

**Chamorro Land Trust Commission
Municipal Golf Course Lease Agreements**

**Compliance Audit
October 1, 2012 to September 30, 2015**

**OPA Report No. 16-09
December 2016**



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EXECUTIVE SUMMARY
Chamorro Land Trust Commission Municipal Golf Course Lease Agreements
OPA Report No. 16-09, December 2016

Our compliance audit of the Guam Municipal Golf Course commercial lease agreements found that the initial 25-year lease agreement was executed in 1989 pursuant to public law, however, the second agreement in 2014, was not. When the 1989 Lease expired in 2014, the Chamorro Land Trust Commission (CLTC) leased the 829,124 square meters of golf course property to Company B despite Company B's noncompliance with the lease agreement and

- Without Legislative authorization (Public Law (P.L.) 12-061 codified in 21 Guam Code Annotated (GCA) § 60112).
- Without the Governor's, Lieutenant Governor's, and Attorney General's signatures (21 GCA § 60114).
- Without the required two land appraisals (21 GCA § 75107(e)) and there may have been lost opportunities to raise rental revenue for the 2014 Lease's term.

Lease provisions were not complied with because CLTC did not diligently monitor and enforce the lease provisions and public law to protect CLTC's interests in the property. We found:

- Company A assigned its lease interests to Companies B and C through a series of name changes without the Governor's and Legislature's approvals.
- Company B was grossly delinquent in rental and property tax payments corroborated by Company B's unaudited fiscal year (FY) 2013 through FY 2015 financial data indicating severe financial distress.
- Company B did not submit required annual reports and financial statements.

Despite the noncompliance, a second lease with Company B was executed in 2014 signed only by CLTC's Acting Chairman, CLTC's Acting Director, and Company B's General Manager.

During an October 16, 2015 legislative oversight hearing, the CLTC Administrative Director commented that the 2014 Lease was a continuation of the 1989 Lease, which was already authorized for 50 years by P.L. 19-34. CLTC was obligated to renew the 1989 Lease with the same terms and conditions because the lease was created by public law and there were no rules for CLTC commercial leases.

No Legislative Authorization for 2014 Lease

In 1988, P.L. 19-34 authorized the 1989 Lease specifically between the Department of Land Management (DLM) and Company A for a period not to exceed 50 years to construct and manage a municipal golf course with affordable rates and access to Guam residents. The golf course property, owned by the Government of Guam, transferred to CLTC in 1994.

Not only did the 1989 Lease obtain legislative authorization, but it was signed by the DLM Acting Director, the Company A President, the Governor of Guam, the Lieutenant Governor of Guam, and the Attorney General. On the other hand, the 2014 Lease was only signed by the CLTC Acting Chairman, CLTC Acting Director, and Company B's General Manager although 21 GCA § 60112 does not allow government-owned property to be leased without prior legislative approval.

No Approval from Legislature and Governor for Assignment to Companies B and C

Through several name and ownership changes, the 1989 Lease became assigned to Companies B and C. We did not find any evidence of the Legislature's and Governor's approvals of the assignments as required in Section 7 of the 1989 Lease and P.L. 19-34.

Missed Opportunities to Raise Rental Rates

Property appraisals were not obtained for the 2014 Lease and rental amounts resumed from the 1989 Lease based on 10% of the prior appraised value with 10% increases every five years. As a result, CLTC may have lost opportunities to raise rental revenue over the term of the 2014 Lease. As an example, the Department of Revenue and Taxation's (DRT) 2014 Real Property Tax Assessment Roll assessed the property at \$6.5M, an appreciation of \$5.1M from the initial lease's appraisal of \$1.4M. However, DRT's appraisal was not available until after the 2014 Lease's execution.

Poor Financial Performance

Company B's unaudited financial data for FY 2013 to FY 2015 indicated declining financial performance with increasing net losses. The data showed declining revenues while expenses remained relatively stable. Salaries and the lease were major expense items. Further, we found 36 instances of late rental payments averaging 88 days overdue and ranging from 2 to 258 days late.

Another alarming observation was Company B's cash balances as of September 30, 2015, could not satisfy its significant amounts in current obligations with liabilities exceeding \$10M. Receivables were over \$900 thousand (K) and included \$303K from bingo operators of which one operator was connected to a federal court case involving illegal gambling investigations. With Company B's poor financial performance, the risk of late rental payments is extremely high and Company B's financial viability is questionable.

Conclusion and Recommendations

The current 2014 Lease was executed despite Company B's noncompliance and without proper authorizations, signatures, and appraisals for the government-owned golf course property. Had a more current appraisal been used, there may have been an opportunity to increase rental rates and revenues. The 1989 Lease was improperly assigned to Companies B and C. We have referred the matter to the Attorney General for an opinion on the validity of the renewal. A response has not yet been received.

In their response to the draft report, CLTC agreed to our recommendation to require and obtain independently audited financial statements to ascertain the viability of Company B. However, CLTC disagreed with our findings and is of the opinion that the 2014 Lease was merely a renewal authorized for another 25 years under the same terms and conditions of the initial 1989 Lease.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our compliance audit of the Chamorro Land Trust Commission (CLTC) Municipal Golf Course lease agreements from October 1, 2012 through September 30, 2015. The audit objective was to determine whether the Guam Municipal Golf Course lease agreements were executed in accordance with applicable law.

The objective, scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

This audit was conducted after a Senator in the 33rd Guam Legislature requested the Office of Public Accountability (OPA) to review Company B's fiscal year (FY) 2013 and FY 2014 unaudited financial data.

Background

On February 1, 1989, the Government of Guam, as Lessor, and Company A, as Lessee, effected a 25-year commercial lease agreement (1989 Lease) allowing Company A to construct and manage a municipal golf course on 829,124 square meters of Government of Guam property in Dededo.¹ A municipal golf course is owned by a government authority that usually charges affordable rates and affords adequate access to local residents.

The 1989 Lease was authorized by Public Law (P.L.) 19-34 in December 1988 and signed in January 1989 by the Acting Director of the Department of Land Management (DLM), the President of Company A, the Governor of Guam, the Lieutenant Governor of Guam, and the Attorney General. It expired on January 31, 2014 and contained an option to renew for another 25 years with the same terms and conditions except rental payment which is adjusted every five years.

The property was transferred from the Government of Guam, through DLM, to the CLTC in 1994 by P.L. 22-76.

The initial annual rental amount was 10% of \$1.4 million (M), the appraised value of the property, or \$140 thousand (K) for the first five years. The first year's rent was waived considering the property improvements constructed by Company A. Per the lease agreement, the annual rent increased 28% in 1994 and 10% every five years thereafter.

¹ Lot No. 10122-12, containing 829,124 ± square meters (less 28,328 ± square meters, Guam Power Authority & Guam Waterworks to use), Mogfog, Municipality of Dededo, as shown on Drawing No. 88195 (L.M. 184FY88).

Effective February 1, 2014, CLTC, as Lessor, and Company B entered into a commercial lease agreement for another 25 years expiring January 31, 2039 (2014 Lease) for the same municipal golf course property. The 2014 Lease was signed in March and April 2014 by CLTC’s Acting Chairman and Acting Director and the General Manager of Company B.

Table 1 shows the annual rental amounts, due February 1st each year, for both lease agreements.

Table 1: 1989 Lease and 2014 Lease Annual Rental Amounts²

	Years	Annual Rent (\$)	Increase (\$)	Increase %
1989 Lease February 1, 1989 to January 31, 2014	1989 – 1993	140,139	-	-
	1994 – 1998	179,153	39,014	28%
	1999 – 2003	197,069	17,916	10%
	2004 – 2008	216,776	19,707	10%
	2009 – 2013	238,454	21,678	10%
2014 Lease February 1, 2014 to January 31, 2039	2014 – 2018	262,299	23,845	10%
	2019 – 2023	288,529	26,230	10%
	2024 – 2028	317,382	28,853	10%
	2029 – 2033	349,120	31,738	10%
	2034 – 2038	384,032	34,912	10%

The leases had several provisions including:

- Section 2 - Establishing rental amounts due annually on February 1st which may be paid in monthly installments due by the 15th of each month.
- Section 3 - Requiring lessees to pay all real personal property taxes levied against the premises.
- Section 7 - Disallowing the lessees from selling, assigning, mortgaging, subleasing, encumbering, hypothecating, or transferring its interest in the property without the Governor’s and Legislature’s approval.
- Section 8 - Requiring lessees to establish fee schedules and preferential course reservation periods to reasonably accommodate Guam residents’ demands for golf facilities.
- Section 12 - Requiring lessees to hold comprehensive broad form general public liability insurance of at least \$100,000 for bodily injury or death and at least \$50,000 for accidents.
- Section 21 - Requiring lessees to submit on the anniversaries of the leases, annual financial statements and reports of uses, improvements, and income derived from the property.

² Except 1994-1998 rental amounts were increased by 28%.

Chamorro Land Trust Commission

CLTC was established by the Chamorro Land Trust Act of 1975 (P.L. 12-226) for the purpose of protecting and ensuring trust lands are awarded to native Chamorros through residential, agricultural, and commercial leases. CLTC is responsible for the disposition of Chamorro Homelands pursuant to mandates to advance the social, cultural and economic development and well-being of Chamorros by way of residential, agricultural and commercial land distribution and economic assistance programs.

CLTC is regulated by laws under Title 21 Chapter 75 of the Guam Code Annotated (GCA) and governed by a five-member Board of Commissioners appointed by the Governor of Guam.

Public Utilities Commission Oversight

The municipal golf course is a public utility as defined in 12 GCA §12101 and the Public Utilities Commission (PUC) has regulatory oversight of municipal golf course fees charged to customers. The PUC is the investigative and regulatory agent of the Government of Guam to ensure affordable rates and adequate access to such golf facilities by residents of Guam.

PUC has issued orders approving rates for the municipal golf course and the last rate increase was in 2008.

Legislative Oversight Hearing Held on October 16, 2015

On October 16, 2015, a legislative oversight hearing was held by the Chairperson of the Committee on Transportation, Infrastructure, Lands, Border Protection, Veterans' Affairs and Procurement (Legislative Chairperson) to discuss the Committee's concerns about the 1989 Lease's renewal with the CLTC Administrative Director. In particular, the Chairperson wanted to address three points:

1. Did the tenant comply with the lease agreement to merit renewal?
2. Should the lease have been renewed?
3. Annual rent – Did CLTC get the best deal?

The CLTC Administrative Director responded to the Committee's questions and agreed to provide documentation where warranted at a later date. We obtained this documentation directly from the Legislative Chairperson's office to corroborate certain findings in this report.

Results of Audit

Our compliance audit of the Guam Municipal Golf Course lease agreements found that the 1989 Lease, the initial lease agreement, was executed and authorized pursuant to public law. However, the 2014 Lease was not. CLTC did not obtain current property valuations for the golf course to determine rental amounts and there may have been missed opportunities to increase rental revenue for the 2014 Lease's term. Several provisions of the lease agreements were not complied with.

These conditions occurred because CLTC did not diligently monitor and enforce the lease provisions and public law to protect CLTC's, as well as the people of Guam's, interests in the property. The noncompliance included:

- Company A did not comply with the 1989 Lease provisions and P.L. 19-34 by assigning its interest to Company B and Company C through a series of name changes, without the Governor's and Legislature's approval.
- Company B was grossly delinquent in rental and property taxes payments corroborated by Company B's FY 2013 through FY 2015 unaudited financial data indicating severe financial distress.
- Company B did not submit required annual reports and financial statements.

When the 1989 Lease expired in 2014, CLTC executed another lease effective February 2014 for the 829,124 square meters of property to Company B despite Company B's noncompliance with the lease agreement and

- Without Legislative authorization (P.L.12-061 codified in 21 GCA § 60112),
- Without the Governor's, Lieutenant Governor's, and Attorney General's signatures (21 GCA § 60114), and
- Without the required two land appraisals (21 GCA § 75107(e)).

2014 Lease Not Authorized by Legislature nor Approved by Governor

In 1988, through P.L. 19-34, the Legislature authorized the Governor of Guam to lease Lot No. 10122-12 in Dededo, Guam specifically to Company A for a period not to exceed 50 years. The purpose of the lease was to construct and manage a municipal golf course with affordable rates and adequate access for Guam residents. Not only did the 1989 Lease obtain legislative authorization, but it was signed by the DLM Acting Director, the President of Company A, the Governor of Guam, the Lieutenant Governor of Guam, and the Attorney General.

On the other hand, the 2014 Lease was only signed by the CLTC Acting Chairman, CLTC Acting Director, and the Company B's General Manager. The 2014 Lease did not obtain the Legislative authorization that was required by 21 GCA § 60112 for leases of government-owned property. The 2014 Lease also was not executed by the Governor, not attested by the Lieutenant Governor, and not approved as to form by the Attorney General as required by 21 GCA § 60114 for all leases of government owned property for commercial purposes.

During the October 16, 2015 legislative oversight hearing, the CLTC Administrative Director commented that the 2014 Lease was a continuation of the 1989 Lease which was already authorized and approved for 50 years by P.L. 19-34. The leases were creations of public law and absent rules for lease of CLTC commercial properties, CLTC had no options except to renew the 1989 Lease with the same terms and conditions.

However, we disagree with the CLTC Administrative Director. Because a new lease was effected with new owners, Legislative authorization and signatures from the Governor, the Lieutenant Governor, and Attorney General should have been obtained. The 1989 Lease was now 25 years old and any new legal requirements, current valuations, and other appropriate reviews should have been considered to protect the Government's interest in the property.

Unauthorized Assignment of Lease to Company B

CLTC essentially renewed the 1989 Lease which expired January 31, 2014 after the 25-year term, effective February 1, 2014. Although a renewal, the 2014 Lease was signed by Company B's General Manager and named Company B as the lessee while the 1989 Lease was signed by Company A's President and named Company A as the lessee. Section 7 of the 1989 Lease, as well as P.L. 19-34, does not allow Company A to assign or transfer its interests in the lease for the government land without approvals from the Legislature and the Governor.

During the October 16, 2015 legislative oversight hearing, the Legislative Chairperson inquired extensively about how Company B became the new lessee without obtaining approvals from the Legislature and the Governor. The CLTC Administrative Director responded that the company is the same but the ownership, shareholders, and name had changed. The changes were indicated in documentation provided by CLTC to the Legislative Chairperson on October 30, 2015 outlining the history of the companies:

- In November 1987, the Department of Revenue and Taxation (DRT) issued Incorporation Certificate 7015 to Company A.
- In March 1996, DRT issued an amended Incorporation Certificate under Company B formerly known as Company A.
- In May 2015, DRT issued an amended Incorporation Certificate under Company C formerly known as Company B.
- In July 2015, DRT issued an amended Incorporation Certificate under Company B formerly known as Company C.

The amended Incorporation Certificates did not list the shareholders for the respective companies.

Although the documentation showed the amendments changed Company A's name, we did not find any evidence of approvals from the Legislature and the Governor as required in Section 7 of the lease agreement and P.L. 19-34 for this assignment. The new shareholders and owners should have been disclosed along with the reason for the changes in Company A's structure. At the very least, a notification to CLTC, the Legislature, and the Governor should have been documented.

From the CLTC board meeting minutes prior to the 2014 renewal, CLTC was aware that the lessee had changed based on the rental payments received but was not clear how the ownership had changed over the years. However, it appeared that the companies were changing to recoup the amounts invested in the municipal golf course.

Missed Opportunities to Raise Rental Amounts in 2014 Lease

In the 1989 Lease, DLM reviewed and determined that \$1.4M was the appropriate property valuation and that 10% of the \$1.4M would be the initial annual rental payments. These rental amounts of \$140,139 increased by 10% every five years.

We found that CLTC did not obtain two appraisals of the golf course property required by P.L. 31-44 (codified in 21 GCA § 75107(e)) which was effective May 2011, prior to the 2014 Lease. The 2014 Lease rental amounts resumed the 10% increases from the 1989 Lease rental amounts. As a result, CLTC may have missed opportunities to increase rental rates.

As an example, we obtained DRT’s 2014 Real Property Tax Assessment Roll, which valued the golf course property at \$6.5M, or \$5.1M more than the 1989 Lease’s valuation of \$1.4M. In this example, \$11.8M could have been additional rental revenue over the term of the 2014 Lease. However, the DRT assessment was not available until after the 2014 Lease was executed.

Table 2: Comparison of Annual Rental Amounts for 2014 Lease Based on Appraisals

Term	Based on 1989 Appraisal of \$1,401,393		Based on 2014 DRT Appraisal of \$6,493,776		Difference
	Annual Rent	Total Rent for 5-Year Period	Annual Rent	Total Rent for 5-Year Period	
Feb 2014 - Jan 2019	\$ 262,299	\$ 1,311,495	\$ 649,378	\$ 3,246,888	\$ (1,935,393)
Feb 2019 - Jan 2024	288,529	1,442,645	714,315	3,571,577	(2,128,932)
Feb 2024 - Jan 2029	317,382	1,586,910	785,747	3,928,734	(2,341,824)
Feb 2029 - Jan 2034	349,120	1,745,600	864,322	4,321,608	(2,576,008)
Feb 2034 - Jan 2039	384,032	1,920,160	950,754	4,753,769	(2,833,609)
Total:		\$ 8,006,810		\$ 19,822,576	(11,815,766)

During the October 16, 2015 oversight hearing, the CLTC Administrative Director stated that he did not have any options to adjust the rental amounts because the 2014 Lease was a renewal with the same conditions and terms from the 1989 Lease. However, the Legislative Chairperson pointed out that the exception was for the rent which was to be adjusted every five years and did not prohibit considering a current valuation.

1. The lease shall be for a term beginning on February 1, 1989 and ending on January 31, 2014, with an option to renew the lease for another twenty-five (25) years upon the same terms and conditions contained in this lease, excepting the payment of rent which shall be adjusted every five (5) years as stated in Paragraph 2.

The November 21, 2013 CLTC board meeting minutes indicated that the Acting CLTC Chairman (who is now the CLTC Administrative Director) similarly wanted to start discussions on the rental

rates before the 1989 Lease's expiration on January 31, 2014. The Acting CLTC Chairman stated Company B was aware the lease would change and he wanted a fair price because the current rental amount was based on a valuation from 25 years ago.

Poor Financial Performance

We found 36 instances of late rental payments by Company B averaging 88 days overdue and ranging from 2 to 258 days late. CLTC board meeting minutes discussing the renewal of the 1989 Lease indicated that Company B's history of delinquent rental payments as well as its delinquent property taxes were concerning to the CLTC. Meeting minutes from November 2012 note that \$185K was owed for real property taxes and approximately \$400K in rent.

The October 2013 CLTC board minutes indicated that because the 1989 Lease was up for renewal, Company B had paid its delinquent taxes and rental amounts.

Our analysis of Company B's FY 2013 to FY 2015 unaudited financial data indicated declining financial performance with increasing net losses. The data showed declining revenues and relatively stable expenses. Salaries and the lease were major expense items. In FY 2015, Company B's liabilities were in excess of \$10M and receivables were over \$900K. Company B's accounts receivable grew 24% from FY 2013 to FY 2015 and we noted receivables from various companies and \$303K from bingo operators. One bingo operator was connected to the U.S. District Court Criminal Case No. 11-00082 involving illegal gambling investigations by the Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), and Naval Criminal Investigative Service (NCIS).

Another alarming observation was that as of September 30, 2015, Company B's cash balances could not satisfy its significant amounts in current obligations. Based on the unaudited data showing Company B's poor financial performance, the risk of late rental payments is extremely high and Company B's financial viability is questionable.

Because of Company B's deteriorating financial condition and inability to pay timely rent and property taxes, we recommend requiring annual independent audits of Company B's financial statements to be submitted no later than six months after the fiscal year at Company B's expense.

During the October 16, 2015 oversight hearing, the Legislative Chairperson was concerned that despite Company B's poor rental payment history, the lease was renewed for another 25 years instead of a shorter period. Again, the CLTC Administrative Director explained that he had no other options but to renew the lease with the same terms and conditions because the lease was a creation of law and there were no rules and regulations promulgated for commercial use of CLTC lands.

A main contention of the Legislative Committee members was that CLTC did not enforce its authority to terminate the lease despite Company B's poor payment history. The property, considered Chamorro Homelands equipped with some infrastructure, could have been put to better use such as subdividing for residential and agricultural use to alleviate the backlog of applicants for Chamorro Homelands.

The CLTC Administrative Director firmly stated that the best and highest use of the property is for a golf course and the infrastructure was specifically designed for a golf course. Had CLTC foreclosed on the property, CLTC would have inherited a golf course it was in no position to manage. Company B was also helping the junior golfing community by providing affordable golfing opportunities for them.

The oversight hearing concluded with a comment from a Committee member reminding the CLTC Administrative Director the purpose of the CLTC and the spirit of the law could have been fulfilled for agricultural and residential applicants as the best use of the property. But too much emphasis was placed on the lease and the amount of money invested even though Company B clearly defaulted on the lease provisions and were not good tenants.

Conclusion and Recommendations

The CLTC Board and Management did not adequately protect its interest in the municipal golf course property, which is government owned Chamorro Homelands. CLTC did not properly monitor Company B's performance in managing the municipal golf course nor did the CLTC enforce the provisions of the leases and compliance to applicable public laws. In the October 17, 2013 CLTC board meeting minutes, CLTC Legal Counsel commented that there should be periodic compliance reviews of the leases. It appeared that Company B did not comply especially with their payments of rent and property taxes until the looming lease renewal.

The 1989 Lease was renewed with Company B despite Company B's alarming financial condition and history of late rental payments.

Other compliance issues regarding the leases of the municipal golf course include:

- The 1989 Lease was improperly assigned to two other companies without the Legislature's and Governor's approvals of the new owners.
- The 2014 Lease was not authorized by the Legislature nor approved by the Governor, Lieutenant Governor, and the Attorney General.
- Property appraisals were not obtained prior to the 2014 Lease and CLTC missed opportunities to increase rental revenue.
- Company B was grossly delinquent in its payment of rent and property taxes and did not submit the required financial and performance reports.

The purpose of authorizations and approvals is to ensure the Chamorro Homelands are entrusted to lessees that are responsible stewards for Chamorro Homelands. Complying with the lease demonstrates this responsibility. Timely financial and performance reports allow CLTC to adequately monitor compliance to the lease provisions and enforce the leases as stewards for Chamorro Homelands.

We are concerned about the execution of the 2014 Lease that did not obtain Legislative authorization and the Governor's approval as well as the Attorney General's review. We have referred the matter to the Attorney General for an opinion on the validity of the 2014 Lease. A response has not yet been received.

In addition, we recommend the CLTC require and obtain independently audited financial statements to ascertain the reliability of the financial data and the viability of Company B.

Classification of Monetary Amounts

	Finding Description	Questioned Costs	Potential Savings	Unrealized Revenue	Other Financial Impact
1	2014 Lease Not Authorized by Legislature nor Approved by Governor	\$ -	\$ -	\$ -	\$ -
2	Unauthorized Assignment of Lease to Company B	\$ -	\$ -	\$ -	\$ -
3	Missed Opportunities to Raise Rental Amounts in 2014 Lease	\$ -	\$ -	\$11,815,766	\$ -
4	Poor Financial Performance	\$ -	\$ -	\$ -	\$ -
	Totals	\$ -	\$ -	\$11,815,766	\$ -

Management Response and OPA Reply

In November 2016, we transmitted a draft report to the CLTC Administrative Director. Shortly after, we met with the Administrative Director and members of the CLTC Board to discuss the findings and recommendation. During our exit meeting, the Administrative Director stated that CLTC could not have used the DRT 2014 property valuation because it was not available until after the 2014 Lease was executed. Therefore, we modified our draft report to reflect this statement.

We received an official response from CLTC on November 29, 2016 concurring with the audit recommendation to require Company B to submit audited financial statements to assure Company B's financial position.

The CLTC response disagreed with our findings and commented that although the 2014 Lease may not have been the preferred manner to renew the 1989 Lease, the 2014 Lease was not invalid or improper. Company B exercised its option to renew, as authorized in P.L. 19-34, and CLTC renewed the lease after Company B became current with its rent and taxes. The renewal continued the rental amounts from the 1989 Lease. Although the lease did not authorize a new appraisal, CLTC acknowledged that it was not prohibited either.

Our compliance audit showed that the 2014 Lease was not properly executed because in effect, it had assigned a new lessee and required legislative authorization. We have requested the Attorney General to opine on this legal matter and have not received a response as of the release of this report.

CLTC indicated that OPA did not seek to clarify the issues presented, however, we did request clarifications on compliance items in May 2016 and CLTC responded in August 2016.

See Appendix 3 for CLTC's management response.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of implementing the recommendations, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. We will be contacting the Chamorro Land Trust Commission to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation and assistance from the staff and management of the Chamorro Land Trust Commission.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:**Objective, Scope, & Methodology**

The audit objective were to determine whether the Guam Municipal Golf Course Leases were executed in accordance with applicable law.

The scope of our audit was from October 1, 2012 through September 30, 2015 (FY 2013 through FY 2015) and other periods deemed necessary. The audit scope encompassed the lease agreements executed in 1989 and 2014 for the Municipal Golf Course located in Dededo, Guam.

To accomplish our objective, we

- Obtained, compiled, and reviewed applicable laws, regulations, policies, and procedures pertaining to the Guam Municipal Golf Course, including Public Law 33-95, enacted November 9, 2015, which is specific legislation subsequent to our scope period.
- Obtained, summarized, and reviewed prior audit reports and other reports to identify any prior deficiencies relative to the Guam Municipal Golf Course lease agreements.
- Obtained all Guam Municipal Golf Course lease agreements effective since its authorization in public law in 1988.
- Obtained and analyzed Company B's FY 2013 through FY 2015 financial information and determined anomalies in comparing balances and ratios. We did not perform procedures to opine on whether the financial information was fairly presented.
- Obtained and analyzed rental payments to determine compliance to lease provisions.
- Obtained and analyzed other relevant documentation, such as board minutes, to determine compliance to the lease agreement and public law.

We conducted this audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2:**Prior Audit Coverage**

OPA Report No. 09-03 Chamorro Land Trust Commission Commercial Division issued April 2009

In response to prior OPA audit recommendations, as of October 2008, CLTC reported that no rules and regulations have been drafted for the use of golf course lease payments and the Administrative Director will take charge of this project until staff is hired.

OPA Report No. 05-09 Chamorro Land Trust Commission Non-Appropriated Funds issued December 2005

The audit recommended that CLTC establish rules and regulations for the use of the Municipal Golf Course lease payments. CLTC spent \$269,000 in the absence of rules and regulations although required by law. The CLTC Director responded that the rules would be established by February 1, 2006.

OPA Report No. OPA-04-99 Management Audit of the Chamorro Land Trust Commission issued November 1999

The audit recommended that the CLTC Director promulgate rules and regulations for the use of lease payments from the Guam Municipal Golf Course.

On June 3, 2015, the Governor of Guam transmitted the proposed CLTC Rules and Regulations for Commercial Use pursuant to the Administrative Adjudication Law. Bill 139-33 was introduced to approve the rules, but P.L. 33-79 was passed in September 2015 to disapprove the proposed rules.

In November 2015, P.L. 33-95 was enacted to facilitate the leasing of selected CLTC properties for commercial activities in order to begin generating the revenues needed to accomplish land surveys and registration and to provide infrastructure to residential and agricultural CLTC land tracts.

 <p><i>Eddie Baza Calvo</i> Governor of Guåhan</p> <p><i>Ray Tenorio</i> Lieutenant Governor of Guåhan</p> <p><u>Commission Members</u></p> <p><i>Pascual V.A. Sablan</i> Chairman</p> <p><i>Joseph I. Cruz</i> Vice Chairman</p> <p><i>Amanda L.G. Santos</i> Commissioner</p> <p><i>Gyongyi "Pika" P. Fejeran</i> Commissioner</p> <p><i>(Vacant)</i> Commissioner</p> <p><i>Michael J.B. Borja</i> Administrative Director</p>	<p><i>Chamorro Land Trust Commission</i> <i>(Kumision Inangokkon Tano' Chamoru)</i></p> <p><i>P.O. Box 2950 Hagåtña, Guåhan 96932</i> <i>Phone: 649-5263 ext. 435 Fax: 649-5383</i></p>	
	November 29, 2016	RECEIVED OFFICE OF PUBLIC ACCOUNTABILITY
	Doris Flores Brooks, CPA, CGFM Public Auditor 238 Archbishop Flores Street, Ste 401 Hagatna, Guam 96910	BY: <u>JH</u> DATE: <u>11/29/16</u> TIME: <u>2:50</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
	SUBJ: Draft Audit Report – Municipal Golf Course Lease Agreement	
	Hafa Adai Ms. Brooks:	
	On behalf of the Chamorro Land Trust Commission board of commissioners, we thank you for taking the time to review the Chamorro Land Trust Commission (CLTC) Municipal Golf Course Lease Agreement. Your review was based on a request from the Guam Legislature Committee on Land following its oversight hearing in October 16, 2015 on the Municipal Golf Course Lease Agreement. For both the oversight hearing and your audit review, the CLTC provided numerous historical documents and responded to questions. Unlike the legislative oversight hearing, however, the CLTC only has this forum to respond to the findings of your audit. An interview of the CLTC leadership or commissioners did not occur to assist with clarification of your review of documents and videos of the oversight hearing. Had that effort been made, your findings would have received more clarification and perhaps resolved your concerns.	
	In our November 21, 2016, meeting with you and your staff to discuss this audit, you mentioned your office had requested the Attorney General of Guam to determine if this Municipal Golf Course lease was valid. With that in mind, the release of this audit report would seem a premature conclusion because the Attorney General's opinion could render this audit report moot. If a legal opinion deemed important to request, perhaps this report should be detained until the legal opinion is issued.	
	Additionally, we agreed the due date of this report would be extended to November 29, 2016, and that your office would provide a revised report by November 22, 2016. To date, we have not yet received the revised report.	
	<u>BACKGROUND</u>	
	The golf course lease is the product of Public Law 19-34 which authorized the government of Guam to lease land for a public golf course for a period not to exceed fifty years. The resultant lease was approved in January 1989 for two twenty-five year intervals for a total term of fifty years. The lease granted the lessee the option to renew the lease for its second twenty-five year term with the same conditions contained in the executed lease.	

Rev. 4/4/2016

In 1994, the land for the golf course was transferred to the control of the CLTC upon the enactment of the Chamorro Land Trust Act as amended by Public Law 22-76 and codified in Guam Code Annotated in Title 21, Chapter 75, Section 75120.

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In the years leading up to the renewal of the first twenty-five year term of the lease, the CLTC wrestled the Guam Municipal Golf Course rent delinquency. Senior management from the golf course appeared before the board of commissioners to discuss the matter and received warnings that the lease could be terminated. However, the commission and its staff were diligent and successful in working with the lessee to bring the account current. The golf course also resolved its property tax delinquency. At the time the golf course exercised its option to extend the lease for a second twenty-five year term, it had no delinquencies in its rent or property taxes. Without any existing default conditions, the CLTC board of commissioners could not reasonably deny the option to renew the lease.

An important factor that weighed in the board of commissioners' concern of the lease renewal were the conditions established in Public Law 23-38. This public law adopted the CLTC rules and regulations for residential and agricultural uses and specifically prohibited commercial leases until rules and regulations for commercial leases were adopted, pursuant to the Administrative Adjudication Law. At that time, the CLTC commercial rules and regulations were in the early stages of being drafted. Without the commercial rules and regulations, CLTC could not engage in any commercial leases, to include a new lease for the golf course. If the golf course lease were terminated and not reinitiated until rules were in place, it would have left the CLTC the responsibility to maintain the grounds of the vacant golf course at a substantial cost. The current commercial rules and regulations were enacted by Public Law 33-95 in November 2015 but the requirements to declare any lands for commercial use would take many months and still many more months of procurement activities before a contract could be engaged.

DISCUSSION

The Office of Public Accountability noted four main concerns resulting from its compliance audit of the CLTC Municipal Golf Course Lease Agreement. Listed below are the CLTC's comments on each of these concerns.

1. 2014 Lease Not Authorized by Legislature nor Approved by Governor

Public Law 19-34 authorized the 1989 lease between the Department of Land Management (on behalf of the government of Guam) and the lessee of the golf course for a period of fifty years defined as two twenty-five year terms with an option for the lessee to renew the lease for a second twenty-five year period **"upon the same terms and conditions contained in this lease."**

The 2014 lease was purely intended to be a renewal of the 1989 lease and was the result of the lessee exercising its renewal option and was not beyond the authority granted by P.L. 19-34. The conditions set in the 2014 lease were similar to the conditions set in the 1989 lease to include the payment term increments established.

In 1989, the leased property was owned by the "Government of Guam." Title to the leased property was then transferred to the CLTC in 1994. According to 21 GCA §75106, "the powers and duties of the Governor and the department (of

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Land Management) with respect to lands of the territory shall not extend to lands having the status of Chamorro homelands except as specifically provided for in this Chapter.” Accordingly, the 2014 lease was signed by the CLTC Acting Chairman and not by the Governor.

2. Unauthorized Assignment of Lease to Company B

The interest was not transferred. The corporate name of the lessee was changed from [REDACTED] to [REDACTED]. This is referenced in the Administrative Law Judge Report regarding the Application of the [REDACTED] Public Utilities Commission Docket Number 93-009, dated September 15, 1997.

The terms of the lease prohibit the transfer without the prior consent of the Governor and the Legislature.

3. Rental Amounts in 2014 Lease Not Based on Appraised Value

The lease period was stated as a twenty-five year term “with an option to renew the lease for another twenty-five (25) years upon the same terms and conditions contained in this lease, excepting the payment of rent which shall be adjusted every five (5) years as stated in Paragraph 2.” CLTC interpreted this renewal provision to mean that the rent would continue to increase based on the initial fair market value of the property, rather than considering the renewal to be an opportunity to obtain new appraisals to set a new base rental amount.

Although the lease did not prohibit considering a current valuation for the second twenty-five year term, it also did not authorize this action. Furthermore, there was no other form of authorization to take such action. The 1989 lease is a contract which established conditions throughout the term of the agreement. The binding nature of the contract did not permit its terms, such as a new payment structure, to be renegotiated upon renewal.

Likewise, the use of a Department of Revenue 2014 Real Property Tax Assessment Roll to arrive at an estimated value of the golf course property is flawed. The lease renewal was executed in April 1, 2014 and the tax roll data used in the compliance audit was not certified until March 14, 2015, therefore, at the time of the renewal, the estimated value was not available. In fact, the most recent property tax assessment available at the time of the lease renewal was from 1995.

However, if we used the 2014 property tax assessment roll for argument’s sake and developed a new lease payment terms with these values, we believe the lessee would most likely have not accepted the terms. In fact, we also believe the terms would have been so prohibitively high that, if able, a new lessee would not have been found. The proposed payment terms outlined in the audit report would have added another \$472,630 per year on the initial years, or an additional \$39,385 per month. In the existing golf courses, revenues throughout the island were in a slump from a depressed market. This audit expresses a probable loss in potential revenues that would most likely not have been possible to achieve.

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Based on the provisions of the 1989 lease and continued into the 2014 lease renewal, the CLTC receives a revenue from the golf course whereas the audit's expression of arriving at a new unauthorized amount would possibly have yielded an unsigned lease renewal and zero revenue.

4. Poor Financial Performance

The Chamorro Land Trust Commission board of commissioners has also been concerned with the financial viability of the current lessee. [REDACTED] under its current ownership and under this lease renewal has maintained improved payments on its monthly lease. Additionally, the CLTC has implemented a financial accounting system to more adequately track and report this lease and all CLTC leases.

To assure the financial position of the golf course lessee, the CLTC will require the financial reports be submitted include the audited version of those reports.

CONCLUSION

The Chamorro Land Trust Commission respects and appreciates the compliance audit presented on the Guam Municipal Golf Course Lease Agreement. While we take exception to specific details in the report, overall, we appreciate the transparency in this matter. We request the Office of Public Accountability to seriously consider the comments presented in this letter. The latitude of the report's findings challenge the actions taken by the CLTC which the CLTC believes the lease renewal was in accordance with governing directives and terms of a lease and nothing more. Although the 2014 lease may not have been the preferred manner by which the 1989 lease was renewed, we do not believe it created or eliminated anything not already in the 1989 lease to make it invalid or improper.

Additionally, if the OPA feels it necessary to query the Attorney General of Guam to also validate the legality of this lease, then the findings of this report should be withheld until a response is received.

Please do not hesitate to call on us if you have any questions or comments.

Sincerely,


MICHAEL J.B. BORJA
Administrative Director


PASCUAL A. SABLAN
Chairman

Appendix 4:**Status of Audit Recommendations**

No.	Addressee	Audit Recommendation	Status	Action Required
1	CLTC Board and Management	The CLTC require and obtain audited financial statements to ascertain the reliability of the financial data and the viability of Company B.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.



**Chamorro Land Trust Commission
Municipal Golf Course Lease Agreements
Report No. 16-09, December 2016**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Christian Rivera, Audit Staff

Yuka Hechanova, CPA, CIA, CGFM, CGAP, CGMA, Audit Supervisor

Doris Flores Brooks, CPA, CGFM, Public Auditor

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