (COR), passed by *I Mina’trentai Siette Na Liheslaturan Guåhan* on July 3, 2023, recognizes that given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years, it is projected to take at least several years for the Territory’s visitor industry and for the Authority to achieve the enplanement trajectory and financial stability—through the restoration of operating reserves and capital improvement funds—expected prior to the COVID-19 pandemic.

WHEREAS, *I Mina’trentai Siette Na Liheslaturan Guåhan* further found that the Authority’s concession agreements are in the best interest of the Authority and the Territory and an extension of such concession agreements is in the best interests of the Authority and the Territory.

WHEREAS, Bill 130-37 was signed by *I Maga’hågan Guåhan* as Public Law 37-23 on July 5, 2023. *I Maga’hågan Guåhan* recognized that “[a]s our tourism industry recovers from the impacts of both Typhoon Mawar and the COVID-19 pandemic, it is critical that we work to ensure our only public airport's financial security. Due to current circumstances, it is impracticable for GIAA to negotiate long-term concession contracts. An extension of existing contracts represents a reasonable short-term measure that will give the airport more bargaining power and enable it to enter into more favorable long-term concession agreements,

ensuring its financial stability during this necessary recovery period, for the benefit of all the people of Guam.”

WHEREAS, Public Law 37-23 authorizes the Authority to negotiate terms and conditions of the extension(s) and provides that the terms and conditions of the extension shall be in the best interests of the Authority, subject to the approval of the Board of Directors of the Authority.

WHEREAS, at this meeting, the Authority’s Management has presented and recommended an extension of the Lotte Concession Agreement with such terms and conditions as are set forth in the amendment attached hereto as Exhibit A (“Lotte Extension”).

WHEREAS, after review and consideration of the Lotte Concession Agreement and the terms and conditions of the Lotte Extension and the information provided by Management relating thereto, the Board desires to approve the terms and conditions of the Lotte Extension.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Antonio B. Won Pat International Airport Authority, Guam, as follows:

Section 1. The Board of Directors finds that the Lotte Extension is in the best interests of the Authority and Guam and the Board hereby approves and authorizes an extension of the Lotte Concession Agreement based on the terms and conditions set forth in amendment attached as Exhibit A.

Section 2. Management is authorized to do all things necessary and proper to implement this resolution.

Section 3. This resolution shall take effect from and after its adoption.

[SIGNATURE PAGE FOLLOWS]

DULY AND REGULARLY ADOPTED BY THE BOARD OF DIRECTORS OF THE ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM AT THE JULY 18, 2023 SPECIAL BOARD MEETING.

BRIAN J. BAMBA, Chairman

GURVINDER SOBTI, Vice Chairman

DONALD I. WEAKLEY

LUCY M. ALCORN

ROSIE TAINATANGO

DOYON A. MORATO

JESSE G. GARCIA

ATTEST:

DONALD I. WEAKLEY, Secretary

Exhibit A
Amendment No. 3 to Lotte Concession Agreement
(See attached)

AMENDMENT NO. 3
SPECIALTY RETAIL MERCHANDISE CONCESSION AGREEMENT

This **AMENDMENT NO. 3** is made and entered into by and between the **ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM** a public corporation and autonomous agency of the government of Guam, whose mailing address is P.O. Box 8770, Tamuning, Guam 96931 (the “Authority”), and **LOTTE DUTY FREE GUAM, LLC.**, a Guam limited liability company whose mailing address is P.O. Box 24893, Barrigada, Guam 96921 (“Concessionaire”).

WITNESSETH:

WHEREAS, on May 18, 2013, the Authority and Concessionaire entered into a Specialty Retail Merchandise Concession Agreement, as amended, (the “Agreement”); and

WHEREAS, the Agreement by its terms is to expire on July 20, 2023;

WHEREAS, Public Law 37-23, authorizes the Authority to negotiate extensions of its concession agreements, including the Agreement, given the damage and uncertainty caused by the COVID-19 pandemic, Typhoon Mawar, and other geopolitical issues and hardships that have arisen over the past several years;

WHEREAS, the parties desire to amend the Agreement to extend the term of the Agreement as authorized by Public Law 37-23;

WHEREAS, Public Law 37-23 requires that the terms and conditions of the extension shall be in the best interests of the Authority and subject to the approval of the Board of Directors of the Authority;

WHEREAS, the Board of Directors has reviewed this Amendment No. 3 and has found that it is in the best interests of the Authority and approved this Amendment No. 3 during the [July 18, 2023] special meeting of the Board of Directors as Resolution No. _____.

NOW THEREFORE, for and in consideration of the terms and conditions and other valuable consideration exchanged, the parties agree as follows:

1. **Extension of Term.** The Term of the Agreement is hereby extended for an additional term of three (3) years commencing on July 21, 2023 and expiring on 11:59 p.m. on July 20, 2026 (“Extended Term”).

2. **Rent.** During the Extended Term, Concessionaire covenants and agrees to pay the Authority, Rent in an amount equal to the Annual Concession Fee described below plus the per Enplaned Passenger Fee described below.

a. **Annual Concession Fee.** The Annual Concession Fee shall be an amount equal to Two Million Six Hundred Forty Million U.S. Dollars (\$2,640,000).

- b. Per Enplaned Passenger Fee. The Per Enplaned Passenger Fee shall be the fee per Enplaned Passenger as provided below:

Per Enplaned Passenger Fee	Total Number of Enplaned Passengers for the period of July 21, 2023 to July 20, 2026 (on a cumulative basis)
\$4.00	Up to 1,000,000
\$4.50	1,000,001 million to 1.5 million
\$5.00	Over 1.5 million

- i. Enplaned Passenger shall mean (1) Departing Passengers and (2) in-transit passengers arriving at and departing from the Airport on the same flight, or making a connection with another flight; and shall include revenue and non-revenue passengers, including airline employees.
- ii. Departing Passenger shall mean airlines' revenue and non-revenue passengers, including airline employees, originating their journey in Guam.

3. **Payment of Rent.**

- a. The Annual Concession Fee shall be paid annually in advance on July 21 of each year of the Extended Term.
- b. The Per Enplaned Passenger Fee shall be paid in arrears on a monthly basis not later than the twentieth (20th) day following the end of the calendar month for which the Enplaned Passenger Fee relates. The Per Enplaned Passenger Fee shall be subject to an adjustment against the Enplaned Passengers data in the annual third-party audit of the Authority. If the monthly Enplaned Passenger data from the annual third-party audit differs from the monthly Enplaned Passenger data provided by the Authority to Concessionaire, then the previously paid Per Enplaned Passenger Fee shall be adjusted accordingly.

4. **Authority Held Harmless.** Pursuant to Section 14.1 of the Agreement, Concessionaire agrees that it is responsible for the Authority's attorneys' fees and costs for the Protest Litigation (Superior Court Consolidated Case Nos. CV0943-14, CV0094-15, and CV0198-15) and related litigation and Concessionaire agrees that it shall pay all the Authority's defense fees and costs invoices through July 20, 2023. Thereafter, Concessionaire's obligation to pay the Authority's defense fees and costs for the Protest Litigation (Superior Court Consolidated Case Nos. CV0943-14, CV0094-15, and CV0198-15) shall be capped at \$1,200,000 per Lease Year.

In the event the Authority's total defense fees and costs invoices for the Protest Litigation in any one Lease Year is less than the corresponding \$1,200,000 cap, the difference between the Authority's total defense fees and costs invoices for the Protest Litigation and the cap shall be paid by Concessionaire to the Authority, without offset or deduction, within five (5) business days of the end of each Lease Year. Except for the annual cap on Protest Litigation fees and costs, Concessionaire's obligations under Section 14.1 remain unchanged.

5. **Faithful Performance Guarantee.** During the Extended Term, Concessionaire's Faithful Performance Guarantee shall be no less than Eight Million U.S. Dollars (\$8,000,000). Within three (3) business days of the effective date of this Amendment, Concessionaire shall provide the Authority with the Faithful Performance Guarantee.

6. **Minimum Capital Investment.** Concessionaire covenants and guarantees that Concessionaire shall make a capital investment of no less than the amount of Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000), inclusive of the expansion of the Gucci boutique ("Minimum Capital Investment"). Concessionaire's Minimum Capital Investment obligation shall comply with all terms of the Agreement, including Section 8.6, except that approximately Two Million U.S. Dollars (\$2,000,000) of the Minimum Capital Investment shall be depreciated/amortized over a period of not more than the five (5) years, beginning on the date of beneficial occupancy of the Gucci boutique or January 20, 2024, whichever occurs first, on a straight-line basis with no salvage value. For the next competitive solicitation for the Specialty Retail Concession, any unamortized amount at July 20, 2026 shall be paid by the subsequent concessionaire.

7. **Guam Made Products.** Within ninety (90) days of the effective date of this Amendment, Concessionaire shall provide the Authority with its plan for the sale and marketing of Guam made products, to include a plan according to which Concessionaire shall mentor Guam small businesses interested in retail concessions at the Airport and shall allow local small businesses to display and sell Guam made products in various locations within the Retail Space. Such plan shall be implemented within one hundred twenty (120) days of the effective date of this Amendment.

8. **Sense of Place.** Concessionaire shall maintain the Retail Space so as to provide travelers with an atmosphere embodying the uniqueness of Guam and the Marianas.

9. This Amendment No. 3 shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. Except as amended herein, the provisions, terms, and conditions of the Agreement shall remain in full force and effect and all terms used herein shall have the same meanings as set forth in the Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 to be effective as of the date this Amendment No. 3 is executed by the Authority.

ANTONIO B. WON PAT INTERNATIONAL LOTTE DUTY FREE GUAM, LLC
AIRPORT AUTHORITY, GUAM

By: _____
JOHN M. QUINATA
Executive Manager

Date: July __, 2023

By: _____
DAE WOONG CHEN
Chief Executive Officer

Date: July __, 2023

APPROVED AS TO FORM:
CALVO FISHER & JACOB LLP

By: _____
JANALYNN CRUZ DAMIAN
GIAA Legal Counsel

Date: July __, 2023