clerks@guamlegislature.org

From: Committee on Rules 36GL <cor@guamlegislature.org>
Sent: Wednesday, July 27, 2022 10:10 AM
To: Clerks; Rennae Meno
Cc: Speaker Therese M. Terlaje
Subject: Messages and Communications for Doc. No. 36GL-22-2322*
Attachments: 36GL-22-2322.pdf

Håfa Adai Clerks,

Please see attached M&C Doc. No. 36GL-22-2322 for processing:

36GL-22-2322	OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund (HCBF)*	Office of Public Accountability

Si Yu'os Ma'åse',

COMMITTEE ON RULES
Vice Speaker Tina Rose Muña Barnes
36th Guam Legislature
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Please see attached M&C Doc. No. 36GL-22-2322*

36GL-22-2322	OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund (HCBF)*	Office of Public Accountability

Si Yu'os Ma'åse',

Marie Cruz
Community Relations Liaison

Office of Speaker Therese M. Terlaje

Committee on Health, Land, Justice and Culture
I Mina'trentai Sais na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
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From: **Mariella Cruz** <mcruz@guamopa.com>
Date: Tue, Jul 26, 2022 at 11:06 AM
Subject: Transmittal: OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund
To: <governor@guam.gov>, <joshua.tenorio@guam.gov>, Office of the Speaker <speaker@guamlegislature.org>, <senatormunabarnes@guamlegislature.org>, <officeofsenatorshelton@guamlegislature.org>, <senatortcnelson@guamlegislature.org>, <office@senatorperez.org>, Joe S. San Agustin <senatorjoessanagustin@gmail.com>, <clyntridgell@guamlegislature.org>, <senatorpedo@senatorjpterlaje.com>, <officeofsenatormoylan@guamlegislature.org>, Office of Senator Frank Blas, Jr. <office@senatorfrankblas.com>, <senatormary@guamlegislature.org>, <senatorvanthonyada@gmail.com>, <senatortelot@gmail.com>, <office@senatorjoannebrown.com>, <senatorchrisduenas@gmail.com>, Leevin T. Camacho <ag@oagguam.org>, MAYORS' COUNCIL OF GUAM <mcogadmin@teleguam.net>, Anthony Chargualaf <inalahanmayor@gmail.com>, Jessy Gogue <ocp.mayor@gmail.com>, Fred Horecky <horeckylaw@teleguam.net>, Edward M. Birn <Edward.Birn@doa.guam.gov>, Lester Carlson <lester.carlson@bbmr.guam.gov>, <kbaird@guamcourts.org>
Cc: Vincent Duenas <vduenas@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

Hafa Adai!

Transmitted herewith is the full report of OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund. Thank you!

Best regards,

Mariella G. Cruz
Accountability Auditor I

Office of Public Accountability
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Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Transmittal: OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund

Mariella Cruz <mcruz@guamopa.com> Tue, Jul 26, 2022 at 11:06 AM
To: governor@guam.gov, joshua.tenorio@guam.gov, Office of the Speaker <speaker@guamlegislature.org>, senatormunabarnes@guamlegislature.org, officeofsenatorshelton@guamlegislature.org, senatortcnelson@guamlegislature.org, office@senatorperez.org, "Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, clyntridgell@guamlegislature.org, senatorpedo@senatorjpterlaje.com, officeofsenatormoylan@guamlegislature.org, "Office of Senator Frank Blas, Jr." <office@senatorfrankblas.com>, senatormary@guamlegislature.org, senatorvanthonyada@gmail.com, senatortelot@gmail.com, office@senatorjoannebrown.com, senatorchrisduenas@gmail.com, "Leevin T. Camacho" <ag@oagguam.org>, MAYORS' COUNCIL OF GUAM <mcogadmin@teleguam.net>, Anthony Chargualaf <inalahanmayor@gmail.com>, Jessy Gogue <ocp.mayor@gmail.com>, Fred Horecky <horeckylaw@teleguam.net>, "Edward M. Birn" <Edward.Birn@doa.guam.gov>, Lester Carlson <lester.carlson@bbmr.guam.gov>, kbaird@guamcourts.org
Cc: Vincent Duenas <vduenas@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

Hafa Adai!

Transmitted herewith is the full report of OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund. Thank you!

Best regards,

Mariella G. Cruz
Accountability Auditor I

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8:00 A.M.

OFFICE OF PUBLIC ACCOUNTABILITY

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July 26, 2022

Hafa Adai! Transmitted electronically is OPA Report No. 22-03, Mayors' Council of Guam Host Community Benefit Fund (HCBF).

Our audit found that the overall management and usage of the HCBF was not entirely in accordance with applicable laws, regulations and best practices. Our review of the disbursements of the Host Community villages of Chalan Pago-Ordot (CPO) and Inalåhan made from Fiscal Year (FY) 2017 to FY 2021 specifically found:

- Unauthorized Expenditures from the HCBF
- Lack of Adequate Documentation for Expenditures
- Commingling of HCBF with Non-Appropriated Fund Revenues
- Non-Issuance of Form 1099 for Non-Employee Compensation (NEC)
- Non-Compliance with the Open Government Law for Host Community Municipal Planning Council (MPC) Meetings

Unauthorized Expenditures from the HCBF

We found that CPO spent $201K of the HCBF during a five-year period on staff/MPC recognition; sponsorship; equipment; donations; reimbursements; and other purchases. Minimal expenditures were recorded during the five-year period, as the CPO Mayor's Office is working on leveraging the HCBF funds to construct a multi-purpose recreation/emergency center and a new Mayor's office. Based on Title 10, Chapter 51, §§51404 and 51406 of the Guam Code Annotated (GCA), the MPC of the Host Community shall determine the projects to be funded for the village. **No expenditure** (emphasis added) shall be made from the HCBF that is not approved by resolution of the MPC; however, in our testing of 20 sample transactions from the CPO Mayor's Office, we found that 17 transactions totaling $67K were not specifically approved through a resolution pursuant to the HCBF's enabling legislation.

Additionally, we found that Inalåhan spent $960K of the HCBF during a five-year period on employee bonuses; community functions; donations; equipment; food and catering; permits and licenses; prizes and awards; repairs and maintenance; supplies and materials; and other purchases. In our testing of 60 sample transactions from the Inalåhan Mayor's Office, we noted 18 transactions totaling $47K that were not specifically approved via a resolution pursuant to the HCBF's enabling legislation.

Lack of Adequate Documentation for Expenditures

Our results of testing for CPO and Inalåhan's compliance with the MCOG's standard operating procedures for appropriated funds for the procurement of supplies, materials, and services found that several disbursements lacked adequate documentation for certain purchases. We noted multiple transactions for both CPO and Inalåhan that did not have three quotations solicited prior to purchase.

Commingling of HCBF with NAF Revenues
Pursuant to 10 GCA §51406, the HCBF shall be maintained separate and apart from all other government funds. In our review of Inalåhan's and CPO's bank statements, proceeds from the HCBF and village NAF revenues were deposited into the same bank account. For Inalåhan, this practice occurred from FY 2017 to the first quarter of FY 2021; however, we noted that NAF revenues have not been deposited into the Inalåhan's HCBF account since the second quarter of FY 2021. For CPO, a secondary bank account was in existence during the five-year scope period for investment of some of the HCBF proceeds as time certificates of deposit, which accumulated NAF interest revenue of about $1.2K per month; however, this account was closed by the CPO Mayor's Office as of May 2022.

Non-Issuance of Form 1099 for Non-Employee Compensation
The usage of the HCBF primarily consists of payments to third-party vendors to provide services to the Host Community. In instances where services performed by third-party vendors exceeds $600, Form 1099-NEC for non-employee compensation must be issued for tax purposes. In our examination of Inalåhan's and CPO's HCBF disbursements, many of the transactions met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with both Inalåhan and CPO's mayoral office staff, it was disclosed that Form 1099-NECs were not issued.

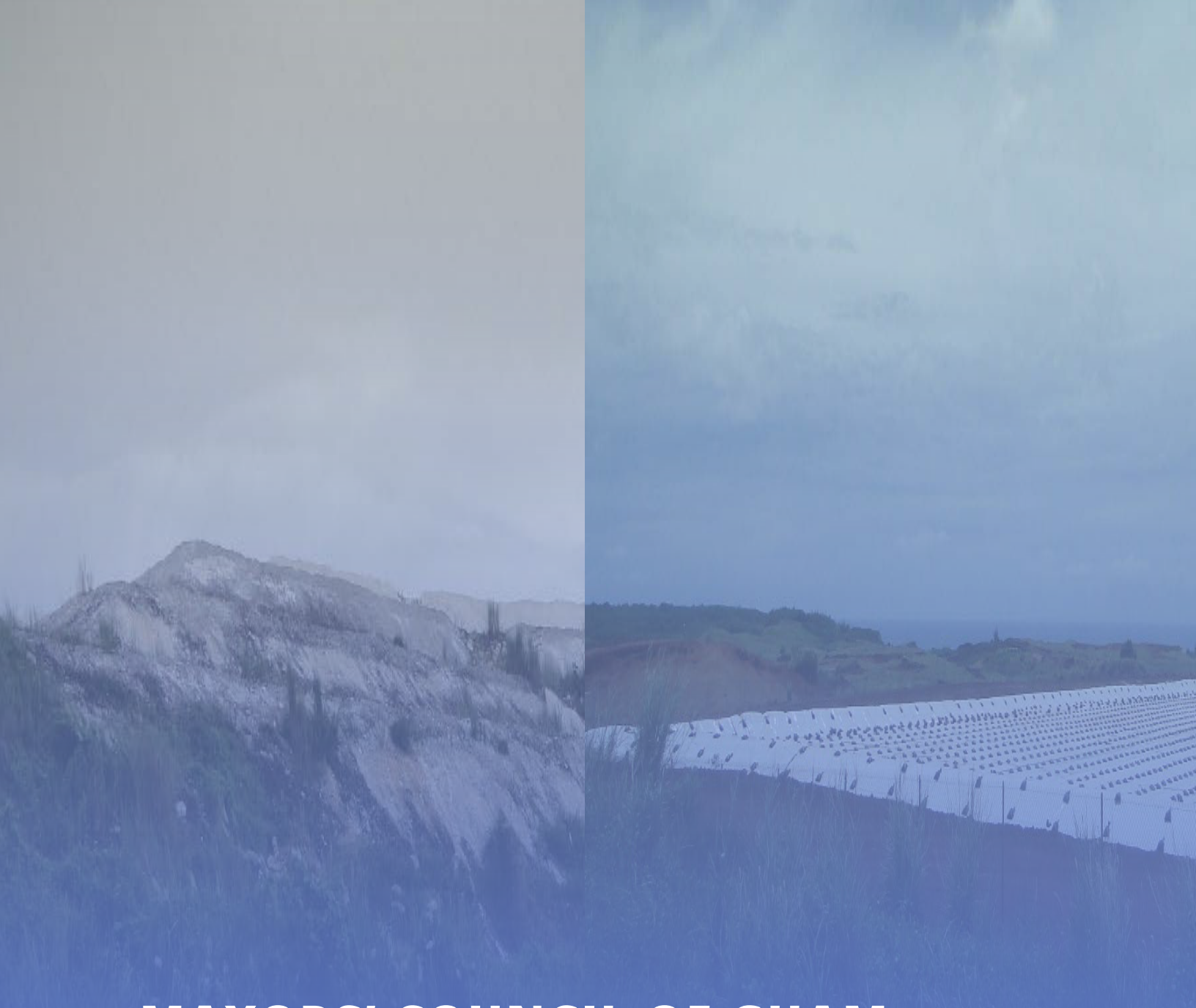
Non-Compliance with the Open Government Law for Host Community MPC Meetings
As of June 2021, Public Law (P.L.) 36-34 required for regular and special meetings of a public agency to be broadcasted via video live streaming applications. The provisions of P.L. 36-34 also apply to village MPC meetings according to a legal opinion issued in March 2022 by the Office of the Attorney General of Guam; however, P.L. 36-34 did not provide funding needed for agencies to obtain the technology needed to comply with this mandate. Consequently, Inalåhan and CPO MPC meetings held after May 2021 were not properly noticed nor broadcasted in accordance with P.L. 36-34.

OPA made seven recommendations to the CPO and Inalåhan Mayor's Offices to address non-compliance issues related to the preparation of relevant documents and processing of certain disbursements in accordance with the MCOG Standard Operating Procedures for Appropriated Funds and Guam procurement law, as well as non-compliance issues with the HCBF's enabling legislation and the Open Government Law.

For your convenience, you may also view and download the report in its entirety at www.opaguam.org. Should you want a physical copy of the report or have any questions, please contact Vincent Duenas, Audit Supervisor, at vduenas@guamopa.com or Mariella Cruz, Audit Staff, at mcruz@guamopa.com.

Senseramente,

Benjamin J.F. Cruz
Public Auditor



MAYORS' COUNCIL OF GUAM HOST COMMUNITY BENEFIT FUND

PERFORMANCE AUDIT
October 1, 2016 through September 30, 2021

OPA Report No. 22-03
July 2022

Doc. No. 36GL-22-2322.*

Mayors' Council of Guam
Host Community Benefit Fund

Performance Audit
October 1, 2016 through September 30, 2021

OPA Report No. 22-03
July 2022

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Mayor, Municipality of Chalan Pago-Ordot
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EXECUTIVE SUMMARY
Mayors' Council of Guam Host Community Benefit Fund
OPA Report No. 22-03, July 2022

Our audit of the receipts and disbursements of the Mayors' Council of Guam's (MCOG) Host Community Benefit Fund (HCBF) administered by the Host Community villages of Chalan Pago-Ordot (CPO) and Inalåhan found that the overall management and usage of the HCBF was not entirely in accordance with applicable laws, regulations and best practices. Specifically, we found:

- Unauthorized Expenditures from the HCBF
- Lack of Adequate Documentation for Expenditures
- Commingling of HCBF with Non-Appropriated Fund (NAF) Revenues
- Non-Issuance of Form 1099 for Non-Employee Compensation
- Non-Compliance with the Open Government Law for Host Community Municipal Planning Council (MPC) Meetings

Based on our review of selected transactions, we questioned $114 thousand (K) in expenditures, of which $67K was from the CPO Mayor's Office and $47K from the Inalåhan Mayor's Office, that were unauthorized because they were not approved by their respective MPCs as required by the HCBF's enabling legislation.

Uses of the HCBF

As hosts of the Ordot Dump and Layon Landfill, the villages of CPO and Inalåhan are to be compensated $150K annually for accommodating the solid waste needs of the island of Guam. Ratepayers are assessed a premium surcharge of $0.38 per month for residential customers and $3.57 per ton for commercial customers by the Guam Solid Waste Authority, which, in turn, transfers these monies to the host villages. The funds are to be used for capital improvement projects which may include, but are not limited to, (1) youth, senior and community centers; (2) recreation areas, to include parks, sports fields and public gathering areas; (3) infrastructure to provide access to utilities, telecommunications, television and internet services to areas where providing such services are cost prohibitive; and (4) village beautification projects.

Unauthorized Expenditures from the HCBF

We found that CPO spent $201K[1] of the HCBF during a five-year period on staff/MPC recognition; sponsorship; equipment; donations; reimbursements; and other purchases. Minimal expenditures were recorded during the five-year period, as the CPO Mayor's Office is working on leveraging the HCBF funds to construct a multi-purpose recreation/emergency center and a new Mayor's office. Based on Title 10, Chapter 51, §§51404 and 51406 of the Guam Code Annotated (GCA), the MPC of the Host Community shall determine the projects to be funded for the village. **No expenditure** (emphasis added) shall be made from the HCBF that is not approved by resolution of the MPC; however, in our testing of 20 sample transactions from the CPO Mayor's Office, we found that 17 transactions totaling $67K were not specifically approved through a resolution pursuant to the HCBF's enabling legislation.

[1] CPO spent $55K in FY 2017, $65K in FY 2018, $28K in FY 2019, $12K in FY 2020, and $42K in FY 2021.

Additionally, we found that Inalåhan spent $960K[2] of the HCBF during a five-year period on employee bonuses; community functions; donations; equipment; food and catering; permits and licenses; prizes and awards; repairs and maintenance; supplies and materials; and other purchases. In our testing of 60 sample transactions from the Inalåhan Mayor's Office, we noted 18 transactions totaling $47K that were not specifically approved via a resolution pursuant to the HCBF's enabling legislation.

Bonuses Given to Unclassified Employees
Our review of Inalåhan's HCBF disbursements made between FY 2017 to FY 2020 also found that monetary gifts were given to as many as nine Inalåhan Mayor's Office staff annually for Christmas, with amounts ranging from $150 to $200. A total of $7K in bonuses was paid to Inalåhan Mayor's Office staff from FY 2017 to FY 2020. Staff of the mayors' offices serve as unclassified employees pursuant to 5 GCA §40121. According to 4 GCA §6218.2, no bonuses shall be authorized and/or paid in lump-sum, or otherwise, to unclassified employees of GovGuam unless so specified by law. While it is generous to reward employees for their hard work, these bonuses were inappropriately awarded to unclassified GovGuam employees. It is noted, however, that the current Inalåhan Mayor has discontinued the practice of awarding bonuses to Inalåhan Mayor's Office staff as of the second quarter of FY 2021.

Lack of Adequate Documentation for Expenditures
Our results of testing for CPO and Inalåhan's compliance with the MCOG's standard operating procedures (SOPs) for appropriated funds for the procurement of supplies, materials, and services found that several disbursements lacked adequate documentation for certain purchases. We noted multiple transactions for both CPO and Inalåhan that did not have three quotations solicited prior to purchase. The non-solicitation of a minimum of three quotations for applicable purchases goes directly against the competitive nature that characterizes the GovGuam procurement process.

Lack of Department of Public Works Approval for Construction Projects
We identified ten out of 20 transactions for CPO totaling $82K related to construction, road repair, and beautification projects. We could not find supporting documentation to prove the projects were reviewed and approved by the Department of Public Works (DPW). Three disbursements did not require DPW approval: one disbursement for an environmental study totaling $15.5K was a contract directly overseen by DPW, while the remaining two disbursements were for advertisement of the invitation for bid relative to the Multi-Purpose Center and new Mayor's office projects. The CPO Mayor stated that his prior experience in the military as an Engineer Officer allowed for the CPO Mayor's Office to be relieved of the requirement to seek approval from DPW for capital improvement projects within this threshold. This arrangement has been in existence since the Mayor took office in January 2009.

For Inalåhan, we identified five out of 60 transactions for totaling $38K for community projects and construction; however, we could not find supporting documentation to prove the projects were reviewed and approved by DPW.

[2] Inalåhan spent $240K in FY 2017, $172K in FY 2018, $227K in FY 2019, $88K in FY 2020 and $233K in FY 2021.

Guam Community College Procurement Training Certification
According to the Procurement Training Compliance Report submitted by the MCOG for FY 2021, the Administrative Assistants under the former Inalåhan Mayor and the CPO Mayor completed Module 1 of the Guam Community College Procurement Training Program in January 2018, and therefore obtained the requisite credential to carry out procurements as a level-one purchaser; however, as of the of FY 2021, there were no personnel at the Inalåhan Mayor's Office that have completed the procurement training.

Commingling of HCBF with NAF Revenues
Pursuant to 10 GCA §51406, the HCBF shall be maintained separate and apart from all other government funds. In our review of Inalåhan's and CPO's bank statements, proceeds from the HCBF and village NAF revenues were deposited into the same bank account. For Inalåhan, this practice occurred from FY 2017 to the first quarter of FY 2021; however, we noted that NAF revenues have not been deposited into the Inalåhan's HCBF account since the second quarter of FY 2021. For CPO, a secondary bank account was in existence during the five-year scope period for investment of some of the HCBF proceeds as time certificates of deposit, which accumulated NAF interest revenue of about $1.2K per month; however, this account was closed by the CPO Mayor's Office as of May 2022.

Non-Issuance of Form 1099 for Non-Employee Compensation
The usage of the HCBF primarily consists of payments to third-party vendors to provide services to the Host Community. In instances where services performed by third-party vendors exceeds $600, Form 1099-NEC for non-employee compensation (NEC) must be issued for tax purposes. In our examination of Inalåhan's and CPO's HCBF disbursements, many of the transactions met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with both Inalåhan and CPO's mayoral office staff, it was disclosed that Form 1099-NECs were not issued.

Non-Compliance with the Open Government Law for Host Community MPC Meetings
As of June 2021, Public Law (P.L.) 36-34 required for regular and special meetings of a public agency to be broadcasted via video live streaming applications. The provisions of P.L. 36-34 also apply to village MPC meetings according to a legal opinion issued in March 2022 by the Office of the Attorney General of Guam; however, P.L. 36-34 did not provide funding needed for agencies to obtain the technology needed to comply with this mandate. Consequently, Inalåhan and CPO MPC meetings held after May 2021 were not properly noticed nor broadcasted in accordance with P.L. 36-34.

Conclusion and Recommendations
Our audit of the HCBF administered by the CPO and Inalåhan Mayor's Offices determined that the funds were not entirely properly managed due to non-compliance issues with certain disbursements. To promote transparency, accountability, and compliance with the Host Community Benefits Fund Program, we made seven recommendations to address the non-compliance issues with certain disbursements.

Benjamin J.F. Cruz
Public Auditor

Introduction

This report presents the results of our audit of the receipts and disbursements of the Mayors' Council of Guam's (MCOG) Host Community Benefit Fund (HCBF) from October 1, 2016 to September 30, 2021. This audit was requested by the Chief Administrative Law Judge (ALJ) of the Public Utilities Commission (PUC), and was included in the Office of Public Accountability's (OPA) Annual Audit Plan and the HCBF's enabling legislation. This audit is also Part B of the MCOG Non-Appropriated Funds (NAF) series. Part A was issued in September 2020 and reported on the MCOG's compliance with NAF reporting requirements. An analysis of the receipts and disbursements of the MCOG NAFs will be issued in a separate audit report.

Our audit objective was to determine whether MCOG's HCBFs were properly managed and accounted for in accordance with applicable laws, regulations, and best practices. The objective, scope, methodology, and prior audit coverage can be found in Appendices 1 and 2.

Background

In July 2010, Public Law (P.L.) 30-165 designated the villages of Ordot and Inalåhan as the Host Community. The Host Community each receive $150 thousand (K) per year through the HCBF as compensation for accommodating the solid waste needs of the island of Guam through the operation of the former Ordot Dump and the current Layon Landfill. The HCBF receives funding from a premium surcharge paid by residential ($0.38 per month) and commercial ($3.57 per ton) ratepayers for solid waste disposal services provided by the Guam Solid Waste Authority (GSWA). The premium is subject to review by the PUC every five (5) years, and is adjusted on a discretionary basis to account for factors such as inflation.

Inalåhan will receive funds from the HCBF for as long as the Layon Landfill remains in operation. However, Ordot will continue to receive proceeds from the HCBF under the following conditions:

- Through the duration of the post-closure period, in conformance with the Guam Post-Closure Care and Maintenance Plan (2005), or a subsequent post-closure plan duly adopted by the authorized agencies and entities, or
- Until such time that the Administrator of the Guam Environmental Protection Agency deems the land clear and free of any and all toxins that could potentially harm the health and/or the environment.

Uses of the HCF

The Mayors and the respective Municipal Planning Council (MPC) of the Host Community are responsible for the management of the HCBF. Funds of the HCF are maintained separate and apart from all other government funds.

Funds in the HCBF may only be used by the Host Community for the purposes as described below. The respective MPC of the Host Community are to determine the projects to be funded for the village. Any expenditures made through the HCBF must be approved by resolution of the

respective MPC of the Host Community. The MPC also has the authority to procure supplies and services for the Host Community, notwithstanding any other provision of the Guam Procurement Law.

Title 10, Chapter 51, §51403 of the Guam Code Annotated (GCA) allows for the Mayors of the Host Community to use the HCBF for the following capital improvement projects, which may include, but are not limited to:

(a) Youth, Senior and Community Centers;
(b) Recreation areas, to include parks, sports fields and public gathering areas;
(c) Infrastructure to provide access to utilities, telecommunications, television and internet services to areas where providing such services are cost prohibitive; and
(d) Village Beautification projects.

P.L. 32-021 allowed for the HCBF to be encumbered as collateral for a loan or line of credit to advance its community projects as described above. The MPC of the Host Community may enter into any such agreements necessary for the acquisition of the loan or line of credit, with any lending institution chosen under the applicable procurement rules, regulations and policies. The MPC of the Host Community may utilize the services of the Guam Economic Development Authority (GEDA) in the securing of any financing or line of credit authorized, and any fees for GEDA's services if utilized are waived.

A copy of the HCBF's enabling legislation can be found in Appendix 3.

HCBF Deposits and Disbursements

The fees collected by GSWA appears on commercial and residential customer bills as the "Host Community Premium Surcharge". GSWA deposits the fees into an account separate and apart from other funds maintained by GSWA, then transfers them quarterly to the Chalan Pago-Ordot (CPO) and Inalåhan Mayor's offices. During our scope period, we confirmed both offices received a total of $897K in premium surcharge fees. See Table 1 for the deposits made to the two respective mayor's offices for Fiscal Year (FY) 2017 to FY 2021.

Table 1: Premium Surcharge Deposits to Host Communities

Host Community Premium Deposits	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Total
CPO	$ 232,077	$ 172,196	$ 172,778	$ 165,875	$ 153,977	$ 896,903
Inalåhan	$ 232,077	$ 172,196	$ 172,778	$ 165,875	$ 153,977	$ 896,903
Total	**$ 464,154**	**$ 344,392**	**$ 345,557**	**$ 331,749**	**$ 307,954**	**$ 1,793,806**

Based on our review of financial reports provided by the Host Community, the CPO Mayor's Office spent $201K and the Inalåhan Mayor's Office spent $960K of the premium surcharge deposits during the five-year period. CPO and Inalåhan reported HCBF balances of $1.2 million (M) and $15K, respectively, as of September 30, 2021. See Table 2 for the disbursements made by the two respective mayor's offices for FY 2017 to FY 2021.

Table 2: Disbursements Made by Host Communities

Host Community Premium Disbursements	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Total
CPO	$ 54,744	$ 64,856	$ 27,936	$ 11,819	$ 41,834	$ 201,189
Inalåhan	$ 240,492	$ 171,810	$ 226,566	$ 88,279	$ 232,983	$ 960,130

The Results of Audit section of this report will expand on the nature and appropriateness of the disbursements made by the two respective offices.

Public Utilities Commission

The PUC is an independent regulatory commission, separate from the Executive and Legislative branches, created by Federal law. The PUC is governed by seven commissioners who serve six-year terms under appointment by the Governor and confirmation by the Legislature. The PUC regulates the rates and rate impacting procurements of the GSWA and other autonomous agencies of the Government of Guam (GovGuam). The PUC shall review the Host Community premium at least once every five (5) years and may adjust it to account for factors such as inflation.

Reason for Audit

In January 2020, the Mayors of CPO and Inalåhan petitioned the PUC to establish a new premium that would achieve an annual Host Community Premium (HCP) amount of $175K per year for their respective villages. This would represent an increase of approximately $50K per year for the HCP. To establish a fee that would achieve the new premium, the Mayors asked the PUC to approve an HCP surcharge fee of $0.39 per month for each residential customer account and $3.63 per ton for commercial customers of GSWA. This would represent a 2.6% increase to the HCP surcharge for residential customers and a 1.7% HCP increase to GSWA commercial customers. The Mayors contend that such HCP increases are justified as they will "help offset Guam's 15.78% Rate of Inflation since 2011."

In GSWA Docket 12-02, Community Benefit Premium PUC Order dated May 28, 2020, the PUC tabled the Mayors' request for the increase in the HCP pending the completion and resolution on the issue of propriety of expenditures of HCP funds by the Mayors' Offices of CPO and Inalåhan pursuant to 10 GCA Article 4. The ALJ inquired with the OPA if an audit of the HCP Program had been conducted by the OPA. The Public Auditor indicated that there would be an audit of the HCBF.

MCOG Standard Operating Procedures

In January 2016, the MCOG adopted standard operating procedures (SOPs) for appropriated and non-appropriated funds. These SOPs outline the guidelines for how each respective mayor's office carries out routine responsibilities such as procurement, property management, humanitarian assistance, payment procedures, etc. As an appropriated fund, the Mayors of the Host Community stated that guidance for the management of the HCBF is followed in accordance with the appropriated funds SOP.

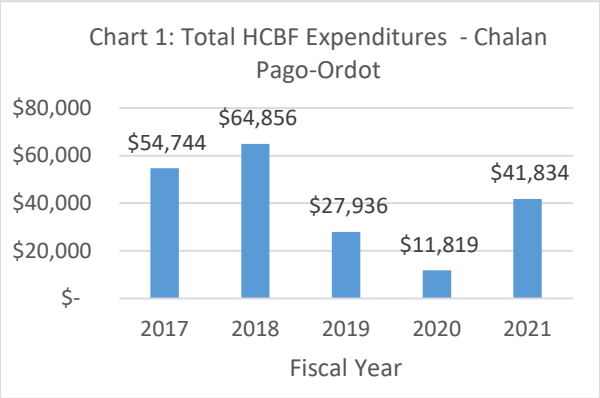
Results of Audit

Our audit of the receipts and disbursements of the MCOG HCBF administered by the Host Community villages of CPO and Inalåhan found that the overall management and usage of the HCBF was not entirely in accordance with applicable laws, regulations and best practices. Specifically, we found:

- Unauthorized Expenditures from the HCBF
- Lack of Adequate Documentation for Expenditures
- Commingling of HCBF with NAF Revenues
- Non-Issuance of Form 1099 for Non-Employee Compensation
- Non-Compliance with Open Government Law for Host Community MPC Meetings

Based on our review of selected transactions, we questioned $114K in expenditures, of which $67K was from the CPO Mayor's Office and $47K from the Inalåhan Mayor's Office, that were unauthorized because they were not approved by their respective MPCs as required by the HCBF's enabling legislation. As the condition of the HCBF differs between the Host Community villages, the results of audit will separately examine Inalåhan and CPO's management and use of the HCBF.

Chalan Pago-Ordot



We found CPO spent $201K of the HCBF during a five-year period on staff/MPC recognition, sponsorship, equipment, donations, reimbursements, and other purchases. Specifically, CPO spent $55K in FY 2017, $65K in FY 2018, $28K in FY 2019, $12K in FY 2020, and $42K in FY 2021. CPO recorded a HCBF balance of $1.2 million (M) as of FY 2021. See Chart 1 for a comparison of expenditures and Table 3 for a breakdown of CPO's disbursements during the five-year period.

Minimal expenditures were recorded during the five-year period, as the CPO Mayor's Office is working on leveraging the HCBF funds to construct a multi-purpose recreation/emergency center and a new Mayor's office. They are looking to request for $3M in borrowings for a total of $3.525M in funding for the project, which will be matched by the Office of Economic Adjustment under the Department of Defense. CPO has allocated $500K in available HCBF monies for the construction of a new Mayor's Office, and another $525K for the design and construction of a Multi-Purpose Center. While the intended use of these committed funds appears to be accordance with the criteria established in 10 GCA §51403, we cannot opine on the appropriateness of these funds unless they are expended.

Table 3: CPO Disbursements from FY 2017 to FY 2021

Category	Total Dollar Amount	Percentage
Construction and Community Projects	$ 142,610	71%
Equipment	$ 40,754	20%
MPC/Staff Event	$ 6,594	3%
Sponsorship	$ 3,081	2%
Repairs and Maintenance	$ 2,006	1%
Reimbursement	$ 1,981	0.98%
Miscellaneous	$ 1,586	0.79%
Materials and Supplies	$ 1,433	0.71%
Holiday Events	$ 946	0.47%
Donation	$ 200	0.10%
Grand Total	**$ 201,191**	**100%**

Unauthorized Expenditures from the HCBF

Based on 10 GCA §§51404 and 51406, the MPC of the Host Community shall determine the projects to be funded for the village. **No expenditure** (emphasis added) shall be made from the HCBF that is not approved by resolution of the MPC.

Our office judgmentally selected 20 disbursements with a total value of $83K to test for compliance with 10 GCA §51406. Of the 20 disbursements, 17 (or 85%) totaling $67K were not specifically approved by the CPO MPC via a resolution. As a result, we questioned the $67K in disbursements that showed:

- $33K for construction and community projects;
- $29K for equipment;
- $2K for MPC/staff event;
- $2K for repairs and maintenance;
- $700 for sponsorships; and
- $150 for reimbursement.

See Appendix 4 for a complete listing of transactions.

We found that only three of the 20 disbursements tested were approved by the CPO MPC through a resolution: two of the disbursements were related to newspaper advertisements for the invitation for bids relative to the construction of the new CPO Mayor's office (CPO Resolution No. 2020-02) and Multi-Purpose Center (CPO Resolution No. 2020-04), and one disbursement was related to an environmental study for the Multi-Purpose Center (CPO Resolution No. 2021-02). These resolutions established and/or modified the budget for the new CPO Mayor's office and Multi-Purpose Center; however, the resolutions did not specify the activities that comprise the "design and construction" budgeted as part of the projects.

In our auditor's judgement, the aforementioned sample testing of disbursements did not meet the criteria set forth in 10 GCA §51406. The CPO MPC did not approve, by resolution, the $67K in expenditures during the five-year period. Consequently, the disbursements tested were not in

compliance with the HCBF's enabling legislation, which decreases the public's confidence that the funds are serving the communities where solid waste management facilities are located. We recommend that, prior to any future disbursements, the CPO Mayor present resolutions to their respective MPCs seeking approval of expenditures, to come into compliance with 10 GCA §51406.

Checks Written for Reimbursements

As disbursements through the HCBF are paid through the issuance of a check, there are instances in which a vendor may not accept checks as a form of payment. This results in mayoral staff having to utilize personal funds to cover purchases; however, reimbursements are not allowed for appropriated funds according to the MCOG SOP. Our review of CPO's HCBF disbursements found multiple instances during FY 2017 to FY 2021 in which checks were issued as reimbursements to the CPO Mayor and mayoral staff; however, reimbursements are not allowed for appropriated funds according to the MCOG SOP.

Lack of Adequate Documentation for Expenditures

In conjunction with the requirement for the Host Community to seek approval of expenditures by resolution of the MPC, the MCOG SOP for appropriated funds outlines the requirements for the procurement of supplies, materials, and services. The SOP cites threshold amounts and their requirements that Mayors may enter into, including:

1. Purchases below $500 may use the "Direct Payment Method" without the necessity of going through normal government procurement procedures.
2. Purchases over $500 but less than $1K per purchase, provided a minimum of three (3) informal written or telephonic quotations are required from vendors.
3. Purchases with a value of less than $15K without General Services Agency (GSA) approval, but a Mayor must formally obtain a minimum of three (3) price quotations from the potential vendor and processes a Requisition for the responding vendor with the lowest responsible bid.
4. Purchases not to exceed $50K for contracts for construction, road repair and beautification projects are to be reviewed by the Department of Public Works (DPW) for compliance assurance within five (5) working days.

Additionally, pursuant to 5 GCA §5141(b), all GovGuam personnel tasked with the responsibility of purchasing or otherwise procuring goods or services, or construction, including those employed by agencies with authority to conduct their own procurement, must receive certification in at least one of the four procurement training modules administered by the Guam Community College (GCC). For the certificate of enrichment (basic), an individual must complete Module 1 "Fundamentals and Principles of Procurement (Basic)" in order to serve in the capacity of a level-one purchaser and to sign procurement requisitions. As of March 2021, GovGuam entities are required to report personnel's compliance with procurement training requirements in a report submittal to the OPA.

Despite CPO's minimal transactions during the five-year period, our audit found certain disbursements lacked adequate documentation and support for applicable purchases as required by the HCBF's enabling legislation and the MCOG's SOP for appropriated funds.

Use of MPC Minutes for Approval to Justify Disbursements
During our initial walkthrough with the CPO Mayor's Office, the CPO Mayor stated that all disbursements must be approved by the MPC, either via a resolution or through meeting minutes and discussed with the MPC. In our testing of 20 disbursements, we found that three were approved through CPO MPC meeting minutes.

We noted that nine disbursements contained approval by the CPO MPC via email to authorize the transaction, but contained no indication of the HCBF as the funding source. The remaining five transactions did not have any documentation to support that approval was obtained prior to disbursement. The CPO Mayor stated in his management response that all 17 disbursements that were not justified via a resolution received final approval/ratification at a CPO MPC meeting; however, we were unable to verify the approval of the aforementioned five disbursements at the time of this report.

Obtaining proper approval prior to disbursements aids in promoting transparency and the Mayor's responsibility for use of the HCBF. Without proper prior approval, it is uncertain if the MPC performed their due diligence and care in the active oversight over the use of the HCBFs. We recommend that, prior to any future disbursements, the CPO Mayor present resolutions to the CPO MPCs seeking approval of expenditures to come into compliance with 10 GCA §51406.

Purchases Less Than $500
We identified five out of 20 disbursements (other than sponsorships) tested below $500. All five disbursements had receipts to support and confirm purchase amounts and/or recipients.

Purchases Over $500, But Less Than $1,000
We identified three out of 20 disbursements tested with a value between $500 and $1K. Of the three disbursements, one had documentation to support that the CPO Mayor's Office performed their due diligence in soliciting a minimum of three informal quotes prior to purchase or disbursement.

Purchases Between $1,000 and $15,000
We identified eight out of 20 disbursements tested between $1K and $15K from CPO's disbursements. Five of eight disbursements ranging between $1K and $15K had documentation to support that a Scope of Work or Type of Equipment form was prepared when quotes were solicited. All eight disbursements required a minimum of three written quotations from licensed vendors, of which five had documentation to support three written quotes were solicited prior to purchase. The other three disbursements did not have any documentation to support their purchase as they were sole-sourced.

Purchases Over $15,000
We identified one out of 20 disbursements tested with a purchase value at over $15K. The lone disbursement was made for an equipment purchase where formal quotes were solicited; however, there was no documentation to prove the purchase was reviewed and approved by GSA.

The non-solicitation of a minimum of three (3) quotations for applicable purchases goes directly against the competitive nature that characterizes the GovGuam procurement process. We

recommend that the CPO Mayor's Office perform their due diligence in soliciting the minimum of three (3) quotations and preparing other necessary documents for applicable purchases pursuant to the MCOG SOP.

Lack of DPW Approval for Construction Projects

We identified ten out of 20 transactions totaling $82K related to construction, road repair, and beautification projects. After closer review of the records, we could not find supporting documentation to prove that seven of the projects were reviewed and approved by DPW. Three disbursements did not require DPW approval: one disbursement for an environmental study totaling $15.5K was a contract directly overseen by DPW, while the remaining two disbursements were for advertisement of the invitation for bid relative to the Multi-Purpose Center and new Mayor's office projects.

The CPO Mayor stated that his prior experience in the military as an Engineer Officer allowed for the CPO Mayor's Office to be relieved of the requirement to seek approval from DPW for capital improvement projects within this threshold. This arrangement has been in existence since the Mayor took office in January 2009. The CPO Mayor stated he also has taken on planning, coordinating, and Quality Assurance inspection roles for many of the DPW projects performed by the CPO Mayor's Office.

Although the CPO Mayor has prior experience in engineering, we could not locate his credentials to practice or offer engineering services as a licensed professional engineer on the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors roster. We do find it commendable for the CPO to use his prior expertise; however, we cannot overlook the requirement in procurement law and the MCOG SOPs that require DPW's approval for any construction contracts. Obtaining proper approval from DPW for construction projects aides in promoting transparency, compliance with procurement law, and a release of liability should the quality of workmanship falter. We recommend the CPO Mayor's Office comply with the requirement to seek approval from the DPW for construction projects within the threshold of $50K pursuant to Article 1 §0101(c) of the MCOG SOP and procurement law.

Guam Community College Procurement Training Certification

According to the Procurement Training Compliance Report submitted by the MCOG for FY 2021, the Administrative Assistant of the CPO Mayor's Office completed Module 1 of the Guam Community College (GCC) Procurement Training Program in January 2018, and therefore obtained the requisite credential to carry out procurements as a level-one purchaser.

Commingling of HCBF with NAF Revenues

Pursuant to 10 GCA §51406, the HCBF shall be maintained separate and apart from all other government funds. In our walkthrough with the CPO Mayor's Office, it was noted that proceeds from the HCBF and CPO's NAF were kept in one bank account. CPO also invested some of the HCBF proceeds as time certificates of deposit during the five-year scope period, which accumulated NAF interest revenue of about $1.2K per month; however, the CPO Mayor's Office noted the investment account has been closed at the May 2022 audit exit meeting. We also noted that the CPO Mayor's Office maintains sufficient records to differentiate village NAF and HCBF

transactions; however, we recommend for the funds to be maintained separate and apart pursuant to 10 GCA §51406.

Non-Issuance of Form 1099 for Non-Employee Compensation
The usage of the HCBF largely consists of payments to third-party vendors to provide services to the Host Community. In instances where services performed by third-party vendors exceeds $600, Form 1099-NEC for nonemployee compensation (NEC) must be issued for tax purposes. Payments must be reported as NEC if the following four conditions are met:

- Payment is made to someone who is not your employee;
- Payment was made for services in the course of your trade or business (including government agencies and non-profit organizations);
- Payment was made to an individual, partnership, estate, or a corporation; and
- Payments to the payee were at least $600 during the year.

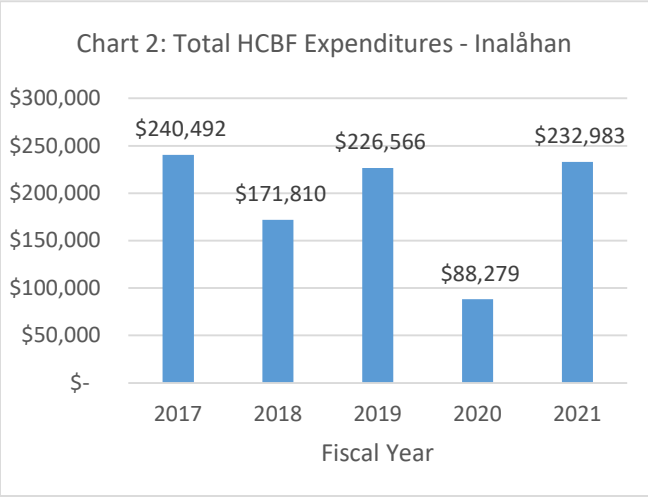
Many of CPO's transactions met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with CPO Mayor's Office staff, it was disclosed that Form 1099-NECs were not issued. As the CPO Mayor's Office often contracts the same vendor for services such as road repairs, we recommend for the CPO Mayor's Office to perform its due diligence in issuing Form 1099-NEC to its vendors for applicable HCBF disbursements in excess of $600.

Non-Compliance with the Open Government Law for CPO MPC Meetings
In June 2021, P.L. 36-34 required for regular and special meetings of a public agency to be broadcasted via video live streaming applications. Meeting notices must contain the agenda of matters to be discussed at the respective meeting. Any action of a public agency taken at a meeting is void and of no effect if the public agency fails to comply with the public notice of agenda matters. The provisions of P.L. 36-34 also apply to village MPC meetings according to a legal opinion issued in March 2022 by the Office of the Attorney General of Guam; however, P.L. 36-34 did not provide funding needed for agencies to obtain the technology needed to comply with this mandate.

Due to lack of funding for village MPCs and other public agencies to advertise agenda items and to obtain the technology needed to implement P.L. 36-34, CPO MPC meetings conducted after June 2021 were not properly noticed nor broadcasted in accordance with the Open Government Law. CPO discusses and approves many of its HCBF disbursements at regular CPO MPC meetings. Although CPO reports the activity of the HCBF in its quarterly NAF report submissions, in the interest of full transparency, we recommend for CPO Mayor's Office to properly notice and broadcast its MPC meetings pursuant to P.L. 36-34.

Inalåhan

We found that Inalåhan spent $960K of the HCBF during the five-year period on employee bonuses; community functions; donations; equipment; food and catering; permits and licenses; prizes and awards; repairs and maintenance; supplies and materials; and other purchases. Specifically, Inalåhan spent $240K in FY 2017, $172K in FY 2018, $227K in FY 2019, $88K in FY 2020 and $233K in FY 2021. Inalåhan recorded a balance of $15K at the end of FY 2021. See Chart 2 for a comparison of expenditures during the five-year period.



However, we noted inconsistencies regarding the HCBF records maintained by the Inalåhan Mayor's Office. While receipts and other supporting documents for disbursements were generally maintained, we noted that balances reported in the Inalåhan Mayor's Office's ledger did not corroborate with account balances shown in monthly bank statements. Additionally, a ledger was not maintained for FY 2021. The Inalåhan Mayor's Office ledger showed total expenditures of $700K. See Table 4 for a breakdown of Inalåhan's disbursements from FY 2017 to FY 2020.

Table 4: Inalåhan Ledger Disbursements from FY 2017 to FY 2020

Category	Total Dollar Amount	Percentage	Category	Total Dollar Amount	Percentage
Repairs and Maintenance	$ 211,652	30%	Equipment	$ 20,253	2.9%
Community Events	$ 89,525	13%	Humanitarian	$ 10,600	1.5%
Donation	$ 63,865	9%	Community Function	$ 10,011	1.1%
Prizes and Awards	$ 60,425	9%	Food and Catering	$ 6,991	1%
Equipment and Parts	$ 44,694	6%	Licenses, Permits and Fees	$ 5,404	0.8%
Supplies and Materials	$ 37,895	5.4%	Liberation Day	$ 5,302	0.8%
Construction and Community Projects	$ 37,336	5.3%	Bonuses	$ 4,950	0.7%
Sponsorship	$ 32,193	4.6%	Community Programs	$ 780	0.1%
Contractual Services	$ 30,696	4.4%	Bank Charges	$ 138	0.02%
Other	$ 27,134	3.9%	**Grand Total**	**$ 699,844**	**100%**

Unauthorized Expenditures from the HCBF

Our office judgmentally selected 60 disbursements with a total value of $174K to test for compliance with 10 GCA §51406. Of the 60 disbursements, 18 (or 30%) totaling $47K were not specifically approved by the Inalåhan MPC via a resolution. As a result, we questioned the $47K in disbursements that showed:

- $14.6K for equipment;
- $11.5K for repairs and maintenance;
- $11.4K for reimbursements;
- $6.1K for construction and community projects;
- $1.9K for sponsorships;
- $693 for MCOG event;
- $300 for employee bonus; and
- $200 for donation.

See Appendix 5 for a complete listing of transactions.

We recommend that, prior to any future disbursements, the Inalåhan Mayor present resolutions to their respective MPCs seeking approval of expenditures, to come into compliance with 10 GCA §51406.

Checks Written for Reimbursements, Payable to "Cash"

Although we have noted no reimbursements made through the HCBF during the last three quarters of FY 2021, we noted one instance in which a check was made payable to "Cash" for the purchase of a diesel mower. While the MCOG SOP does not address treatment of checks payable to "Cash", writing checks payable to "Cash" is generally a bad practice due to the risk of loss and difficulty in record keeping.

Bonuses Given to Unclassified Employees

Our review of Inalåhan's HCBF disbursements made between FY 2017 to the first quarter of FY 2021 also found that monetary gifts were given by the former Inalåhan Mayor to as many as nine Inalåhan Mayor's Office staff annually for Christmas, with amounts ranging from $150 to $200. A total of $7K in bonuses was paid to Inalåhan Mayor's Office staff from FY 2017 to the first quarter of FY 2021. Staff of the mayors' offices serve as unclassified employees pursuant to 5 GCA §40121. According to 4 GCA §6218.2, no bonuses shall be authorized and/or paid in lump-sum, or otherwise, to unclassified employees of GovGuam unless so specified by law. Bonus or bonus payments shall mean sums authorized and/or paid to an unclassified employee that is separate and apart from and/or added to the base pay of such unclassified employee for any purpose. While it is generous to reward employees for their hard work, these bonuses were inappropriately awarded to unclassified GovGuam employees. It is noted, however, that the current Inalåhan Mayor has discontinued the practice of awarding bonuses to Inalåhan Mayor's Office staff as of the second quarter of FY 2021.

Lack of Adequate Documentation for Expenditures

Our results of testing for Inalåhan's compliance with MCOG's SOP for the procurement of supplies, materials, and services found that majority of disbursements lacked adequate documentation for certain purchases.

Use of MPC Minutes for Approval to Justify Disbursements

During our initial walkthrough with the former Inalåhan Mayor, we confirmed there were no resolutions passed by the MPC to justify disbursements made through their HCBF. Instead, disbursements were ratified during the MPC meetings.

The former Inalåhan Mayor later provided four resolutions (IMPC 2017-01, IMPC 2018-02, IMPC 2019-01, and IMPC 2020-01) that were passed during FY 2017 through FY 2020. See Appendix 6 for a copy of Resolution No. IMPC 2017-01. Each resolution stated the MPC concludes expenses made from the HCBF were requested via motion and approved by the majority, which ultimately supported the initial seven focus areas defined by the Inalåhan MPC:

1. Educational Purposes (Scholarships, Academic Services, Student Awards)
2. Youth and Adult Facilities
3. Infrastructure to Enhance Desired Development
4. Environmental Improvement of Existing Liabilities

5. Community Improvement to Support of Capital Projects
6. Sponsor Community Events
7. Subsidize Inalåhan Mayors Operational Annual Budget

The resolutions further specified disbursements related to supporting official sports tournaments, annual community events to promote positive family values, financial aid for medical, humanitarian, and manmade disasters. Each of the resolutions were approved and adopted by members of the Inalåhan MPC; however, these were blanket resolutions that encompassed all of the disbursements that occurred for each year during FY 2017 to FY 2020. During the first quarter of FY 2021, however, there were no resolutions passed and/or Inalåhan MPC meetings held to ratify and approve these transactions. For the remaining three quarters of FY 2021, the current Inalåhan Mayor passed two resolutions through the Inalåhan MPC (Resolution Nos. 2021-001 and 2021-002) which concern the HCBF; however, the corresponding transactions were not among the 60 disbursements tested.

We found that 42 (or 73%) out of 60 transactions tested were generally approved through a resolution. Of the 18 remaining disbursements, four were approved via MPC meeting minutes; three had other forms of written approval endorsed by the former Inalåhan Mayor; and 11 did not have any documentation to show that disbursements were discussed and approved prior to payment.

We recommend that, prior to any future disbursements, the Inalåhan Mayor present resolutions to the Inalåhan MPC seeking approval of expenditures in accordance with 10 GCA §51406.

Purchases Less Than $500
We identified eight out of 60 disbursements tested (other than donations and employee bonuses) below $500 from Inalåhan's disbursements. Of the eight disbursements, four (or 50%) had invoices, receipts, etc. to support and confirm purchase amounts and/or recipients.

Purchases Over $500, But Less Than $1,000
We identified eight out of 60 disbursements (other than donations) tested between $500 and $1K from Inalåhan's disbursements. All eight disbursements did not have any documentation to support that the Inalåhan MPC performed their due diligence in soliciting a minimum of three informal quotes prior to purchase or disbursement.

Purchases Between $1,000 and $15,000
We identified 23 out of 60 disbursements tested between $1K and $15K from Inalåhan's disbursements. Three (or 13%) of 23 disbursements had documentation to support that a Scope of Work or Type of Equipment form was prepared when quotes were solicited. Additionally, only three (or 13%) of the 23 disbursements had documentation to support that three written quotes were solicited prior to purchase. Of the 20 remaining disbursements, one disbursement had evidence that showed that one quote was solicited; two disbursements were related to a sole sourced vendor; and three disbursements had missing documentation. The other 14 disbursements did not have any documentation to support that the Inalåhan MPC performed their due diligence in soliciting a minimum of three formal quotes prior to purchase or disbursement.

Purchases over $15,000
We identified one out of 60 disbursements tested that was over $15K from Inalåhan's disbursements. The lone disbursement was made for grass cutting on village roads; however, three quotes were not solicited for this purchase. According to the former Inalåhan Mayor, the Inalåhan MPC approved the vendor that is owned by two Inalåhan residents to provide this service. The justification for not soliciting bids for services is to try to keep business within the village.

The non-solicitation of a minimum of three (3) quotations for applicable purchases goes directly against the competitive nature that characterizes the GovGuam procurement process. We recommend the Inalåhan Mayor's Office perform their due diligence in soliciting the minimum of three (3) quotations and preparing other necessary documents for applicable purchases pursuant to the MCOG SOP.

Lack of Department of Public Works Approval for Construction Projects
We identified five out of 60 transactions totaling $38K for community projects and construction; however, we could not find supporting documentation to prove the projects were reviewed and approved by DPW. We recommend the Inalåhan Mayor's Office comply with the requirement to seek approval from the DPW for construction projects within the threshold of $50K pursuant to Article 1 §0101(c) of the MCOG SOP and procurement law.

Non-Compliance with Procedures for Humanitarian Assistance Disbursements
Our audit identified numerous expenditures from FY 2017 to FY 2020 that appeared to be for the benefit of certain individuals or groups within the village, or what the former Inalåhan Mayor considered humanitarian assistance. Our office judgmentally selected four disbursements related to humanitarian assistance. Each of the four disbursements had proof of citizenship, proof of residency, or a written request; however, none of the four disbursements had all three required documents. Three of the four disbursements related to humanitarian assistance exceeded $500. Based on Appendix II, Section 1 of MCOG's SOP for appropriated funds, in no case shall such assistance exceed $500 in cash, materials, or in-kind services.

During our interview with the former Inalåhan Mayor, she expressed that the Inalåhan Mayor's Office tries to give donations to those in need. To aid in this process, the Inalåhan MPC has a listing of residents who are less fortunate and are trying to make ends meet. For example, when there is a death in the community, the Inalåhan Mayor's Office will donate $100 to the family. The former Inalåhan Mayor confirmed that donations are approved by the Inalåhan MPC.

Similarly, the Inalåhan Mayor's Office receives requests in writing from those who cannot afford off-island medical care. Requests for donation are first presented to the MPC and require approval before being awarded. The former Inalåhan Mayor also stated that, in comparison to the other Host Community village, Inalåhan has a different social-economic status as a low-to-moderate income level, which serves as the justification to provide benefits and fund community events.

Since the HCBF was established to benefit the Host Communities, disbursements of this nature can give the impression that only select individuals in the Host Community are receiving benefits. These types of expenditures are at the sole discretion of the MPC and Inalåhan Mayor's Office as to who benefits and was authorized through Inalåhan MPC resolutions. Inalåhan Mayor's Office

staff have noted that this practice was discontinued under the current Inalåhan Mayor, and our review of FY 2021 disbursements found no humanitarian assistance-related transactions. As the Mayors of Guam are authorized to provide humanitarian assistance to their constituents, we recommend for the Inalåhan Mayor to exercise due diligence in ensuring that requests for humanitarian assistance are processed and issued in accordance with applicable procedures.

Guam Community College Procurement Training Certification

According to a Procurement Training Compliance Report submitted by the MCOG, the Administrative Assistant under the former Inalåhan Mayor completed Module 1 of the GCC Procurement Training Program in January 2018, and therefore obtained the requisite credential to carry out procurements as a level-one purchaser; however, as of the end of FY 2021, there were no personnel at the Inalåhan Mayor's Office that have completed the procurement training.

Commingling of HCBF with NAF Revenues

In our review of Inalåhan's bank statements and ledger, proceeds from the HCBF and Inalåhan Mayor's Office's NAF revenues were deposited into the same bank account from FY 2017 to the first quarter of FY 2021; however, we note that NAF revenues have not been deposited into the Inalåhan's HCBF account since the second quarter of FY 2021.

Non-Issuance of Form 1099 for Non-Employee Compensation

Many of Inalåhan's HCBF disbursements met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with Inalåhan Mayor's Office staff, it was disclosed that Form 1099-NECs were not issued. As the Inalåhan Mayor's Office often contracts the same vendors for services such as grass cutting, we recommend for the Inalåhan Mayor's Office to perform its due diligence in issuing Form 1099-NEC to its vendors for applicable HCBF disbursements in excess of $600.

Non-Compliance with the Open Government Law for Inalåhan MPC Meetings

Inalåhan MPC meetings held after June 2021 were not properly noticed nor broadcasted in accordance with P.L. 36-34. In the interest of transparency, especially as the activity of Inalåhan's HCBF is only reported via the Inalåhan MPC's Treasurer's report, we recommend for the Inalåhan MPC to properly notice and broadcast its meetings pursuant to P.L. 36-34.

Conclusion and Recommendations

Our audit of the Host Community Benefit Fund administered by the Chalan Pago-Ordot and Inalåhan Mayor's Offices determined that the funds were not entirely properly managed due to non-compliance issues with certain disbursements. Specific issues that support our conclusion include CPO and Inalåhan's fund disbursements totaling $67K and $47K, respectively, that were not approved via resolution of their respective MPCs; non-compliance with procedures for humanitarian assistance disbursements; lack of adequate documentation for applicable purchases; incorrect use of MPC minutes in lieu of resolutions required by law; and a lack of review and/or approval from DPW and GSA for certain contracts.

As of September 30, 2021, the CPO reported a balance of $1.2M in HCBF, while Inalåhan reported a balance of $15K. The CPO has allocated $500K for the construction of a Mayor's Office and another $525K for the design and construction of a Multi-Purpose Center.

To promote transparency, accountability, and compliance with the Host Community Benefits Fund Program, we recommended the Chalan Pago-Ordot and Inalåhan Mayor's Offices:

1. Perform their due diligence in soliciting the minimum of three (3) quotations and preparing other necessary documents for applicable purchases pursuant to the MCOG SOPs.
2. Prior to any future disbursements, the Inalåhan and CPO Mayors present resolutions to their respective MPCs seeking approval of expenditures, to come into compliance with 10 GCA §51406.
3. Exercise due diligence in ensuring that requests for humanitarian assistance are processed and issued in accordance with applicable procedures.
4. Comply with the requirement to seek approval from the Department of Public Works for construction projects within the threshold of Fifty Thousand Dollars ($50,000) pursuant to Article 1 §0101(c) of the MCOG Standard Operating Procedures and procurement law.
5. Maintain HCBF proceeds separate and apart from other governmental funds pursuant to 10 GCA §51406.
6. Perform due diligence in issuing Form 1099-NEC to its vendors for applicable HCBF disbursements in excess of $600.
7. Properly notice and broadcast its village MPC meetings in accordance with P.L. 36-34/Open Government Law.

Classification of Monetary Impact

No.	Finding Description	Questioned Costs		Total
		Chalan Pago-Ordot	Inalåhan	
1.	Unauthorized Expenditures from the HCBF	$ 67,000	$ 47,000	$ 114,000
2.	Lack of Adequate Documentation for Expenditures	$ -	$ -	$ -
3.	Commingling of HCBF with NAF Revenues	$ -	$ -	$ -
4.	Non-Issuance of Form 1099 for Non-Employee Compensation	$ -	$ -	$ -
5.	Non-Compliance with the Open Government Law for Host Community Municipal Planning Council Meetings	$ -	$ -	$ -
	Total	$ 67,000	$ 47,000	$ 114,000

In May 2022, a draft report was transmitted to the Mayors of CPO and Inalåhan for their official response. In the same month, we held separate exit conferences with the CPO and Inalåhan Mayors to discuss the findings and recommendations.

The CPO Mayor disagreed with our initial finding that their usage of the HCBF was not in accordance with the intended purpose outlined in the HCBF's enabling legislation. The CPO Mayor contended that the list of the four examples of capital improvement projects in 10 GCA §51403 is prefaced with a provision stating that "Host Community benefits **may include, but not be limited to** (emphasis added), the following". This provision provides the Host Community MPCs with flexibility in the overall use and approval of HCBF revenues. This finding was therefore modified to reflect CPO and Inalåhan's compliance with obtaining approval for HCBF disbursements via resolution of their respective MPC pursuant to 10 GCA §51406.

The CPO Mayor generally concurred with the remaining findings and recommendations; however, regarding the finding "*Lack of DPW Approval for Construction Projects*", the CPO Mayor cited that most of the DPW employees who review and approve projects performed by GovGuam are not licensed with the Guam PEALS Board. Additionally, the CPO Mayor is able to provide sufficient documentation to DPW regarding his designation as an Engineering Officer in the United Stated Marine Corps from 1983 to 1993.

In July 2022, the draft report was revised and retransmitted to the Mayors of CPO and Inalåhan as a result of discussions from the May 2022 exit conference. The CPO Mayor provided a second management response in reply to our findings concerning CPO's compliance with obtaining approval for HCBF disbursements via resolution of their MPC pursuant to 10 GCA §51406. The CPO Mayor stated that it has always understood the use of a formal "resolution" for the approval of all HCBF expenditures was not the expressed intent of the law, but rather obtaining approval from the MPC via a "motion" and affirmative vote by a majority of the MPC. The CPO Mayor also provided evidence that two disbursements for newspaper advertisements were approved as part of the budgets established via CPO Resolution Nos. 2020-02 and 2020-04 for the construction of the new CPO Mayor's Office and Multi-Purpose Center.

As a result, our findings for CPO were modified to reflect the two disbursements approved via CPO Resolution Nos. 2020-02 and 2020-04; however, CPO's total questioned costs remain at $67K because it is our opinion that a formal MPC resolution be adopted prior to all disbursements in order for the Host Community to comply with 10 GCA §51406. See Appendix 7 for the CPO Mayor's official management response as of July 20, 2022.

The Inalåhan Mayor concurred with the findings presented in the report; however, a written response was not provided for inclusion in this report.

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 recommendation, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. We will be contacting the Mayors of CPO and Inalåhan to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation given to use by the CPO and Inalåhan Mayors and mayoral staff during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY

Benjamin J.F. Cruz
Public Auditor

Appendix 1:
Objectives, Scope, and Methodology

Our audit objective was to determine whether the Mayors' Council of Guam's Host Community Benefits Fund were properly managed and accounted for in accordance with applicable laws, regulations, and best practices.

The scope of the report was from October 1, 2016 to September 30, 2021.

Methodology
The methodology included the review of pertinent laws, rules and regulations, policies and procedures, and other relevant documents about the Host Community Benefits Fund. The work was primarily performed at the OPA Office located at Suite 401 of the DNA Building in Hagåtña, Guam.

We also:

1. Obtained and analyzed the financial reports from the CPO and Inalåhan Mayor's Offices for the Host Community Benefits Fund Premium Surcharges;
2. Researched laws, rules and regulations, policies and procedures, hotline tips, and audit reports on MCOG and Host Community Benefits Fund to obtain an understanding of the activities of the non-appropriated funds administered by the CPO and Inalåhan Mayor's Offices;
3. Clarified transactions and requested additional information based on the analysis conducted by emailing questions, holding Zoom conference calls due to the global pandemic with the mayor's and their staff;
4. Judgmentally selected 60 transactions from Inalåhan's disbursements and 20 transactions from CPO's disbursements and tested them against relevant criteria;
5. Reviewed and utilized the Mayors' Council of Guam's Standard Operating Procedures for Appropriated and Non-Appropriated Funds as criteria for sample testing and compliance;
6. Confirmed with the Guam Solid Waste Management Authority on premium surcharge fees transferred as a result of their assessment and collection from residential and commercial ratepayers;
7. Surveyed to confirm aspects of the control environment (i.e., attitude, culture, current practices, etc.)

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan 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. 20-06, Mayors' Council of Guam Non-Appropriated Funds' Compliance with Reporting Requirements (Issued September 2020)
Our review of MCOG's Non-Appropriated Fund financial reports for 19 municipalities and the MCOG Revolving Fund found that most Mayor's offices were unaware of the different mandated reporting requirements. Our review specifically found:

- Two villages did not submit quarterly NAF reports;
- MCOG Revolving Fund quarterly NAF reports untimely submitted;
- Annual reporting requirements for village NAFs not known and enforced;
- Two Non-Profit Organizations (NPO) did not submit required NPO financial reports; and
- Village festival reports were not consistently submitted.

MCOG FY 2016 Financial Audit
The MCOG and the Mayors were commended for ending FY 2016 with an unmodified (clean) opinion on its NAF and no material weaknesses or significant deficiencies idnetified. However, separate management letters were issued to each Mayor and MCOG.

The NPOs that operate the NAFs of Agana Heights and Mongmong-Toto-Maite complied with their December 31, 2015 filings required by DRT, but they were not audited. While Tamuning's NAF is also operated by an NPO, the NPO has not completed all required DRT filings since 2014 and was not audited.

The deficiencies identified mainly included the lack of comparative prices on procurement, unsupported and/or unreceipted collections, and untimely deposits.

- 10 out of 19 villages had issues in compliance with procurement rules and regulations.
- Nine out of 19 villages had issues with their cash receipts process.

ARTICLE 4
HOST COMMUNITY BENEFITS.

SOURCE: Entire Article added as Article 5 to this Chapter P.L. 30-165:1 (July 16, 2010). Recodified to this Article by the Compiler pursuant to the authority granted by 1 GCA § 1606.

2013 NOTE: This Article was originally entitled "Contract for Collection of Recyclyable Paper," added by P.L. 24-246 (Aug. 14, 1998). This Article was repealed by P.L. 31-020:5 (Apr. 18, 2011) and reenacted as Chapter 51A, Article 5, of this title effective 90 days from date of enactment pursuant to P.L. 31-020:13.

§ 51401. Definitions.
§ 51402. Host Community.
§ 51403. Host Community Benefits.
§ 51404. Host Community Expenditures.
§ 51405. Host Community Premiums.
§ 51406. Host Community Fund Management.
§ 51407. Exemption from Executive Budget Act.
§ 51408. Line of Credit Authorized.

§ 51401. Definitions.

As used in this Article:

(a) Host Community means the concept of community master planning, where benefits are provided to the geographic region of a community where solid waste management facilities are located, such as sanitary landfills, incinerators and gasification facilities.

(b) Host Community Benefits means any capital improvement projects that are funded by premiums collected for the benefit of the Host Community.

(c) Host Community Premiums means any premium assessed in addition to the tipping fee to cover the cost of the Host Community benefits.

(d) Host Community Fund means a fund of the government of Guam that is separate and apart from all other funds of the government of Guam that shall be used for the exclusive benefit of the Host Community.

SOURCE: Added by P.L. 30-165:1 (July 16, 2010).
2017 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 51402. Host Community.

For purposes of this Article, the Host Community shall be the villages of Inarajan and Ordot.

SOURCE: Added by P.L. 30-165:1 (July 16, 2010).

§ 51403. Host Community Benefits.

Host Community benefits may include, but not be limited to, the following:

(a) Youth, Senior and Community Centers;

(b) Recreation areas, to include parks, sports fields and public gathering areas;

(c) Infrastructure to provide access to utilities, telecommunications, television and internet services to areas where providing such services are cost prohibitive; and

(d) Village Beautification projects.

SOURCE: Added by P.L. 30-165:1 (July 16, 2010).

§ 51404. Host Community Expenditures.

The Municipal Planning Council of the Host Community village shall determine the projects to be funded for the village.

SOURCE: Added by P.L. 30-165:1 (July 16, 2010).

§ 51405. Host Community Premiums.

(a) The Host Community premium *shall* be assessed from the opening of the Inarajan landfill until the closing of the *Inarajan* landfill. The aggregate Host Community premium is One Hundred Fifty Thousand Dollars ($150,000) per year for the village of *Inarajan*.

(b) The aggregate Host Community premium is One Hundred Fifty Thousand Dollars ($150,000) per year for the village of *Ordot*, through the duration of the post-closure period, in conformance with the Guam Post-Closure Care and Maintenance Plan (2005), or a subsequent post closure plan duly adopted by the authorized agencies and entities, *or* until such time that the Administrator of the Guam Environmental Protection Agency deems the land clear and free of any and all toxins that could potentially harm the health of humans and/or the environment.

(c) The Host Community premium *shall* be reviewed *at least* once every five (5) years and may be adjusted by the Public Utilities Commission (PUC) to account for factors such as inflation. The Public Utilities Commission (PUC) *shall* equitably determine the Host Community premium for each residential and commercial account.

SOURCE: Added by P.L. 30-165:1 (July 16, 2010). Amended by P.L. 32- 021:2 (April 11, 2013).
2017 NOTE: Subsection/subitem designations added/altered pursuant to the authority of 1 GCA § 1606.

§ 51406. Host Community Fund Management.

The Host Community Fund *shall* be maintained separate and apart from all other government funds and managed by the Mayor and the Municipal Planning Council. No expenditure *shall* be made from the Fund that is not approved by resolution of the respective Municipal Planning Councils of the Host Community. The funds deposited in the Host Community Fund shall only be used by the respective Host Community for the purposes of the Host Community Benefit projects as described in § 511003 of this Article. The Host Community Fund *shall* be subject to periodic audit by the Office of Public Accountability, and *shall not* be subject to any transfer authority of *I Maga'lahen Guåhan.*

SOURCE: Added by P.L. 30-165:1 (July 16, 2010). Amended by P.L. 31-233:XII:22 (Sept. 7, 2012), P.L. 32-021:2 (April 11, 2013).

§ 51407. Exemption from Executive Budget Act.

The Host Community Fund is exempt from the provisions of the Executive Budget Law (5 GCA Chapter 4).

SOURCE: Added by P.L. 32-021:3 (April 11, 2013).

§ 51408. Line of Credit Authorized.

(a) The Host Community Fund may be encumbered as collateral for a loan or line of credit to advance its community benefit projects as described in § 511003 of this Article. The Municipal Planning Council of the Host Community is authorized to enter into such agreements necessary for the acquisition of the loan or line of credit, with any lending institution chosen under the applicable procurement rules, regulations and policies. Neither the Host Community nor the employees of the Municipal Planning Council of the Host Community shall incur any personal liability for any loan agreement lawfully entered into.

(b) The Municipal Planning Council of the Host Community may utilize the services of the GEDA in the securing of any financing or line of credit authorized in this Section, and any fees for GEDA's services if utilized are hereby waived.

SOURCE: Added by P.L. 32-021:3 (April 11, 2013).

§ 51409. Procurement Shall Be Delegated to the Municipal Planning Council of the Host Community.

Notwithstanding any other provision of Guam procurement law, the authority to procure supplies and services for the Host Community shall be delegated by the Chief Procurement Officer to the Municipal Planning Council of the Host Community.

SOURCE: Added by P.L. 32-021:4 (Apr. 11, 2013) as 5 GCA § 5120. Moved by Compiler to this section pursuant to 1 GCA § 1606.

Appendix 4:
Questioned Costs for Chalan Pago-Ordot Mayor's Office

Finding #1: Unauthorized Expenditures from the HCBF

Date	Description	Amount
Construction and Community Projects		
11/17/2016	Wada Co. – Inv # B161111	$ 11,400.00
8/7/2017	JRN Air Conditioning - S-008705	$ 1,725.00
11/8/2017	Hawaiian Rock Products - #01171	$ 5,045.40
3/7/2018	Hawaiian Rock Products - Inv # 01204/P.O.-006	$ 6,733.00
4/30/2018	Hawaiian Rock Products - Inv #01216	$ 3,698.40
11/19/2019	50% DP for Roof Repair	$ 3,570.00
12/17/2020	Hawaiian Rock Products - Invoice #642390/730530	$ 703.58
Construction and Community Projects – Sub-Total		$ 32,875.38
Equipment		
5/17/2017	ACC Air Condition - Rec #10428	$ 988.00
8/7/2018	Far East Equipment Co. - Bal. on Implement	$ 3,504.79
11/19/2018	Mid Pac Far East - CPM-110718	$ 24,500.00
Equipment – Sub-Total		$ 28,992.79
MPC/Staff Event		
1/30/2017	Holiday Party	$2,297.50
Reimbursement		
6/21/2021	Reimbursement for Tires #196	$ 149.59
Repairs and Maintenance		
9/4/2019	Far East Equipment Co. - Inv FEEQ0809	$ 955.00
9/6/2019	EMI - Inv #B625708	$ 480.00
6/17/2020	Alternator & Starter	$ 215.00
6/30/2020	Vehicle Inspection (4)	$ 60.00
Repairs and Maintenance – Sub-Total		$1,710.00
Sponsorship		
6/20/2019	Guam Cal Ripken League – 3 players	$ 300.00
6/20/2019	Guam Cal Ripken League – 3 players	$ 300.00
6/20/2019	Guam Little League – 1 player	$ 100.00
Sponsorship – Sub-Total		$ 700.00
Total Questioned Costs		**$ 66,725.26**

Appendix 5:
Questioned Costs for Inalåhan Mayor's Office **Page 1 of 2**

Finding #1: Unauthorized Expenditures from the HCBF

A. No approval documents

Date	Description	Amount
Repairs and Maintenance		
10/30/2020	Pacific Tyre – Mangilao	$ 73.82
1/27/2021	Walter's Cutting & Mowing Service – Invoice #0802	$ 3,000.00
3/17/2021	Janitorial & Lawn Care Services Inv#s 931629, 931630, 931631, 931632	$ 1,320.00
8/9/2021	Groundworx – Aug 2021 Cut Inv #IMO-21-007	$ 4,400.00
Repairs and Maintenance – Sub-Total		$ 8,793.82
Reimbursement		
8/12/2019	Inarajan Municipal Planning Council	$ 9,075.58
10/29/2020	Candies and Printer Ink	$ 650.00
Reimbursement – Sub-Total		$ 9,725.58
Employee Bonus		
12/20/2016	Xmas Gift 2016	$ 50.00
12/11/2020	Employee xmas bonus	$ 200.00
Employee Bonus – Sub-Total		$ 250.00
Equipment		
2/17/2021	Peavy Sound System IMO Use	$ 600.00
5/21/2021	Purchase of Mini Diesel Truck	$ 10,000.00
Equipment – Sub-Total		$ 10,600.00
MCOG Event		
11/19/2018	18 X-mas Party	$ 693.00
	Total Questioned Costs	**$ 32,788.58**

B. Expenditures approved by documents other than a resolution

Date	Description	Amount
Construction and Community Projects		
2/16/2021	Inv #2019-618 "Keep Inalåhan Clean" Signs	$ 950.00
7/9/2021	Inv #1028 – Concrete Pads for USPS	$ 5,102.21
Construction and Community Projects – Sub-Total		$ 6,052.21
Reimbursement		
12/20/2017	Misc. reimbursements	$ 1,659.82
Employee Bonus		
12/19/2017	2018 Xmas gift	$ 50.00
Donation		
10/9/2019	2019 Halloween Event	$ 200.00
Equipment		
6/24/2021	Purchase of 3 laptops	$4,000.00
Sponsorship		
6/30/2021	Inarajan Elementary Fieldtrip 7-15-2021	$ 1,875.00
	Total Questioned Costs	**$ 13,837.03**

HAMI INALAHAN

RESOLUTION No. IMPC 2017-01

RELATIVE TO THE HOST COMMUNITY FUND

BE IT RESOLVED BY THE INARAJAN MUNICIPAL PLANNING COUNCIL, DISTRICT OF INARAJAN AND, WITH THE APPROVAL BY A MAJORITY OF THE MEMBERS LISTED ABOVE; THE FOLLOWING RESOLUTION IS HEREBY ADOPTED;

WHEREAS, in order to gain community buy-in, a multi-faceted education campaign was launched, community presentations held, informational flyers distributed, and focus groups were conducted to gain community input on the pro- and con- of hosting the Layon Landfill to be located in Dandan, Malojloj;

WHEREAS, the Municipal Planning Council convened to review community input on how best to utilize the revenues collected to benefit the residents of Inarajan;

WHEREAS, the Municipal Planning Council issued the Landfill Host Community Fund which illustrated eight (8) focus areas and are as follows;

Educational Purposes (Scholarships, Academic Services, Student Awards)
Youth and Adult Facilities
Infrastructure to Enhance Desired Development
Environmental Improvement of Existing Liabilities (Set aside money for future legal representation fees should the community need to mitigate legal issues regarding landfill)
Community Improvement to Support of Capital Projects (i.e. Mayor's Office, Basketball Gym, Baseball Field)
Sponsor Community Events (i.e. Easter Egg, Halloween Treat, Christmas Parade, Inarajan and Malojloj Fiesta Parade, Sports Tournaments, etc.)
Subsidize Inarajan Mayors Operational Annual Budget

WHEREAS, the Municipal Planning Council will draft annual Fiscal Budget Plan to ensure that funds are properly earmarked according to the goals and priorities of the Inarajan community;

WHEREAS, P.L. 30-165 was signed into law by Acting Governor Michael W. Cruz, MD, on July 16, 2010;

WHEREAS, P.L. 30-165, Sub Section 511003, outlined the Host Community benefits may include, but *not* be limited to the following as prescribed by 10 GCA ss 51401;

(A) Youth, Senior and Community Centers;
(B) Recreation areas, to include parks, sports fields and public gathering areas;
(C) Infrastructure to provide access to utilities, telecommunications, television and internet services to areas where providing such services are cost-prohibitive; and
(D) Village Beautification Projects

WHEREAS, the Host Community Fund is exempt from the provisions of the Executive Budget Law (5GCA Chapter 4);

WHEREAS, procurement *shall* be delegated to the Municipal Planning Council (REF SS 5120, Article 2, Chapter5, Title 5, GCA);

WHEREAS, whereas the Municipal Planning Council drafted Resolution No, 2014-12, was promulgated on April 8, 2014, transmitted to Guam Legislature, Director – Department of Administration, Office of the Public Auditor and the Mayor's Council of Guam, and effectuated the following:

(a) As per Guam Code Annotated 40, SS 40135, allowed for the establishment of a Municipal Planning Council 'Revolving Fund' under the control and custody of the Municipal Planning Council;
(b) The intent of the Revolving Fund is to be used for operation and maintenance of village facilities under the Mayor's Office and to funds special projects identified by the Municipal Planning Council;
(c) Established Municipal Planning Council official titles and term limitation of 2-year of 1) Vice Chair 2) Secretary 3) Treasurer;
(d) Designated the Municipal Planning Council as the Second Signatory of the Revolving Fund for goods and services $2500.00 and above.

WHEREAS, the official Host Community Benefit Fund (CBF) ledgers include item description, expenses paid, bank charges, and void checks that support the Landfill Host Community Fund eight (8) focus areas;

WHEREAS, after further review of the of the CBF ledgers and monthly MPC meetings, the MPC concludes expenses to the HCF were requested via motion and approved by the majority which ultimately supported the initial eight (8) focus areas;

(a) Sporting supplies, sporting equipment, refreshments and flag
(b) Minagof Fun Run with St. Joseph Catholic Church and the Inarajan Senior Center/Adult Daycare serving as beneficiaries;
(c) Annual celebration of the Feast of St. Joseph, Feast of St. Isidro, and Guam Liberation Festivities (*all inclusive*)
(d) Honorary High School Graduation for the senior individuals who ceased their studies due to war (*all inclusive)*
(e) Support Official Sports Tournament (*all inclusive)*
(f) Financial award to honor village residents who graduated #1 and #2 at NDHS, IMS, IES, SHS, GAA, FDMS, MCS
(g) Annual community events that promote positive family values, cultural entertainment, and age appropriate activities (Halloween, Easter, and Christmas (*all inclusive*))
(h) Maintain and upgrade sports facilities under the purview of the Inarajan Mayor's Office.
(i) Educational grant for interested residents to complete their GED or Adult High Diploma or attend national leadership training/seminar
(j) Purchase green equipment and related supplies and mobile storage with A/C.
(k) Monetary awards for winners in categories during annual community events.
(l) Website, security, emergency communication device, deceased, manmade disasters
(m) Provide technical assist on mutually agreed projects for agencies/businesses located in village of Inarajan.
(n) Financial aid for medical, humanitarian, manmade disasters, frail/elderly and diagnosed with a terminal illness, off-island Chamorro organizations
(o) Refreshments and related supplies
(p) Advertisement (print, radio)

BE IT RESOLVED, that the Chairwoman of the Inarajan Municipal Planning Council certifies and the Secretary attests to the adoption hereof, and that copies of this resolution be thereafter transmitted to the 32nd Guam Legislature; Director, Department of Administration; the Office of the Public Auditor; and to the Mayor's Council of Guam.

DULY RECORDED AND REGULARLY ADOPTED BY THE INARAJAN MUNICIPAL PLANNING COUNCIL ON THE 19th DAY OF OCTOBER 2017.

Adopted:

Doris Flores Lujan
Mayor

ATTEST:

Joaquin Paulino Taitague
Secretary

The vote on the resolution was recorded as follows:

Doris F. Lujan	AYE
Arthur Taimanglo	AYE
Joaquin P. Taitague	AYE
Linda T. Borja	AYE
Jesse Perez	AYE
Teresita Cruz	AYE
Samuel J. Flores	AYE
Francisco San Nicolas	AYE
Tomas Diego	AYE
Rick L.G. Meno	AYE

Office of the Mayor
District of Chalan Pago-Ordot

JESSY C. GOGUE
MAYOR

July 20, 2022

Office of Public Accountability
(Attn: Benjamin J.F. Cruz)
Suite 401 DNA Building
238 Archbishop Flores St.
Hagatna, GU 96913
Email: bjcruz@guamopa.com

RE: REVISED DRAFT REPORT – MAYORS' COUNCIL OF GUAM HOST COMMUNITY BENEFIT FUND

Hafa Adai Public Auditor Cruz,

On July 11, 2022 I received via email, the Revised Draft Report of the Performance Audit of our Host Community Benefit Fund (HCBF) for the period of October 1, 2016 through September 30, 2021. We note that this audit summarizes the findings of **two separate HCBFs** [emphasis added] managed by the Chalan Pago-Ordot (CPO) and the Inalåhan Mayor offices. However, this response only addresses the findings related to the CPO Mayor's office and we provide the following response.

In your revised transmittal letter received, it indicates that Finding #1 and Finding #3 were changed as follows:

1. ~~HCBF Not Entirely used for Intended Purpose~~ to **Unauthorized** [emphasis added] Expenditures from the HCBF;
2. Lack of Adequate Documentation for Applicable Purchases (no change);
3. Commingling of HCBF with Non-Appropriated Fund (NAF) Revenues, *"to include the closure of CPO's investment account as of the May 2022 exit meeting."*;
4. Non-Issuance of Form 1099 for Non-Employee Compensation (no change); and
5. Non-Compliance with the Open Government Law for Host Community Municipal Planning Council (MPC) Meetings (no change).

Based on this report, Attachment (1) has also been updated to reflect the revised findings outlined in your report. With the adjustment of your findings, this revised report also indicates that CPO's "questioned costs" changed from $4K to $67K in disbursements. That this increased amount stems primarily from Finding #1, in which an MPC resolution was not drafted and duly adopted in accordance with 10 GCA §51406 prior to the expenditure of HCBF monies.

In response to this revised finding, Attachment (2) is also submitted and is specific to the "questioned costs" listed for Chalan Pago-Ordot. This attachment reflects how our office received "prior approval" from our MPC to expend the funds disbursed. That, it has always been our understanding that the use of a formal "resolution" for the approval of all HCBF expenditures was not the expressed intent of the law, given the fact that prior OPA audits did **not** highlight the formal adoption of an MPC Resolution as a finding under §51406. In fact, it has always been our understanding that the use of "resolution" meant the approval of our MPC, by a "motion" and an affirmative vote by a majority of the MPC, to expend funds "**prior**" to the issuance of a payment.

Village Flower "Chichirika"

Government of Guam ~ P. O. Box 786, Hagatna, Guam 96932
Tel. (671) 472-8302 / 477-1333 ~ Fax: (671) 477-7131

RE: REVISED DRAFT REPORT – MAYORS' COUNCIL OF GUAM HOST COMMUNITY BENEFIT FUND (cont..)

Nonetheless, given the revised report provided; if OPA now determines that the expenditure of all future HCBF requires a drafted and duly adopted MPC Resolution, we will implement corrective action to address this finding. However, as a Public Document and given the impression this report conveys to the public, I do request a formal review and determination regarding the use of the word "resolution" (similarly, to "motion") in the section of law that applies to our HCBF; since OPA has not reflected this as a finding in prior audits.

Finally, we hope that the attachments provided will help with any future discussions and corrective action that may be address upon the finalization of this Performance Audit report. More importantly, that this information reflects our efforts to obtain "prior approval" by our MPC before the expenditure of funds, including reimbursements, which our MPC had the authority to disapprove if they determined that these expenses were not in keeping with the authorized use of public funds or were not authorized by public laws.

Should you have any questions regarding the response provided, please feel free to call me at 671-472-8302/3 or you can email me at ocp.mayor@gmail.com. I would also like to "Thank You", in advance, on future collaborations with you and your team that will help ensure that the management of CPO's HCBF is done in accordance with applicable laws, regulations, and best practices.

Senseramente,

Jessy C. Gogue
Mayor

Attachment: (1) REVISED CPO Narrative of OPA's Host Community Benefit Fund (HCBF) Performance Audit
(2) Questioned Costs for Chalan Pago-Ordot Mayor's Office

cc: Mayors' Council of Guam, files

CPO ltr to OPA,
HCBF Performance Audit
dtd July 20, 2022

CPO NARRATIVE
OPA's Host Community Benefit Fund (HCBF)
REVISED Performance Audit
July 20, 2022

FINDING	OPA Comment (CPO)	OPA CONCLUSION & RECOMMENDATIONS	CPO RESPONSE
1. **Unauthorized Expenditures from the HCFB**	a. Our office judgmentally selected 20 disbursements with a total of $83K to test for compliance with 10 GCA §51406. Of the 20 disbursement, **19 (or 95%) totaling $67K were not specifically approved by the CPO MPC via a resolution. As a result, we questioned the $67K in disbursements that showed: • $33.3K for construction and community projects; • $29K for equipment; • $2.3K for MPC/staff event; • $700 for sponsorships; and • $150 for reimbursements.**	• ...the aforemenntioned sample testing of disbursements did not meet the criteria set forth in 10 GCA §51406. (Ref. Appendix 4, Performance Audit) **The CPO MPC did not approve, by resolution, the $67K in expenditures during the five-year period. Consequently, the disbursements tested were not in compliance with the HCBF's enabling legislation, which decreases the public's confidence that the funds are serving the communities where solid waste management facilities are located. We recommend that, prior to any future disbursements, the CPO Mayor present resolutions to their respective MPCs seeking approval of expenditures, to come into compliance with 10 GCA §51406.**	a. **As mentioned in our transmittal letter, we are concerened that each expenditure of HCBF monies, now appears to require the drafting and approval of a formal MPC Resolution. That prior OPA audits did not raise this issue as a "finding" since the implementation of this HCBF provision. That we believed a resolution of the MPC was inclusive of a "motion" by the MPC to expend funds, a discussion on the motion, and an affirmative vote by a majority of the MPC at our regular MPC regular meetings. However, should this finding stand, we will ensure that future expenditures are approved by the drafting and adoption of a formal MPC Resolution.**
	b. *Checks Written for Reimbursements.* Our review of CPO's HCBF disbursements found multiple instances **during FY 2017 to FY 2021** in which checks were issued as reimbursement to the CPO Mayor and mayoral staff. However, reimbursements are not allowed for appropriated funds according to the MCOG SOP.		b. **CONCUR.** Corrective action will be taken to resolve the conflict between the MCOG SOP and reimbursements to the CPO Mayor and mayoral staff.

Attachment (1)
1 of 5

CPO NARRATIVE
OPA's Host Community Benefit Fund (HCBF)
REVISED Performance Audit
July 20, 2022

FINDING	OPA Comment (CPO)	OPA CONCLUSION & RECOMMENDATIONS	CPO RESPONSE
2. Lack of Adequate Documentation for Applicable Purchases	a. *Use of MPC Minutes for Approval to Justify Disbursements*. During our initial walkthrough with the CPO Mayor's Office, the CPO Mayor stated that all disbursements must be approved by the MPC, either via a resolution or through meeting minutes and discussed with the MPC; however, in our testing of 20 disbursements, four were approved through CPO MPC minutes, and four were approved via email vote by the CPO MPC, The remaining 12 transactions did not have any documentation to support that approval was obtained **prior** to disbursement.	• Obtaining the proper approval prior to disbursements aids in promoting transparancy and the Mayor's responsibility for the use of the HCBF. Without proper prior approval, it is uncertain if the MPC performed their due diligence and care in the active oversight over the use of the HCBFs. We recommend that prior to any future disbursements, the CPO Mayor present resolutions to the CPO MPCs seeking approval of expenditure, to come into compliance with 10 GCA §51406.	a. **CONCUR**. Corrective action will be taken to address **the lack of documentation that indicates that approval was obtained prior to disbursement**.
	b. *Purchases Less than $500.* We identified six out of 20 disbursements (other than sponsorships) tested below $500. All six disburements had receipts to support and confrim purchase amounts and/or receipts.		b. **CONCUR**. No Corrective Action required.
	c. *Purchases Over $500, But Less Than $1,000*. We identified three out of 20 disbursements tested with a value between $500 and $1K. Of the three disbursements, one had documentation to support that the CPO Mayor's Office performed their due diligence in soliciting a minimum of three informal quotes prior to purchase or disbursment.	• Refer to 2.e.	c. Refer to 2.e.

Attachment (1) 2 of 5

CPO NARRATIVE
OPA's Host Community Benefit Fund (HCBF) July 20, 2022
REVISED Performance Audit

FINDING	OPA Comment (CPO)	OPA CONCLUSION & RECOMMENDATIONS	CPO RESPONSE
2. Lack of Adequate Documentation for Applicable Purchases (cont.)	d. *Purchases between $1,000 and $15,000*. We identified eight out of 20 disbursements tested between $1K and $15K from the CPO's disbursements. Five of eight disbursements ranging between $1K and $15K had documentation to support that a Scope of Work or Type of Equipment form was prepared when quotes were solicited. All eight disbursements required a minimum of three written quotations from licensed vendors, of which five had documentation to support three written quotes were solicited prior to purchase. The other three disbursements did not have any documentation to support their purchase as they were sole-sourced.	• Refer to 2.e.	d. Refer to 2.e.
	e. *Purchases over $15,000.* We identified one out of 20 disbursements tested with a purchase value at over $15K. The lone disbursement was made for an equipment purchase where formal quotes were solicited; however, there was no documentation to prove the purchase was reviewed and approved by GSA.	c., d., & e. The non-solicitation of a minimum of three (3) quotations for applicable purchases goes directly against the competitive nature that characterizes the GovGuam procurement process. We recommend that the CPO Mayor's Office perform their due diligence in soliciting the minimum of three (3) quotations and preparing other necessary documents for applicable purchases pursuant to the MCOG SOP.	c., d., & e.. **CONCUR**. Corrective action will be taken to address these findings.

Attachment (1) 3 of 5

CPO NARRATIVE
OPA's Host Community Benefit Fund (HCBF)
REVISED Performance Audit
July 20, 2022

FINDING	OPA Comment (CPO)	OPA CONCLUSION & RECOMMENDATIONS	CPO RESPONSE
2. Lack of Adequate Documentation for Applicable Purchases (cont.)	f. *Lack of DPW Approval for Construction Projects.* We identified ten out of 20 transactions totaling $82K related to construction, road repair, and beautification projects. After closer review of the records, we could not find supporting documentation to prove the projects were reviewed and approved by DPW; however, one disbursement for the environmental study totaling $15.5K was a contract that was directly overseen by DPW.	• The CPO Mayor stated that his prior experience in the military as an Engineer Officer allowed for the CPO Mayor's Office to be relieved of the requirement to seek approval from DPW for capital improvement projects within this threshold. ...Although the CPO Mayor has prior experience in engineering, we could not locate his credentials to practice or offer engineering services as a licensed professional engineer on the Guam Board of Registration for Professional Engineers, Architects and Land Surveyors roster. ...We recommend the CPO Mayor's Office comply with the requirement to seek approval from the DPW for construction projects within the threshold of $50K pursuant to Article 1 §0101(c) of the MCOG SOP and procurement law.	f. **CONCUR**. Corrective action will be taken to address this finding. However, our office would like this report to reflect that MOST of the DPW employees who review and approve projects performed by the government of Guam ARE NOT credentialed with the Guam PEALS board. That Mayor Gogue can provide sufficient documents to DPW regarding his designation as an Engineer Officer in the United States Marine Corps since 1983. That he continued to perform his duties as an Engineer Officer, in a myriad of assignments from Quantico, VA to Okinawa, Japan, until 1993.
3. Commingling of HCBF with Non-Appropriated Fund (NAF) Revenues	3.a. ...it was noted that proceeds from the HCBF and CPO's NAF were kept in one bank account. CPO also **invested** some of the HCBF proceeds as time certificates of deposit **during the five-year scope period**, which accumulates NAF interest revenue of about $1.2K per month; **however, the CPO Mayor's Office noted that the investment account has been closed at the May 2022 audit exit meeting.**	• We noted that the CPO Mayor's Office maintains sufficient records to differentiate village NAF and HCBF transactions; however, we recommend for the funds to be maintained separate and apart pursuant to 10 GCA §51406.	3.a. **CONCUR**. Corrective action will be taken to address this finding.

Attachment (1) 4 of 5

CPO NARRATIVE
OPA's Host Community Benefit Fund (HCBF)
REVISED Performance Audit
July 20, 2022

FINDING	OPA Comment (CPO)	OPA CONCLUSION & RECOMMENDATIONS	CPO RESPONSE
4. Non-Issuance of Form 1099 for Non-Employee Compensation	4.a. ...many of CPO's transactions met the four conditions which require the issuance of Form 1099-NEC to the respective vendor; however, in our interviews with CPO Mayor's Office staff, it was disclosed that Form 1099-NECs were not issued.	• As the CPO Mayor's Office often contracts the same vendor for services such as road repairs, we recommend for the CPO Mayor's Office to perform its due diligence in issuing Form 1099-NEC to its vendors for applicable HCBF disbursements in excess of $600.	4.a. **CONCUR**. Corrective action will be taken to address this finding.
5. Non-Compliance with the Open Government Law for Host Community Municipal Planning Council (MPC) Meetings	5.a. ...CPO discusses and approves many of its HCBF disbursements at regular CPO MPC meetings. Due to lack of funding for village MPCs and other public agencies to obtain the technology needed to implement P.L. 36-54, CPO MPC meetings conducted after April 2021 were not properly noticed nor broadcasted in accordance with the Open Government Law.	• Although CPO reports the activity of the HCBF in its quarterly NAF report submissions, in the interest of full transparency, we recommend for CPO to properly notice and broadcast its MPC meetings pursuant to P.L. 36-54.	5.a. **CONCUR**. Corrective action will be taken to address this finding.

NOTE: Text in "blue" are changes to the original CPO NARRATIVE response.

Attachment (1) 5 of 5

Questioned Costs for
Chalan Pago-Ordot Mayor's Office

July 20, 2022

Finding #1: Unauthorized Expenditures from the HCBF

Date	Description	Amount	Date MPC Authorized	Remarks
Construction and Community Projects				
11/17/2016	Wada Co. – Inv # B161111	$ 11,400.00	10/7/2016	Approved via email-10/7/2016, Expense ratified 11/16/2016 MPC Meeting
8/7/2017	JRN Air Conditioning - S-008705	$ 1,725.00	7/19/2017	Approved via email-7/19/2017, Expense ratified 08/16/2017 MPC Meeting
11/8/2017	Hawaiian Rock Products - #01171	$ 5,045.40	9/20/2017	Approved budget during 09/20/2017 MPC regular meeting.
3/7/2018	Hawaiian Rock Products - Inv # 01204/P.O.-006	$ 6,733.00	9/20/2017	-same as above-
4/30/2018	Hawaiian Rock Products - Inv #01216	$ 3,698.40	9/20/2017	-same as above-
11/19/2019	50% DP for Roof Repair	$ 3,570.00	10/23/2019	Approved MPC meeting, 10/23/2019
2/13/2020	The Guam Daily Post - AO #A62416	$ 230.00	1/31/2020	**MPC Resolution 2020-02** (Funded from the budget for NEW Mayor's Office.)
12/17/2020	Hawaiian Rock Products - Invoice #642390/730530	$ 703.58	10/28/2020	Approved budget during 10/28/2020 MPC regular meeting.
3/16/2021	Guam Daily Post - #A69103 IFB/Project #600-5-1021-F-CPO-BW	$ 230.00	4/17/2020	**MPC Resolution 2020-04** dated 10/19/2020. (Funded from the budget for a NEW Multi-Purpose Center.) Ratified @ MPC meeting 03/17/2021.
Construction and Community Projects – Sub-Total		$ 33,335.38		
Equipment				
5/17/2017	ACC Air Condition - Rec #10428	$ 988.00	5/9/2017	Approved via email-05/09/2017, Expense ratified 06/21/2017 MPC Meeting
8/7/2018	Far East Equipment Co. - Bal. on Implement	$ 3,504.79	8/16/2017	Approved budget for purchase at regular MPC meeting - 08/16/2017.
11/19/2018	Mid Pac Far East - CPM-110718	$ 24,500.00	11/14/2018	Approved budget of $85K for a new or used tractor @ regular MPC meeting 11/14/2018.
Equipment – Sub-Total		$ 28,992.79		
MPC/Staff Event				
1/30/2017	Holiday Party	$ 2,297.50	1/18/2017	Approved budget of $5K @ MPC meeting on 01/18/2017.
Reimbursement				

Attachment (2)

1 of 2

Questioned Costs for
Chalan Pago-Ordot Mayor's Office

July 20, 2022

Date	Description	Amount	Date MPC Authorized	Remarks
6/21/2021	Reimbursement for Tires #196	$ 149.59	6/16/2021	Ratified & approved for payment @ MPC meeting 06/16/2021.
Repairs and Maintenance				
9/4/2019	Far East Equipment Co. - Inv FEEQ0809	$ 955.00	8/12/2019	Approved via email on 8/12/2019, Ratified @ MPC meeting 08/21/2019
9/6/2019	EMI - Inv #B625708	$ 480.00	8/29/2019	Approved via email 08/29/2019, Ratified @ MPC meeting 09/18/2019
6/17/2020	Alternator & Starter	$ 215.00	6/17/2020	Approved via email on 06/17/2020, Ratified @ MPC meeting 06/24/2020
6/30/2020	Vehicle Inspection (4)	$ 60.00	6/22/2020	Approved via email 06/22/2020. Ratified @ MPC meeting 08/19/2020
Repairs and Maintenance – Sub-Total		$ 1,710.00		
Sponsorship				
6/20/2019	Guam Cal Ripken League – 3 players	$ 300.00	6/11/2019	Approved via email 06/11/2019, Ratified @ MPC meeting 06/19/2019
6/20/2019	Guam Cal Ripken League – 3 players	$ 300.00	6/11/2019	Approved via email 06/11/2019, Ratified @ MPC meeting 06/19/2019
6/20/2019	Guam Little League – 1 player	$ 100.00	6/11/2019	Approved via email 06/11/2019, Ratified @ MPC meeting 06/19/2019
Sponsorship – Sub-Total		$ 700.00		
Total Questioned Costs		**$ 67,185.26**		

NOTE: All payments were made after receiving approval from the MPC.

Attachment (2)

2 of 2

Appendix 8:
Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Exercise due diligence in ensuring that requests for humanitarian assistance are processed and issued in accordance with applicable procedures.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
2.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Perform their due diligence in soliciting the minimum of three (3) quotations and preparing other necessary documents for applicable purchases pursuant to the MCOG Standard Operating Procedures.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
3.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Prior to any future disbursements, the Inalåhan and CPO Mayors present resolutions to their respective MPCs seeking approval of expenditures, to come into compliance with 10 GCA §51406.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
4.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Maintain HCBF proceeds separate and apart from other governmental funds pursuant to 10 GCA §51406.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
5.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Comply with the requirement to seek approval from the Department of Public Works for construction projects within the threshold of Fifty Thousand Dollars ($50,000) pursuant to Article 1 §0101(c) of the MCOG Standard Operating Procedures and procurement law.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
6.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Properly notice and broadcast its village MPC meetings in accordance with P.L. 36-34/Open Government Law.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.
7.	Chalan Pago-Ordot and Inalåhan Mayor's Office	Perform due diligence in issuing Form 1099-NEC to its vendors for applicable HCBF disbursements in excess of $600.	OPEN	Please provide the target date and title of the official(s) responsible for the implementation of the recommendation.

MAYORS' COUNCIL OF GUAM
HOST COMMUNITY BENEFIT FUND
Report No. 22-03, July 2022

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Mariella Cruz, Audit Staff
Ira Palero, CPA, Auditor-in-Charge
Vincent Duenas, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

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