

**Government of Guam
Tiyán Campus Tax Credits Program**

**Performance Audit
October 1, 2008 through September 30, 2014**

**OPA Report No. 14-07
December 2014**



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EXECUTIVE SUMMARY
Tiyan Campus Tax Credits Program
OPA Report No. 14-07, December 2014

What started out as a lease in June 2009 to temporarily house the John F. Kennedy (JFK) High School students and staff while its new campus was under construction, resulted in the Purchase Agreement of the Tiyan Campus in December 2013. The Purchase Agreement between the Government of Guam (GovGuam) and Core Tech International Corporation (Core Tech) initially allowed for tax credits to be used in lieu of annual cash payments. An Amended and Restated Lease Purchase Agreement and the related Amendment signed in November 2014 now calls for annual cash payments for base rent and additional rent (insurance and maintenance), but allows the use of tax credits for collateral equipment, as well as for the base rent and additional rent due in January 2015. This Tiyan Campus Tax Credits Program performance audit was initiated as part of our annual audit plan.

The Tiyan Campus [Tiyan High School and Guam Department of Education's (GDOE) Central Office and other facilities] will cost a total of \$260.3M. There is a maximum of \$44.1M in tax credits that may be claimed in relation to the lease and purchase of the Tiyan Campus. The tax credits that have been claimed or to be claimed are as follows:

- \$21.5M for lease payments from FY 2010 to FY 2013;
- \$7.5M for collateral equipment for Tiyan High School and the GDOE Central Office and other facilities; and
- \$15.1M for 2014 and 2015 base rent and additional rent.

We also found:

- Per the purchase agreement, the Tiyan Campus had a purchase price of \$87.1 M and consists of Tiyan High [\$45M for 99,776 square meters (m²) of land and 158,120 square feet (ft.²) of buildings] and GDOE Central Office and other facilities (\$42.1M for 29,786 m² of land and 181,339 ft.² of building).
- Of the \$87.1M purchase cost, GDOE has yet to determine how much is for land versus buildings. Due to the pending allocation, the total land and building costs were combined.
- The total cost of land, buildings, insurance and maintenance, and collateral equipment for Tiyan High (\$134.1M) and GDOE Central Office (\$126.3M) combined is \$260.3M.
- In addition to the Tiyan Campus, GovGuam obtained five new schools through the issuance of Certificates of Participation between FY 2007 and FY 2013. The total cost per square foot of the six schools and GDOE Central Office are as follows:

| | SCHOOL | SIZE (SQ FT) | PRINCIPAL AMOUNT | TOTAL AMOUNT | TOTAL COST/ SQ.FT |
|----|---|------------------|-----------------------|-----------------------|-------------------|
| 1a | GDOE Central Office and Other Facilities | 181,339 | \$ 42,127,711 | \$ 126,286,790 | \$ 696.41 |
| 1b | Tiyan High School | 158,120 | \$ 45,021,286 | \$ 134,061,025 | \$ 847.84 |
| 1c | Tiyan Campus (Tiyan High & GDOE Central Office) | 339,459 | \$ 87,148,997 | \$ 260,347,816 | \$ 766.95 |
| 2 | John F. Kennedy High School | 269,647 | \$ 65,735,000 | \$ 202,672,331 | \$ 751.62 |
| 3 | Okkodo High School | 203,578 | \$ 57,577,200 | \$ 134,809,751 | \$ 662.20 |
| 4 | Astumbo Middle School | 81,650 | \$ 15,207,150 | \$ 27,720,000 | \$ 339.50 |
| 5 | Adacao Elementary School | 53,700 | \$ 11,586,400 | \$ 21,120,000 | \$ 393.30 |
| 6 | Liguan Elementary School | 53,700 | \$ 10,862,250 | \$ 19,800,000 | \$ 368.72 |
| | TOTAL | 1,001,734 | \$ 248,116,997 | \$ 666,469,899 | \$ 665.32 |

- Core Tech and 22 other companies claimed approximately \$31.5M in tax credits between FY 2010 and December 2014 (first quarter of FY 2015), of which the top five credits were claimed for taxes on cigarettes, retail, local contracting, rental, and distilled spirits.

The Tiyan Campus was the former temporary site of JFK during the construction of its new campus, the former temporary site of Luis P. Untalan Middle School (Untalan) during the renovation of its campus, and the current site of Tiyan High School and GDOE's Central Office and other facilities.

We applaud the Department of Revenue and Taxation (DRT), the Guam Economic Development Authority (GEDA), and the Department of Administration (DOA) for ensuring that there are processes in place to monitor the Tiyan Campus tax credits. In contrast, we observed that there needs to be better coordination and communication between the Governor's Office (as the government negotiator) and GDOE (as the beneficiary to the Tiyan Campus purchase).

\$107.4M Lease Revenue Bonds

The Industrial Development Authority of the City of Phoenix, Arizona Lease Revenue Bonds (Guam Facilities Foundation, Inc. Series 2014) were issued in December 2014, for a total of \$107.4M. The proceeds are to be loaned to AZ GFF Tiyan, LLC (AZ), an Arizona limited liability company, the sole member of which is the Guam Facilities Foundation, Inc., a Guam non-profit corporation. AZ will use the bond proceeds primarily for paying the costs to finance, acquire, design, construct, and rehabilitate certain facilities on the Tiyan Campus site. The facilities still to be built include:

- New GDOE office building that is approximately 83,500 ft.²;
- New GDOE gymnasium that is approximately 14,000 ft.²; and
- Two warehouses that are approximately 10,000 ft.², and each with a 6,500 ft.² mezzanine.

Previous Tax Credits Audit

In our 2007 audit of the various GovGuam tax credits programs (Report No. 07-15), we found that nine public laws authorized a minimum of \$23.6M in tax credits, and four of the tax credits programs did not have credit limits. This previous audit recommended the repeal of certain tax credits, but the Legislature and Administration did not take any action on this recommendation.

Conclusion

Tax credits and capital lease obligations have become alternative forms of long-term financing that do not affect the debt ceiling imposed by the Organic Act. Tax credits are used to pay down obligations such as the Tiyan Campus purchase (based on the initial Purchase Agreement), Layon land condemnation, and Medically Indigent Program (MIP) payables. However, the amended Tiyan Campus Purchase Agreement shifted the annual costs from tax credits to annual legislative appropriations. As of FY 2013, GovGuam had total liabilities of \$1.6 billion (B), of which bond payables were in excess of \$1B and capital lease obligations were \$117M. The Tiyan Campus purchase will add to this long-term liability.

Doris Flores Brooks, CPA, CGFM
Public Auditor



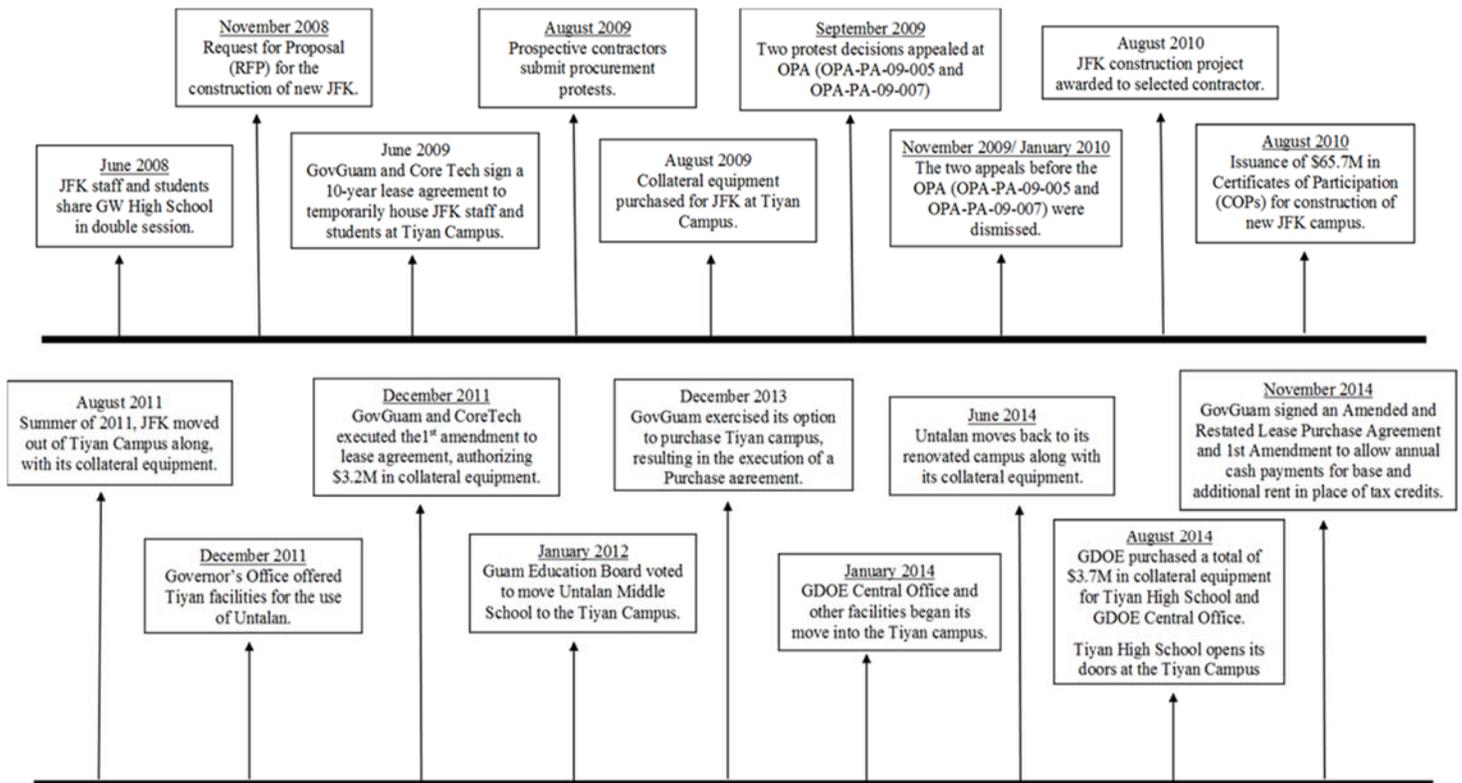
Introduction

This report presents the results of our audit of the Tiyan Campus Tax Credits Program from October 1, 2008 to September 30, 2014 [fiscal year (FY) 2009 to FY 2014] and other periods deemed necessary. The audit objectives were to:

- (1) Determine the costs (total costs and on a per-square-foot basis) of the Tiyan Campus in comparison to the five schools [John F. Kennedy High School (JFK), Okkodo High School (Okkodo), Astumbo Middle School (Astumbo), Adacao Elementary School (Adacao), and Ligan Elementary School (Ligan)];
- (2) Quantify the amount of tax credits provided in lieu of annual cash lease payments; and
- (3) Determine whether processes were in place to monitor the tax credits.

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

Historical Timeline



The Tiyan Campus was the former site of the interim JFK during the construction of its new campus; the former temporary site of Luis P. Untalan Middle School (Untalan) during the renovation of its campus; and the current site of Tiyan High School and GDOE Central Office and other facilities.

In June 2008, some of the buildings in the JFK campus were declared unsafe by the Government of Guam (GovGuam) Health and Safety Task Force, resulting in JFK staff and students having to share space with George Washington High School in double sessions. A Request for Proposal (RFP) for the construction of a new JFK was issued in November 2008, but prospective contractors submitted procurement protests in August 2009.

The protest decisions were subsequently appealed to the Office of Public Accountability (OPA) in August and September 2009. The decisions on the two appeals were rendered in November 2009 and January 2010.¹ In June 2009, in the midst of the JFK campus construction under protest, a lease was obtained with Core Tech International Corporation (Core Tech) to temporarily house the JFK students and staff at Tiyan until the new school was constructed or other facilities were found.

The selected contractor was awarded the contract for the new JFK campus in August 2010. Certificates of Participation (COPs)² totaling \$65.7M were issued in August 2010 to fund the construction. In the summer of 2011, JFK moved out of the Tiyan Campus and into its new buildings, taking with it collateral equipment that were installed in the Tiyan Campus, as allowed in the lease agreement.

With the Tiyan school left empty beginning in August 2011 and although GDOE requested the continued use of the facility for a school, funding was not provided. In December 2011, the Governor's Office offered the Tiyan school for the use of Untalan. In January 2012, the Guam Education Board voted to move Untalan to Tiyan. This move was expedited when the Department of Public Health and Social Services (DPHSS) closed Untalan. Renovations to Untalan were then completed in time for the 2014-2015 school year.

Tiyan Campus Lease and Purchase Agreements

In June 2009, GovGuam and Core Tech executed a 10-year lease agreement with an option to purchase the Tiyan campus. Under the agreement, GovGuam is to make annual lease payments of \$4.5M either in cash or in tax credits (in lieu of cash payments) no later than October 1 of each year. Refer to Timeline above.

In December 2011, GovGuam and Core Tech executed the first amendment to the lease agreement, in which collateral equipment (such as furniture, computer systems, band equipment, and other items identified in a schedule) totaling \$3.2M were authorized. In addition, the Option to Purchase provision in the original lease agreement was amended to state that GovGuam shall have the option to purchase the Tiyan campus for \$43.5M, but the option must be exercised by written notice to Core Tech no later than December 31, 2013. Said purchase price shall be payable over a period of 25 years and shall accrue interest at a rate of 7.193% per annum, resulting in annual payments as specified in the schedule either by giving cash or tax credits.

¹ Procurement Appeals case numbers OPA-PA-09-005 (Guam Community Improvement Foundation v. Department of Public Works) and OPA-PA-09-007 (Guam Education Financing Foundation, Inc. v. Department of Public Works).

² COPs are lease agreements between the government and lessors or holders of the COPs. The construction of a facility is financed by the holders of COPs and the government rents the facility from the COP holders until the annual rent payments are finished and the government acquires title to the improvement when the COPs are fully paid.

In December 2013, GovGuam exercised its option to purchase the Tiyan campus, which resulted in the execution of a Purchase agreement between GovGuam and Core Tech, wherein tax credits in lieu of cash payments were allowed. In this new agreement, the total purchase price was \$87.1M, which included the original school premises and the extended facilities, such as new office buildings, warehouses, and a gymnasium, plus collateral equipment, and land. Of the purchase cost of \$87.1M, GDOE has yet to determine how much is for land versus buildings.

In November 2014, GovGuam executed an Amended and Restated Lease Purchase Agreement and related First Amendment. The amended agreement required annual cash payments for the base rent and additional rent (insurance and maintenance), except for the purchase of collateral equipment in which tax credits were still allowed. The First Amendment modified the Amended agreement to allow the use of tax credits for the January 2015 base rent and additional rent, but annual payments due after January 2015 are to be paid with cash.

It is estimated that the total lease payments for the Tiyan properties would amount to \$260.3M. See Appendix 4 for an aerial view of the Tiyan Campus.

GovGuam Tax Credits

There is no limit to the amount of tax credits that can be issued. Tax credits do not affect the debt ceiling imposed by the Organic Act, and consequently have become an alternative form of long-term financing to pay down obligations such as the Tiyan Campus purchase, Layon land condemnation, and Medically Indigent Program (MIP) payables.

In the September 2013 financial audit, GovGuam had over \$1.07 billion in bonds and notes payable, \$117M in capital lease obligations, and \$29M in tax credits prior to the Tiyan Campus purchase.

\$107.4M Lease Revenue Bonds

The Industrial Development Authority of the City of Phoenix, AZ Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project Series 2014) were issued in December 2014, for a total of \$107.4M. The proceeds are to be loaned to AZ GFF Tiyan, LLC (AZ), an Arizona limited liability company, the sole member of which is the Guam Facilities Foundation, Inc., a Guam non-profit corporation. AZ will use the bond proceeds primarily for paying the costs to finance, acquire, design, construct, and rehabilitate certain facilities on the Tiyan Campus site. The Government of Guam is leasing the project site and facilities pursuant to the November 2014 Amended and Restated Lease Purchase Agreement.

Specifically, the facilities to be built include:

- New GDOE office building that is approximately 83,500 ft.²;
- New GDOE gymnasium that is approximately 14,000 ft.²; and
- Two warehouses that are approximately 10,000 ft.², and each with a 6,500 ft.² mezzanine.

After January 2015, annual lease payments shall be made in cash instead of tax credits, and are subject to annual appropriations by the Guam Legislature. In addition, these Lease Revenue Bonds operate similarly to the COPs issued to rebuild JFK High School and provide infrastructure and furnishings for Okkodo High School, Astumbo Middle School, Adacao Elementary School, and Ligan Elementary School. These Lease Revenue Bonds and COPs do not affect the debt ceiling imposed by the Organic Act of Guam.

Results of Audit

In our audit of the Tiyan Campus Tax Credits Program, we found that GovGuam will spend approximately \$260.3M for the purchase of the Tiyan Campus (Tiyan High and GDOE Central Office and other facilities). The Purchase Agreement initially allowed for tax credits to be used in lieu of annual cash payments. An Amended and Restated Lease Purchase Agreement and the related Amendment signed in November 2014 now calls for annual cash payments for base rent and additional rent (insurance and maintenance), but allows the use of tax credits for collateral equipment, as well as for the base rent and additional rent due in January 2015.

There is a maximum of \$44.1M in tax credits that may be claimed in relation to the lease and purchase of the Tiyan Campus. The tax credits that have been claimed or to be claimed are as follows:

- \$21.5M for lease payments from FY 2010 to FY 2013;
- \$7.5M for collateral equipment for Tiyan High School and GDOE Central Office and other facilities; and
- \$15.1M for 2014 and 2015 base rent and additional rent.

We also found:

- Per the purchase agreement, the Tiyan Campus had a purchase price of \$87.1 M and consists of Tiyan High [\$45M for 99,776 square meters (m²) of land and 158,120 square feet (ft.²) of buildings] and GDOE Central Office and other facilities (\$42.1M for 29,786 m² of land and 181,339 ft.² of buildings).
- Of the purchase cost of \$87.1M, GDOE has yet to determine how much is for land versus buildings. Due to the pending allocation, the total costs of land and buildings were combined in our analysis.
- When the cost of land, buildings, insurance and maintenance, and collateral equipment for Tiyan High (\$134.1M) and GDOE Central Office (\$126.3M) are added together, the total cost is approximately \$260.3M.
- In addition to the Tiyan Campus, GovGuam obtained five new schools through the issuance of COPs between FY 2007 and FY 2013. The total cost per square foot of the six schools are noted in Table 1.

Table 1: Aggregate Capital Lease/Purchase Costs Comparisons

| | SCHOOL | SIZE (SQ FT) | PRINCIPAL AMOUNT | TOTAL AMOUNT | TOTAL COST/SQ.FT |
|----|---|------------------|-----------------------|-----------------------|------------------|
| 1a | GDOE Central Office and Other Facilities | 181,339 | \$ 42,127,711 | \$ 126,286,790 | \$ 696.41 |
| 1b | Tiyan High School | 158,120 | \$ 45,021,286 | \$ 134,061,025 | \$ 847.84 |
| 1c | Tiyan Campus (Tiyan High & GDOE Central Office) | 339,459 | \$ 87,148,997 | \$ 260,347,816 | \$ 766.95 |
| 2 | John F. Kennedy High School | 269,647 | \$ 65,735,000 | \$ 202,672,331 | \$ 751.62 |
| 3 | Okkodo High School | 203,578 | \$ 57,577,200 | \$ 134,809,751 | \$ 662.20 |
| 4 | Astumbo Middle School | 81,650 | \$ 15,207,150 | \$ 27,720,000 | \$ 339.50 |
| 5 | Adacao Elementary School | 53,700 | \$ 11,586,400 | \$ 21,120,000 | \$ 393.30 |
| 6 | Liguan Elementary School | 53,700 | \$ 10,862,250 | \$ 19,800,000 | \$ 368.72 |
| | TOTAL | 1,001,734 | \$ 248,116,997 | \$ 666,469,899 | \$ 665.32 |

- Core Tech and 22 other companies claimed approximately \$31.5M in tax credits between FY 2010 and the first quarter of FY 2015, of which the top five credits were claimed for taxes on cigarettes, retail, local contracting, rental, and distilled spirits.

We applaud the DRT, GEDA, and DOA for ensuring that there are processes in place to monitor the Tiyan Campus tax credits. In contrast, we observed that there needs to be better coordination and communication between the Governor's Office (as the government negotiator) and GDOE (as the beneficiary to the Tiyan Campus purchase).

Tiyan High and GDOE Central Office to Cost \$260.3M

Between FY 2014 and FY 2041, GovGuam will spend a total of \$260.3M for the purchase of the Tiyan Campus (Tiyan High and GDOE Central Office).

- December 2013 Purchase Agreement- allowed GovGuam to fund the entire Tiyan Campus purchase amounting to \$260.3M with tax credits, should it choose to and absent available cash.
- November 2014 Amended and Restated Lease Purchase Agreement- required annual cash payments for the base rent and additional rent (insurance and maintenance), except for the purchase of collateral equipment where tax credits was still allowed.
- November 2014 First Amendment to the Amended and Restated Lease Purchase Agreement- allowed the use of tax credits only for the January 2015 base rent and additional rent. Annual payments after January 2015 are to be paid with cash.

Prior to purchasing the Tiyan Campus, GovGuam issued \$21.5M in tax credits and provided \$4.7M in cash for the annual lease payments of the property and the purchase of two sets of collateral equipment (for JFK and Untalan) between August 2009 and December 2013.

Five Schools to Cost \$406.1M

In addition to the Tiyan Campus, GovGuam obtained five new schools (JFK, Okkodo, Astumbo, Adacao, and Liguán) through the issuance of \$161M in Certificates of Participation (COPs) between FY 2007 and FY 2013 and treated these as a capital lease. After maturity of these COPs, GovGuam would have spent a total of \$406.1M for the five schools (\$202.7M for JFK, \$134.8M for Okkodo, \$27.7M for Astumbo, \$21.1M for Adacao, and \$19.8M for Liguán).

All six schools are under lease-back arrangements in which the schools are funded through annual payments of principal, interest, and annual payments of additional rent for insurance and maintenance of the schools.

Unlike the Tiyan campus, the four schools under the Municipal Lease agreement's annual capital lease is funded through Compact Impact Funds (funds appropriated by the U.S. government to mitigate the impact on Guam of the Covenants of Free Association of the Republic of the Marshall Islands and the Federated States of Micronesia)³ instead of through tax credits.

The annual capital lease for JFK is also not funded through tax credits, but funded from amounts appropriated by the Guam Legislature.

Municipal School Lease for Four Schools

In October 2006, \$64.9M in COPs (Series A and B) were issued to fund the construction of Okkodo High, Astumbo Middle, Liguán Elementary, and Adacao Elementary school. In November 2008, \$7.5M in COPs was issued to supplement the initial issuance. Collectively, these COPs were issued to:

³ Lease payments due in 2023 to 2025 relating to \$14,015,000 of Certificates are funded from the General Fund, subject to annual appropriation by GovGuam.

- Fund certain off-site infrastructure improvements and collateral equipment at two elementary schools, one middle school, and one high school;
- Pay certain delivery costs of the 2008 Certificates; and
- Fund increases to certain reserves.

A breakdown of the annual lease payments follows.

- The annual lease payments on the 2006 Series A and B COPs and the 2008 COPs are payable three times a year: in December, April, and October.
- The average rental payment for collateral equipment of \$970K is due annually from December 2006 to December 2025.
- Average interest only payments of \$983K are due semi-annually from April 2007 to October 2026.
- Average principal payments of \$3.6M are due annually from October 2007 to October 2026.
- Total annual lease payments (principal, interest, insurance, and maintenance costs) was \$2.4M in FY 2007, increased to \$6.1M in FY 2008 and 2009, and increased to \$7.1M from FY 2010 to FY 2019, and then drops back to \$6.1M from FY 2020 to FY 2027.
- The annual insurance and maintenance costs (also referred to as additional rent) for these four schools is an average of \$1M and is included in the calculation of annual lease payments above.
- Total lease payments by October 2026 will amount to \$132.0M.

In March 2013, an additional \$22.8M in COPs was issued for the Okkodo High School expansion project, which would provide 65,000 ft.² of additional classroom space (24 standard classrooms, 4 special education classrooms, and 9 labs) and traffic lights at the entrance of the school. This expansion will increase the school's capacity from 1,200 to 2,000 students. The debt service payments for the new COPs issued are \$337K in FY 2013, \$1.6M in FY 2014, and amounts ranging from \$2.3M to \$2.7M from FY 2015 to FY 2030. Beginning in October 2013, there is an additional \$1.2M required for insurance and maintenance costs, and from October 2014 to October 2030, this additional annual cost is \$1.8M. At maturity, this additional issuance will amount to \$71.4M.

With the addition of the 2013 COPs, the total cost for the four schools at maturity would amount to \$203.4M.

John F. Kennedy High School Lease

In September 2010, \$65.7M in COPs was issued to finance the rebuilding of the new JFK campus.

- Holders of the COPs are the owners of JFK until 2041 (or 30 years) with the last lease payment, at which time the building will revert to GovGuam.
- Annual lease payments are payable semi-annually in June and December, starting from December 2010 to December 2040.
- Annual lease payment requirements are \$3M in FY 2012 and \$5.1M from FY 2013 to FY 2041.
- The annual insurance and maintenance costs (also referred to as additional rent) is \$1.6M and is in addition to the annual lease payments above.
- Due to one year of deferred principal payment and one year of capitalized interest payments, full debt service of \$5.1M did not begin until FY 2013.

- The total cost for the JFK COPs is \$202.7M, inclusive of the \$3.9M for collateral equipment purchased in 2009 while temporarily housed at the Tiyan Campus.

Cost Comparisons

Based on available data, we performed several analyses among the six schools:

- Total cost (principal, interest, collateral equipment, insurance and maintenance);
- Total cost per square foot;
- Additional rent (insurance and maintenance costs);
- Building size; and
- Student Enrollment.

Tiyan Campus Has Highest Aggregate Costs

When the aggregate costs (annual principal and interest payments, collateral equipment acquisition, and insurance and maintenance costs) for the duration of the lease-back, lease, and purchase agreements are considered, we found the Tiyan Campus (Tiyan High and GDOE Central Office land and building) purchase cost of \$260.3M was the highest compared to the construction costs of the five schools. Unlike the Tiyan Campus, the five schools were constructed on existing GovGuam land.

Table 2 below provides a breakdown of the principal, interest, collateral equipment, and insurance and maintenance costs per school. As noted in Table 2, the Tiyan Campus consists of Tiyan High (\$134.1M for 158,120 ft.²) and GDOE Central Office and other facilities (\$126.3M for 181,339 ft.²).

If the costs and measurements of only the three high schools were compared, JFK would be considered the most costly at \$202.7M for 269,647 ft.². This is followed by Okkodo at \$134.8M for 203,578 ft.², and then Tiyan High at \$134.1M for 158,120 ft.².

Tiyan High Most Costly per Square Foot

When we compared the cost per square foot of all six schools, we determined that Tiyan High's \$847.84/ft.² is significantly higher than JFK's \$751.62/ft.², Okkodo's \$470.55/ft.² before expansion and Okkodo's \$662.20/ft.² after expansion, are significantly higher than the cost per square foot for Astumbo Middle, Adacao Elementary, and Liguan Elementary. Refer to Table 2 below.

Table 2: Total Principal, Interest, Collateral Equipment, and Additional Rental (Insurance and Maintenance) Costs Comparisons

| | SCHOOL | Building (SQ FT) | PRINCIPAL | INTEREST | INSURANCE & MAINTENANCE | COLLATERAL EQUIPMENT | TOTAL AMOUNT | TOTAL COST /SQ. FT | I&M COST /SQ. FT. |
|----|--|------------------|-----------------------|-----------------------|-------------------------|----------------------|-----------------------|--------------------|-------------------|
| | Tiyan Campus- THS & GDOE Central Office | | | | | | | | |
| | Tiyan High School (Existing) | 144,120 | \$ 40,074,278 | \$ 51,745,693 | \$ 23,336,499 | \$ 3,267,154 | \$ 118,423,624 | \$ 821.70 | \$ 161.92 |
| | Gymnasium (Pending) | 14,000 | 4,947,008 | 6,308,457 | 3,150,000 | 1,231,936 | 15,637,401 | 1,116.96 | \$ 225.00 |
| 1a | Subtotal, Tiyan High & Gymnasium (99,776 sq. meters of Land & 158,120 sq. feet of Building) | 158,120 | \$ 45,021,286 | \$ 58,054,150 | \$ 26,486,499 | \$ 4,499,090 | \$ 134,061,025 | \$ 847.84 | \$ 167.51 |
| | GDOE Central Office & Other Facilities (Existing) | 64,839 | \$ 14,325,749 | \$ 18,446,953 | \$ 9,787,441 | \$ 504,306 | \$ 43,064,450 | 664.18 | \$ 150.95 |
| | Land (7,178 square meters) | | \$ 511,600 | \$ 605,066 | - | - | \$ 1,116,666 | | |
| | New GDOE Central Office (Pending) | 83,500 | \$ 24,587,809 | \$ 31,281,743 | \$ 15,155,250 | \$ 2,495,694 | \$ 73,520,495 | \$ 880.48 | \$ 181.50 |
| | Warehouse I w/ Mezzanine (Pending) | 16,500 | \$ 1,342,126 | \$ 1,757,302 | \$ 1,169,925 | \$ - | \$ 4,269,353 | \$ 256.92 | \$ 70.90 |
| | Warehouse II w/ Mezzanine (Pending) | 16,500 | \$ 1,360,427 | \$ 1,779,775 | \$ 1,175,625 | \$ - | \$ 4,315,827 | \$ 261.57 | \$ 71.25 |
| 1b | Subtotal, GDOE Central Office (29,786 sq. meters of Land & 181,339 sq. feet of Building) | 181,339 | \$ 42,127,711 | \$ 53,870,839 | \$ 27,288,241 | \$ 3,000,000 | \$ 126,286,790 | \$ 696.41 | \$ 150.48 |
| | Total, Tiyan High & Central Office | 339,459 | \$ 87,148,997 | \$ 111,924,989 | \$ 53,774,740 | \$ 7,499,090 | \$ 260,347,816 | \$ 766.95 | \$ 158.41 |
| 2 | John F. Kennedy High School | 269,647 | \$ 65,735,000 | \$ 85,953,331 | \$ 47,040,000 | \$ 3,944,000 | \$ 202,672,331 | \$ 751.62 | \$ 174.45 |
| | Municipal School Lease (Okkodo High School, Astumbo Middle School, Adacao Elementary School, & Ligan Elementary School) | | | | | | | | |
| 3a | Okkodo High (Original) | 134,650 | \$ 34,759,200 | \$ 18,963,602 | \$ 9,637,198 | \$ - | \$ 63,360,000 | \$ 470.55 | \$ 71.57 |
| 4 | Astumbo Middle | 81,650 | 15,207,150 | 8,296,576 | 4,216,274 | - | 27,720,000 | 339.50 | \$ 51.64 |
| 5 | Adacao Elementary | 53,700 | 11,586,400 | 6,321,201 | 3,212,399 | - | 21,120,000 | 393.30 | \$ 59.82 |
| 6 | Ligan Elementary | 53,700 | 10,862,250 | 5,926,126 | 3,011,624 | - | 19,800,000 | 368.72 | \$ 56.08 |
| | Subtotal, Municipal School Lease (Original) | 323,700 | \$ 72,415,000 | \$ 39,507,503 | \$ 20,077,497 | \$ - | \$ 132,000,000 | \$ 407.78 | \$ 62.03 |
| 3b | Okkodo High (Expansion) | 68,928 | \$ 22,818,000 | \$ 17,537,039 | \$ 31,094,712 | \$ - | \$ 71,449,751 | \$ 1,036.59 | \$ 451.12 |
| | Subtotal, Okkodo Post-Expansion | 203,578 | \$ 57,577,200 | \$ 36,500,641 | \$ 40,731,910 | \$ - | \$ 134,809,751 | \$ 662.20 | \$ 200.08 |
| | Total, Municipal School Lease (Original + Okkodo Expansion) | 392,628 | \$ 95,233,000 | \$ 57,044,543 | \$ 51,172,209 | \$ - | \$ 203,449,751 | \$ 518.17 | \$ 130.33 |
| | TOTAL, SIX SCHOOLS & GDOE Central Office | 1,001,734 | \$ 248,116,997 | \$ 254,922,863 | \$ 151,986,949 | \$ 11,443,090 | \$ 666,469,899 | \$ 665.32 | \$ 151.72 |

Okkodo Highest Annual Additional Rent Cost

When we reviewed the total cost of additional rent (insurance and maintenance costs) for the six schools, Tiyan Campus is the highest at \$53.8M compared to JFK's \$47M, and Okkodo's \$40.7M. When only the portion for Tiyan High's additional rent of \$26.5M is considered in comparison to the two other high schools, it is less than JFK and Okkodo's total additional rent amounts.

On a cost per year basis, the average annual additional rent for the entire Tiyan Campus of \$2.2M is less than the four school's \$2.6M/year, but more than JFK's \$1.6M/year. However, when only the annual additional rent for the high schools is compared, Okkodo's \$2M per year is significantly higher than JFK's \$1.6M and Tiyan High's \$1.1M. See Table 3 for details.

Table 3: Additional Rent Comparisons

| <u>School</u> | <u>Additional Rent</u> | <u># of Years</u> | <u>Average Cost/Year</u> |
|---------------------------------------|------------------------|-------------------|--------------------------|
| Tiyan Campus | | | |
| School | \$ 23,336,499 | 25 | \$ 933,460 |
| Gymnasium | 3,150,000 | 25 | 126,000 |
| Subtotal, School & Gym | 26,486,499 | 25 | 1,059,460 |
| Office Building | 4,229,716 | 25 | 169,189 |
| Tiyan 3 | 5,557,725 | 25 | 222,309 |
| Warehouse I (WH 1) | 706,800 | 25 | 28,272 |
| WH I Mezzanine | 463,125 | 25 | 18,525 |
| Subtotal, WH I & Mezzanine | 1,169,925 | 25 | 46,797 |
| New Office | 15,155,250 | 25 | 606,210 |
| Warehouse II | 1,175,625 | 25 | 47,025 |
| Subtotal, GDOE Central Office | 27,288,241 | 25 | 1,091,530 |
| Total, Tiyan Campus | \$ 53,774,740 | 25 | \$ 2,150,990 |
| Municipal Lease | | | |
| Okkodo High | | | |
| Original | \$ 9,637,198 | 20 | \$ 481,860 |
| Expansion | 31,094,712 | 17 | 1,829,101 |
| Subtotal, Okkodo | \$ 40,731,910 | 20 | \$ 2,036,596 |
| Astumbo Middle | \$ 4,216,274 | 20 | \$ 210,814 |
| Adacao Elem. | \$ 3,212,399 | 20 | \$ 160,620 |
| Liguan Elem. | \$ 3,011,624 | 20 | \$ 150,581 |
| Total, Municipal Lease | \$ 51,172,209 | 20 | \$ 2,558,610 |
| JFK High | \$ 47,040,000 | 30 | \$ 1,568,000 |

Building Size Comparison

Based on total building size, JFK is the largest of the six schools at 269,647 ft.², followed by Okkodo at 203,578 ft.², and Tiyan High at 158,120 ft.². See Table 2 above for the total building sizes of the six schools.

Student Enrollment

Based on GDOE’s current school year student enrollment data, JFK with 1,958 students enrolled has the most students, compared to Okkodo’s 1,693 students and Tiyan High’s 1,158 students. See Table 4 below.

Table 4: School Year 2014-2015 Student Enrollment

| School | Enrollment |
|-------------------|-------------------|
| JFK High | 1,958 |
| Okkodo High | 1,693 |
| Tiyan High | 1,158 |
| Astumbo Middle | 593 |
| Liguan Elementary | 587 |
| Adacao Elementary | 540 |

When Okkodo was initially built in 2008, it had the capacity to accommodate 1,200 students. Prior to the start of school year 2014-2015, GDOE estimated that Okkodo would have a student

enrollment in excess of 1,400. In March 2013, COPs were issued for the purpose of expanding Okkodo. Upon completion of the expansion in 2014 and with close to 1,700 students enrolled in the current school year, Okkodo according to GDOE has the capacity to accommodate more students, up to 2000.

\$36.2M in Lease Payments and Collateral Equipment over 65 Months⁴

Between June 2009 and December 2014, GovGuam is authorized to pay \$36.2M to Core Tech for the lease of the Tiyan Campus and the acquisition of three sets of collateral equipment for JFK, Untalan, and Tiyan High and GDOE Central Office. Of this amount, \$31.5M were claimed as tax credits in lieu of cash payments to Core Tech, and \$4.7M was paid in cash. The \$31.5M includes a \$247 thousand (K) late fee assessed on GovGuam by Core Tech for the late payment of its FY 2011 lease. The \$4.7M cash payment was for the \$3.9M in collateral equipment for the temporary JFK campus and the prorated annual lease of \$749K for the first two months of the lease (August and September 2009). See Table 5 for a summary of the lease payments and tax credits claimed per fiscal year.

Table 5: Tiyan Campus Lease Payments and Tax Credits per Fiscal Year

| | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> | <u>FY 2014</u> | <u>1st Qtr.</u> <u>FY 2015</u> | <u>Total</u> |
|--|--------------------|--------------------|---------------------|--------------------|--------------------|--------------------|-----------------------------------|---------------------|
| Lease/Purchase Agreement | | | | | | | | |
| Annual Lease Payment Due | \$ 748,876 | \$ 4,493,256 | \$ 4,493,256 | \$ 4,493,256 | \$ 4,493,256 | \$ 8,742,240 | \$ 6,411,410 | \$ 33,126,675 |
| Collateral Equipment | 3,944,000 | | | 3,241,679 | | | 4,499,090 | 11,684,769 |
| Subtotal, per Lease/ Purchase Agreement | \$4,692,876 | \$4,493,256 | \$4,493,256 | \$7,734,935 | \$4,493,256 | \$8,742,240 | \$10,910,500 | \$45,560,319 |
| Amount Paid | | | | | | | | |
| Annual Lease Payment (CASH) | \$ 4,692,876 | | | | | | | \$ 4,692,876 |
| Tax Credits | | \$ 4,493,256 | \$ 4,740,003 | \$ 7,734,935 | \$ 4,493,256 | \$ 8,742,240 | \$ 1,282,698 | \$ 31,486,388 |
| Subtotal, Amount Paid | \$4,692,876 | \$4,493,256 | \$4,740,003 | \$7,734,935 | \$4,493,256 | \$8,742,240 | \$ 1,282,698 | \$36,179,264 |
| Variance | \$ - | \$ - | \$ (246,747) | \$ - | \$ - | \$ 0 | \$ 9,627,802 | \$ 9,381,055 |

During our review of the lease payments, we noted fluctuations in annual lease payments, but these were congruent with the lease and purchase agreements. For example:

- In FY 2009, GovGuam paid \$3.9M in cash for collateral equipment for the temporary JFK. Per the lease agreement, the acquired collateral equipment was allowed to be transferred to the new JFK building;
- In FY 2011, GovGuam paid an additional \$247K in tax credits in interest and fees as allowed in Section 5 of the lease agreement to recognize the late posting/recognition of the annual lease payment via tax credits in the amount of \$4.5M that was due October 1, 2010, but was not processed until days later; and
- In FY 2012, GovGuam paid an additional \$3.2M in tax credits for collateral equipment for the temporary Untalan Middle School, as set forth in the December 2011 executed first amendment to the lease agreement. As discussed above, this second set of collateral equipment was needed as the first set acquired in FY 2009 was transferred to the new JFK.

⁴ Annual lease and purchase payments began in August 2009 through December 2014, or a total of 65 months.

We also noted that only \$1.3M of the \$10.9M tax credits allowed for FY 2015 (\$4.5M for collateral equipment and \$6.4M for base rent and additional rent) has been claimed during the first quarter of FY 2015. However, based on the trend during the past six years, it is likely that the remaining tax credits balance would have been exhausted before the end of FY 2015.

23 Companies Shared \$31.5M in Tax Credits

With Core Tech allowed to freely assign and/or transfer the tax credits to any party, company, partnership, or corporation, it assigned portions of the tax credits in lieu of annual cash lease payments it was entitled to under the lease agreement to 22 companies between FY 2010 through FY 2014 and the 1st quarter of FY 2015. Over this six-year period, the 23 companies (inclusive of Core Tech) claimed a total of \$31.5M, with the aggregate tax credits claimed ranging from \$1041 by Company W to \$16.7M by Company A. The top five companies collectively claimed \$27M or 86% of the \$31.5M in tax credits provided. See Table 6 for the breakdown of tax credits claimed by company and Table 7 by fiscal year.

Table 6: Tax Credits Claimed by Company

| | Company | Total | | Company | Total |
|----|-----------|---------------|----|-----------|------------|
| 1 | Company A | \$ 16,745,000 | 13 | Company M | \$ 200,000 |
| 2 | Company B | \$ 4,708,877 | 14 | Company N | \$ 192,141 |
| 3 | Company C | \$ 2,882,749 | 15 | Company O | \$ 165,703 |
| 4 | Company D | \$ 1,507,117 | 16 | Company P | \$ 89,278 |
| 5 | Company E | \$ 1,281,724 | 17 | Company Q | \$ 85,864 |
| 6 | Company F | \$ 1,200,000 | 18 | Company R | \$ 29,945 |
| 7 | Company G | \$ 699,623 | 19 | Company S | \$ 28,528 |
| 8 | Company H | \$ 525,000 | 20 | Company T | \$ 26,189 |
| 9 | Company I | \$ 411,148 | 21 | Company U | \$ 25,992 |
| 10 | Company J | \$ 237,886 | 22 | Company V | \$ 23,992 |
| 11 | Company K | \$ 210,626 | 23 | Company W | \$ 1,041 |
| 12 | Company L | \$ 207,966 | | | |

Grand Total \$ 31,486,388

Table 7: Tax Credits Claimed by FY

| Fiscal Year | Total |
|--------------------|---------------------|
| 2010 | \$ 4,682,685 |
| 2011 | \$ 4,550,574 |
| 2012 | \$ 7,734,935 |
| 2013 | \$ 4,493,256 |
| 2014 | \$ 8,742,240 |
| 1st Qtr. 2015 | \$ 1,282,698 |
| Grand Total | \$31,486,388 |

91% of Tax Credits Claimed Against Cigarettes, Retail, and Local Contracting Taxes

As of report issuance, we were not provided with the details of the taxes against which the tax credits were claimed between October 2013 and December 2014. Between FY 2010 and FY 2013, 18 companies utilized tax credits to offset against Business Privilege Taxes (BPT) as allowed in the lease agreement. Of the \$21.5M tax credits, \$13.5M or 63% was for cigarettes tax, followed by GRT retail tax (\$3.7M or 17%) and GRT local contracting tax (\$2.3M or 11%). See Table 8 for a breakdown of the tax credits claimed by tax type and fiscal year.

Table 8: Tax Credits Claimed Against 15 Tax Types

| | Tax Type | FY 2010 | FY 2011 | FY 2012 | FY 2013 | Grand Total |
|----|--|---------------------|---------------------|---------------------|---------------------|----------------------|
| 1 | Tobacco Tax- Cigarettes | \$ 3,430,995 | \$ 3,073,084 | \$ 5,393,864 | \$ 1,556,100 | \$ 13,454,043 |
| 2 | GRT- Retail | | 11,460 | 1,581,807 | 2,143,605 | 3,736,872 |
| 3 | GRT- Contracting (Local) | 829,264 | 906,097 | 267,734 | 332,146 | 2,335,241 |
| 4 | GRT- Rental Others | | 134,318 | 243,115 | 109,479 | 486,912 |
| 5 | Alcoholic Beverage Tax- Distilled Spirit | | 327,822 | | | 327,822 |
| 6 | GRT- Rental Real Property | 23,992 | 11,459 | 47,344 | 142,645 | 225,440 |
| 7 | GRT- Others | | | 52,019 | 142,873 | 194,892 |
| 8 | Tobacco Tax- Other Tobacco Products | 9,006 | 76,916 | 66,136 | 18,900 | 170,958 |
| 9 | GRT- Commissions | 116,835 | 727 | 27,179 | 8,624 | 153,364 |
| 10 | Alcoholic Beverages- Malted Fermented | | 140,041 | | | 140,041 |
| 11 | GRT- Service | | | 55,121 | 34,571 | 89,692 |
| 12 | GRT- Insurance Premiums | 83,148 | | 428 | 4,313 | 87,889 |
| 13 | Alcoholic Beverages- Vinous Beverages | | 57,137 | | | 57,137 |
| 14 | GRT- Wholesale | | 943 | | | 943 |
| 15 | GRT- Interest | 17 | | 188 | | 205 |
| | TOTAL | \$ 4,493,256 | \$ 4,740,003 | \$ 7,734,935 | \$ 4,493,256 | \$ 21,461,450 |

Tiyan Campus Buildings Work-in-Progress

As stated in the contract, there are several buildings to be built within two to three years after the date of the Amended and Restated Lease Purchase Agreement (November 2014). The facilities are as follows:

- **New GDOE Gymnasium:** 14,000 ft.² gym similar to the one in Okkodo High School.
- **New GDOE Office:** one existing building will be demolished and a new facility of 83,500 ft.² will be built similar to the office building structure of CoreTech, but shall be a three story building. A chain link fence will also be constructed to separate the new GDOE office and warehouses.
- **New GDOE Warehouse I with Mezzanine:** A new warehouse of 10,000 ft.², with a 6,500 ft.² mezzanine will be built similar to the existing warehouse.
- **New GDOE Warehouse II with Mezzanine:** A new warehouse of 10,000 ft.², with a 6,500 ft.² mezzanine will be built similar to the existing warehouse.

Cohesive Multi-Agency Coordination is in Place

The tax credit program requires coordination between multiple agencies to ensure that the transactions are properly recorded and accounted for.

Public Law (PL) 30-37 authorized GovGuam to issue tax credits in lieu of cash payments to a lessor who is willing to provide property and a facility conducive for a school environment for the interim JFK campus and collateral equipment, which shall be transferred to JFK upon completion of its permanent campus. The authorized tax credits shall be freely assignable and transferrable to any party, company, partnership or corporation. The assignment and/or transfer may be a gift or may be for legal consideration. Any assignment and/or transfer shall be in writing, notarized, and an original document shall be filed with the Guam Economic Development Authority (GEDA), with a copy to the Department of Revenue and Taxation (DRT). In addition, the Lessor may utilize tax credits against Business Privilege Taxes as contained within Chapter 26, Title 11 of the Guam Code Annotated.

PL 31-76 and PL 31-229 redefined the term “Lease” as used in PL 30-37 to mean the contract between the Lessor, Core Tech, and GovGuam for the lease and maintenance of school facilities

(not restricted to JFK), its extended facilities, and the purchase of collateral equipment. Extended facilities was defined as any additional properties added to the lease to support the needs of GovGuam.

During the fiscal year, the Department of Administration (DOA), GovGuam's central accounting agency, receives reports pertaining to the tax credits from DRT. DOA then makes the appropriate journal entries on the General Fund's books.

Based on our interviews, walkthroughs, testing, and review of data provided by GEDA, DRT, and DOA, we noted smooth coordination amongst the three agencies and recognize them for their efforts to ensure the Tiyan Campus tax credits program is administered, monitored, and accounted for in accordance with the provisions set forth in law and the lease and purchase agreements. We applaud these agencies and encourage the continued coordination amongst these agencies.

In contrast, we observed that there needs to be better coordination and communication between the Governor's Office (as the government negotiator) and GDOE (as the beneficiary to the Tiyan Campus purchase). For example, the audit team provided GDOE officials a copy of the executed Amended and Restated Lease Purchase Agreement and related Amendment as they had not seen it prior to our request for an explanation of the changes within.

Conclusion

GovGuam will spend \$260.3M for the purchase of the Tiyan Campus (Tiyan High and GDOE Central Office buildings and land), of which \$22.6M will be paid in tax credits and the remaining annual base rent and additional rent will be paid in cash thru legislative appropriations. In addition, GovGuam has already issued \$21.5M for the initial lease of the property between FY 2009 and FY 2013. The cost per square foot of Tiyan High at \$847.84 is the highest amongst the three high schools.

Core Tech and 22 other companies claimed approximately \$31.5M in tax credits, of which the top five credits were claimed for taxes on cigarettes, retail, local contracting, rental, and distilled spirits.

We applaud DRT, GEDA, and DOA for ensuring that there are processes in place to monitor the tax credits. In contrast, we observed that there needs to be better coordination and communication between the Governor's Office (as the government negotiator) and GDOE (as the beneficiary to the Tiyan Campus purchase).

Tax credits and capital lease obligations have become alternative forms of long-term financing that do not affect the debt ceiling imposed by the Organic Act. Tax credits are used to pay down obligations such as the Tiyan Campus purchase (based on the initial Purchase Agreement), Layon land condemnation, and Medically Indigent Program (MIP) payables. However, the amended Tiyan Campus Purchase Agreement shifted the annual cost from tax credits to annual legislative appropriations. As of the FY 2013, GovGuam had total liabilities of \$1.6 billion (B), of which bond payables were in excess of \$1B and capital lease obligations were \$117M. The Tiyan Campus purchase will add to this long-term liability.

This report focused on the Tiyan Campus purchase, but the OPA also plans to conduct audits of the Layon land condemnation and all other tax credits.

Management Response and OPA Reply

We transmitted a draft report to GDOE, DRT, GEDA, DOA, and the Governor's Education Advisor in December 2014 for their official response. We also transmitted a draft report to the Speaker and a Senator of the 32nd Guam Legislature in December 2014. We met with GDOE officials, GEDA officials, the Governor's Education Advisor, and the Senator at separate meetings to discuss the audit results in December 2014.

We received DRT and GEDA's official management responses on December 17, 2014, wherein they concurred with our audit results. Refer to Appendices 5 and 6 for GEDA and DRT's management responses.

We received the GDOE Superintendent's response on December 29, 2014, wherein he explained that GDOE Central Office and other facilities should be excluded from the cost comparisons with the five schools. As a result of our exit meeting with GDOE, revisions were made to the report to ensure the comparisons were objective. Refer to Appendix 7 for GDOE's management response.

We subsequently learned of an executed Amended and Restated Lease Purchase Agreement and related Amendment, both of which were signed in November 2014. The amendments did not change the report substantively, except that the annual payments shifted from tax credits to cash payments.

As of report issuance, DOA did not provide an official management response.

We appreciate the cooperation and assistance shown during the course of this audit by the management and staff of GDOE, DRT, GEDA, and DOA.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:**Objectives, Scope, and Methodology**

This report presents the results of our audit on the Tiyan Campus Tax Credits Program from October 1, 2008 to September 30, 2014, and other periods deemed necessary. This Tiyan Campus Tax Credits Program performance audit was initiated as part of our annual audit plan. The audit objectives were to:

1. Determine the costs (total costs and on a per-square-foot basis) of the Tiyan Campus in comparison to the five schools (JFK High School, Okkodo High School, Adacao Elementary School, Ligan Elementary School, and Astumbo Middle School);
2. Quantify the amount of tax credits provided in lieu of annual cash lease payments; and
3. Determine whether processes were in place to monitor the tax credits.

Audit Methodology

Our audit methodology included a review of laws, policies, and other information pertinent to the Tiyan Campus Tax Credit Program. We also performed the following:

1. Interviewed and conducted walkthroughs with key officials from GEDA, DRT, DOA, and GDOE;
2. Conducted a site visit of the Tiyan Campus;
3. Compiled and analyzed the following information:
 - a. GEDA database of Tiyan Campus tax credits;
 - b. DRT database of Tiyan Campus tax credits;
 - c. DOA recordings in the AS 400 related to the Tiyan Campus tax credits;
 - d. GDOE FY 2009 to FY 2013 audited Financial Statements; and
 - e. Government-Wide FY 2009 to FY 2013 audited Basic Financial Statements.
4. Judgmentally selected 10 samples with an aggregate approved tax credit amount of \$8.7M from DRT's database and tested for compliance with applicable criteria established through agreements, laws, rules, regulations, procedures, etc.;
5. Reviewed lease and purchase agreements, as well as amendments to said agreements;
6. Reviewed the 2006, 2008, and 2013 COPs and Municipal School Lease Agreement resulting in the four schools (Ligan Elementary, Adacao Elementary, Astumbo Middle, and Okkodo High);
7. Reviewed the 2010 COPs and School Lease-Back Agreement resulting in the re-built John F. Kennedy High School; and
8. Performed other reviews and procedures as deemed necessary to address the audit objectives.

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

Tax Credit Programs, OPA Report No. 07-15

OPA conducted a performance audit that examined Guam's various tax credit programs. The audit identified nine public laws that authorized a minimum of \$23.6M in tax credits to taxpayers contributing to property, materials, labor, services or cash to the government of Guam for various programs. Four of these programs do not limit amounts of tax credits given. GEDA authorized tax credits of \$6.6M for the Raceway Park.

Several recommendations were given specific agencies such as (1) GEDA to coordinate with DRT to conduct assessment of all tax programs to include overall benefits and costs, (2) GEDA to revoke \$231,377 in excess Raceway Park tax credits applied above the allowed 5% overhead, (3) DRT to provide to the Legislature and Bureau of Budget Management and Research (BBMR) quarterly and annual reports of revenues forgone via tax credits in FY 2007 and estimate tax credits for FY 2008 and FY 2009 for the purposes of facilitating the annual budget, (4) Director of BBMR to incorporate estimated tax credits in the annual budget, (5) Office of the Attorney General (AGO) to determine the legal action necessary to cause the admissions fees to be remitted by the Guam Racing Federation and (6) the Governor and Legislature to repeal several programs including the Raceway Park (balance \$1,368,823) and Tax Credits for Privately Owned Landowners (balance unknown). However, the Legislature and Administration have not taken any action on the recommendations.

Paseo Stadium Lease Agreement, OPA Report No. 06-18

OPA conducted a compliance audit of the Paseo Stadium Lease Agreement between the Department of Parks and Recreation (DPR) and the Guam Baseball Federation (GBF). The audit found that DPR and GBF did not comply with terms and conditions of the Stadium Lease Agreement and P.L. 27-27. We found that:

- Over \$1M in Paseo Stadium rehabilitation projects were not procured in accordance with Guam Procurement Law.
- Only 1 company was selected to benefit from the tax credits for stadium projects.
- GEDA did not scrutinize the tax credit program and relied on GBF's assertions that contributions were received and projects were completed.
- GBF did not pay the required 4% of accrued gross revenues to DPR for 2004 and 2005.
- DPR did not independently safeguard the MSOF (a government account), against loss and misuse.
- The OPA recommended:
 - DPR Director to work with the Office of the Attorney General to determine viable options to enforce or terminate the Paseo lease agreement.
 - DPR Employees Association to pay the MSOF of \$542;
 - The Legislature to ensure that there is defined monitoring mechanisms incorporated into all future tax credit programs;
 - GEDA Administrator to incorporate procedures into the current rules and regulations to ensure that expenditures for tax credits are procured according to Guam Procurement Law.

- GEDA Administrator to temporarily revoked \$64,690 of the Beneficiary tax credits until evidence of proper authorization and supporting receipts are provided by GBF.

Real Property Taxes, OPA Report No. 13-03

OPA conducted a performance audit of DRT's real property taxes and found that real property taxes had \$15.7M in unrealized, lost and forgone tax revenues due to the lack of interface between Department of Public Works (DPW) and Department of Land Management (DLM). In addition, \$858k in question costs were identified during OPA's testing and review. OPA made several recommendations:

- DRT Director to work with the Guam Legislature and Governor of Guam to amend 11 GCA § 24306 to authorize DRT to utilize current values for real property assessments, place a moratorium on senior citizen and home expansions, and amend 11 GCA § 24110 by raising eligibility for senior citizens from age 55 to 65 to receive a reduction in real property taxes.
- Director of DRT to issue request for proposal for appraisal and revaluation services, establish a communication protocol with DPW and DLM, and place controls on DRT's database to limit input on accessibility and secondary review of management.

There are four tax credits available for a taxpayer's primary home:

- Home Exemption
- Senior Citizen Tax Credit
- Citizen With Disability
- Head of Household of Dependent with Disability

Appendix 3:
Schedule of Annual Capital Lease Costs

TOTAL COSTS: Principal, Interest, Additional Rent, and Collateral Equipment

| Year | Municipal Lease | Okkodo Expansion | JFK High School | Tiyan Campus | Total Annual Cost |
|--------------|-----------------------|----------------------|-----------------------|-----------------------|-----------------------|
| 2007 | \$ 6,100,000 | \$ - | \$ - | \$ - | \$ 6,100,000 |
| 2008 | 6,100,000 | - | - | - | 6,100,000 |
| 2009 | 7,100,000 | - | - | 4,692,876 | 11,792,876 |
| 2010 | 7,100,000 | - | - | 4,493,256 | 11,593,256 |
| 2011 | 7,100,000 | - | - | 4,740,003 | 11,840,003 |
| 2012 | 7,100,000 | - | 4,518,038 | 7,734,935 | 19,352,973 |
| 2013 | 7,100,000 | 337,199 | 6,699,938 | 4,493,256 | 18,630,393 |
| 2014 | 7,100,000 | 2,814,596 | 6,699,013 | 8,472,886 | 25,086,494 |
| 2015 | 7,100,000 | 4,226,296 | 6,695,613 | 11,849,024 | 29,870,932 |
| 2016 | 7,100,000 | 4,226,171 | 6,695,850 | 7,272,935 | 25,294,956 |
| 2017 | 7,100,000 | 4,222,021 | 6,698,600 | 10,113,927 | 28,134,548 |
| 2018 | 7,100,000 | 4,224,021 | 6,696,200 | 10,113,927 | 28,134,148 |
| 2019 | 6,100,000 | 4,226,296 | 6,699,900 | 10,113,927 | 27,140,123 |
| 2020 | 6,100,000 | 4,223,671 | 6,699,550 | 10,113,927 | 27,137,148 |
| 2021 | 6,100,000 | 4,225,971 | 6,695,050 | 10,113,927 | 27,134,948 |
| 2022 | 6,100,000 | 4,222,671 | 6,697,909 | 10,113,927 | 27,134,508 |
| 2023 | 6,100,000 | 4,223,596 | 6,699,663 | 10,113,927 | 27,137,186 |
| 2024 | 6,100,000 | 4,380,421 | 6,695,453 | 10,113,927 | 27,289,801 |
| 2025 | 6,100,000 | 4,539,921 | 6,694,784 | 10,113,927 | 27,448,633 |
| 2026 | 6,100,000 | 4,442,796 | 6,696,994 | 10,113,927 | 27,353,717 |
| 2027 | - | 4,348,396 | 6,696,253 | 10,113,927 | 21,158,576 |
| 2028 | - | 4,251,721 | 6,697,728 | 10,113,927 | 21,063,376 |
| 2029 | - | 4,147,071 | 6,695,259 | 10,113,927 | 20,956,258 |
| 2030 | - | 4,166,916 | 6,698,516 | 10,113,927 | 20,979,359 |
| 2031 | - | - | 6,694,600 | 10,113,927 | 16,808,527 |
| 2032 | - | - | 6,695,578 | 10,113,927 | 16,809,505 |
| 2033 | - | - | 6,695,297 | 10,113,927 | 16,809,224 |
| 2034 | - | - | 6,696,953 | 10,113,927 | 16,810,880 |
| 2035 | - | - | 6,694,688 | 10,113,927 | 16,808,615 |
| 2036 | - | - | 6,697,641 | 10,113,927 | 16,811,568 |
| 2037 | - | - | 6,694,609 | 10,113,927 | 16,808,537 |
| 2038 | - | - | 6,694,734 | 10,114,470 | 16,809,204 |
| 2039 | - | - | 6,696,641 | 3,702,517 | 10,399,158 |
| 2040 | - | - | 6,698,781 | 3,702,517 | 10,401,299 |
| 2041 | - | - | 6,698,500 | 2,840,992 | 9,539,492 |
| TOTAL | \$ 132,000,000 | \$ 71,449,751 | \$ 198,728,331 | \$ 286,502,142 | \$ 688,680,225 |

NOTE: For the Tiyan Campus, payments made between 2009 and 2013 were under the Lease Agreement on a fiscal year basis, whereas payments in 2014 and forward are under the Purchase Agreement and are on a calendar year basis.

Appendix 3:
Schedule of Annual Capital Lease Costs

PRINCIPAL & INTEREST ONLY

| Year | Municipal Lease | Okkodo Expansion | JFK High School | Tiyan Campus | Total Annual Cost |
|--------------|-----------------------|----------------------|-----------------------|-----------------------|-----------------------|
| 2007 | \$ - | \$ - | \$ - | \$ - | \$ - |
| 2008 | 5,096,814 | - | - | - | 5,096,814 |
| 2009 | 5,096,463 | - | - | 748,876 | 5,845,339 |
| 2010 | 6,093,320 | - | - | 4,493,256 | 10,586,576 |
| 2011 | 6,096,081 | - | - | 4,740,003 | 10,836,084 |
| 2012 | 6,097,656 | - | 2,950,038 | 4,493,256 | 13,540,950 |
| 2013 | 6,097,094 | 337,199 | 5,131,938 | 4,493,256 | 16,059,487 |
| 2014 | 6,094,044 | 1,597,260 | 5,131,013 | 5,303,132 | 18,125,448 |
| 2015 | 6,094,413 | 2,358,960 | 5,127,613 | 5,303,132 | 18,884,117 |
| 2016 | 6,095,831 | 2,358,835 | 5,127,850 | 6,007,780 | 19,590,297 |
| 2017 | 6,094,125 | 2,354,685 | 5,130,600 | 8,352,294 | 21,931,704 |
| 2018 | 6,092,525 | 2,356,685 | 5,128,200 | 8,352,294 | 21,929,704 |
| 2019 | 6,090,488 | 2,358,960 | 5,131,900 | 8,241,466 | 21,822,814 |
| 2020 | 5,097,675 | 2,356,335 | 5,131,550 | 8,241,466 | 20,827,026 |
| 2021 | 5,097,675 | 2,358,635 | 5,127,050 | 8,225,778 | 20,809,138 |
| 2022 | 5,098,925 | 2,355,335 | 5,129,909 | 8,176,131 | 20,760,300 |
| 2023 | 5,095,925 | 2,356,260 | 5,131,663 | 8,176,131 | 20,759,978 |
| 2024 | 5,098,425 | 2,513,085 | 5,127,453 | 8,054,220 | 20,793,183 |
| 2025 | 5,095,675 | 2,672,585 | 5,126,784 | 8,054,220 | 20,949,264 |
| 2026 | 5,099,750 | 2,575,460 | 5,128,994 | 8,036,964 | 20,841,167 |
| 2027 | 5,099,600 | 2,481,060 | 5,128,253 | 7,982,351 | 20,691,264 |
| 2028 | - | 2,384,385 | 5,129,728 | 7,982,351 | 15,496,464 |
| 2029 | - | 2,279,735 | 5,127,259 | 7,848,249 | 15,255,244 |
| 2030 | - | 2,299,580 | 5,130,516 | 7,848,249 | 15,278,345 |
| 2031 | - | - | 5,126,600 | 7,829,267 | 12,955,867 |
| 2032 | - | - | 5,127,578 | 7,769,193 | 12,896,771 |
| 2033 | - | - | 5,127,297 | 7,769,193 | 12,896,490 |
| 2034 | - | - | 5,128,953 | 7,621,682 | 12,750,635 |
| 2035 | - | - | 5,126,688 | 7,621,682 | 12,748,369 |
| 2036 | - | - | 5,129,641 | 7,600,801 | 12,730,442 |
| 2037 | - | - | 5,126,609 | 7,534,720 | 12,661,329 |
| 2038 | - | - | 5,126,734 | 7,535,262 | 12,661,997 |
| 2039 | - | - | 5,128,641 | 2,745,940 | 7,874,580 |
| 2040 | - | - | 5,130,781 | 2,745,940 | 7,876,721 |
| 2041 | - | - | 5,130,500 | 2,114,098 | 7,244,598 |
| TOTAL | \$ 111,922,503 | \$ 40,355,039 | \$ 151,688,331 | \$ 218,042,634 | \$ 522,008,508 |

Appendix 3:
Schedule of Annual Capital Lease Costs

INSURANCE, MAINTENANCE, & COLLATERAL EQUIPMENT COSTS

| Year | Municipal Lease | Okkodo Expansion | JFK High School | Tiyan Campus | Total Annual Cost |
|--------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| 2007 | \$ 1,003,186 | \$ - | \$ - | \$ - | \$ 1,003,186 |
| 2008 | 1,003,538 | - | - | - | 1,003,538 |
| 2009 | 1,006,680 | - | - | 3,944,000 | 4,950,680 |
| 2010 | 1,003,919 | - | - | - | 1,003,919 |
| 2011 | 1,002,344 | - | - | - | 1,002,344 |
| 2012 | 1,002,906 | - | 1,568,000 | 3,241,679 | 5,812,585 |
| 2013 | 1,005,956 | - | 1,568,000 | - | 2,573,956 |
| 2014 | 1,005,588 | 1,217,336 | 1,568,000 | 3,169,754 | 6,960,677 |
| 2015 | 1,005,875 | 1,867,336 | 1,568,000 | 6,545,892 | 10,987,103 |
| 2016 | 1,004,169 | 1,867,336 | 1,568,000 | 1,265,155 | 5,704,660 |
| 2017 | 1,007,475 | 1,867,336 | 1,568,000 | 1,761,633 | 6,204,444 |
| 2018 | 1,009,513 | 1,867,336 | 1,568,000 | 1,761,633 | 6,206,482 |
| 2019 | 1,002,325 | 1,867,336 | 1,568,000 | 1,872,461 | 6,310,122 |
| 2020 | 1,002,325 | 1,867,336 | 1,568,000 | 1,872,461 | 6,310,122 |
| 2021 | 1,001,075 | 1,867,336 | 1,568,000 | 1,888,149 | 6,324,560 |
| 2022 | 1,004,075 | 1,867,336 | 1,568,000 | 1,937,797 | 6,377,208 |
| 2023 | 1,001,575 | 1,867,336 | 1,568,000 | 1,937,797 | 6,374,708 |
| 2024 | 1,004,325 | 1,867,336 | 1,568,000 | 2,059,707 | 6,499,368 |
| 2025 | 1,000,250 | 1,867,336 | 1,568,000 | 2,059,707 | 6,495,293 |
| 2026 | 1,000,400 | 1,867,336 | 1,568,000 | 2,076,964 | 6,512,700 |
| 2027 | - | 1,867,336 | 1,568,000 | 2,131,576 | 5,566,912 |
| 2028 | - | 1,867,336 | 1,568,000 | 2,131,576 | 5,566,912 |
| 2029 | - | 1,867,336 | 1,568,000 | 2,265,678 | 5,701,014 |
| 2030 | - | 1,867,336 | 1,568,000 | 2,265,678 | 5,701,014 |
| 2031 | - | - | 1,568,000 | 2,284,660 | 3,852,660 |
| 2032 | - | - | 1,568,000 | 2,344,734 | 3,912,734 |
| 2033 | - | - | 1,568,000 | 2,344,734 | 3,912,734 |
| 2034 | - | - | 1,568,000 | 2,492,246 | 4,060,246 |
| 2035 | - | - | 1,568,000 | 2,492,246 | 4,060,246 |
| 2036 | - | - | 1,568,000 | 2,513,126 | 4,081,126 |
| 2037 | - | - | 1,568,000 | 2,579,207 | 4,147,207 |
| 2038 | - | - | 1,568,000 | 2,579,208 | 4,147,208 |
| 2039 | - | - | 1,568,000 | 956,578 | 2,524,578 |
| 2040 | - | - | 1,568,000 | 956,578 | 2,524,578 |
| 2041 | - | - | 1,568,000 | 726,894 | 2,294,894 |
| TOTAL | \$ 20,077,497 | \$ 31,094,712 | \$ 47,040,000 | \$ 68,459,509 | \$ 166,671,717 |

NOTE: The payments made for the Tiyan Campus for FY 2009, FY 2012, and FY 2014 include amounts for collateral equipment. The FY 2009 payment includes \$3.9M for the temporary JFK, which were then transferred to the new JFK building in 2011. The FY 2012 payment includes \$3.2M for the temporary Untalan Middle School. The FY 2014 payment includes \$3.7M the school, gymnasium, GDOE offices and other facilities.

Appendix 4:
Tiyan Campus Aerial View



Appendix 5: GEDA Management Response



Edward J.B. Calvo
Governor of Guam
I Mags' Lahen Guahan

Raymond S. Tenorio
Lt. Governor of Guam
I Segundo Na Mags' Lahen Guahan

John A. Rios
Acting Administrator
Adminaistradot

December 17, 2014

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of Public Accountability
238 Archbishop Flores St., Suite 401
Hagatna, Guam 96910

Hafa Adai Ms. Brooks,

The Guam Economic Development Authority ("GEDA") is pleased that the OPA's audit report on the Government of Guam Tiyan Tax Credit Program did not identify any significant reportable issues.

We are also grateful that the report recognized the hard work and collaborative effort put forth by GEDA, the Dept. of Revenue & Taxation and the Dept. of Administration that ensures the program is administered, monitored, and accounted for and meets the program's statutory requirements.

This report also affirms the vital role of tax credit program in providing alternative sources of long-term financing to bring important community projects and initiatives to fruition.

In summary, the report determined that the government of Guam has adequate management controls and processes in place for administering the Tiyan Tax Credit Program.

Senseramente,

JOHN A. RIOS
Administrator

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"THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER".

Appendix 6:
DRT Management Response



Dipåtamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE B. CALVO, Governor / *Maga'åhå*
RAYMOND S. TENORIO, Lt. Governor / *Tilente Gubetnadot*

JOHN P. CAMACHO, Director
Direktor

MARIE M. BENITO Deputy Director
Segundo Direktor

December 17, 2014

To: Doris Flores Brooks
Public Auditor of Guam
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

From: Director

Re: Response to Government of Guam Wide Tiyan Tax Credits

We concur with the findings of the audit and the recommendations made.

If you have any questions or concerns, please do not hesitate to contact me at (671) 635-1815.

Sincerely,


JOHN P. CAMACHO



Jon J.P. Fernandez
Superintendent of Education

Department of Education
OFFICE OF THE SUPERINTENDENT

500 Mariner Avenue
Barrigada, Guam 96913-1608
Telephone: (671) 300-1547
Fax: (671) 472-5001
Email: jonfernandez@gdoe.net
www.gdoe.net



December 18, 2014

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910

Re: Draft Audit Report - Government of Guam Wide Tiyan Tax Credits (December 2, 2014)

Hafa Adai Mrs. Brooks,

The Guam Department of Education (GDOE) thanks you for your efforts in completing the audit of Tiyan Tax Credits. We are pleased to submit our response to the Government of Guam Wide Tiyan Tax Credits draft audit report, covering the time period of October 1, 2008 to September 30, 2013. The audit objectives were to determine which of the six (6) schools was the most costly on a total cost per square foot basis; quantify the amount of tax credits approved in lieu of cash payments; and whether processes were in place to monitor tax credits. The performance audit did not identify any audit findings nor made any audit recommendations. As such, GDOE prepares its response based on the conclusions derived in the draft audit report.

“The purchase of the Tiyan Campus (Tiyan High and GDOE Central Office plus land) of \$256.9M is the most costly amongst the six schools.” OPA included the GDOE Central Office and Other Facilities in several of its cost comparisons between Tiyan Campus and the other five (5) schools [John F. Kennedy (JFKHS), Okkodo (OHS), Astumbo Elementary, Adacao Elementary, and Liguana Elementary Schools]. In order to make a fair comparison, GDOE Central Office and Other Facilities should be excluded and only the costs associated with Tiyan High School (as detailed in Table 2) should be compared with the other schools. If the GDOE Central Office was excluded, then the cost of JFKHS would exceed Tiyan High in terms of total amount (principal, interest, insurance and maintenance, and collateral equipment) and Okkodo High would exceed Tiyan High in terms of average cost per year for additional rent. Accordingly, to state that “Tiyan High and GDOE Central Office Plus Land Most Costly” is misleading and not a consistent basis of comparison. If the Office of Public Accountability (OPA) were to follow its first objective, then the comparison would exclude GDOE Central Office and Other Facilities from its cost comparison.

Tax credits are a matter of policy decisions made by the Legislature and the Administration. OPA calculated that GovGuam will spend \$256.9M in tax credits for the purchase of the Tiyan Campus and has already issued \$21.5M for the initial lease of the property. GDOE benefitted from the tax credit but was not involved in the award or the provisions of the credit. OPA's historic timeline shows the challenges the public school system was facing which lead to the need for the Administration and Legislature taking action and utilizing tax credits to support the mission of GDOE.

GDOE would like to thank you for this opportunity to respond to your audit report.

Senseramente,



JON J. P. FERNANDEZ

Cc: Deputy Superintendent, Finance and Administrative Services
Deputy Superintendent, Accountability and Assessment
Chief Internal Auditor



**Government of Guam Merit Bonus Program
Report No. 14-07, December 2014**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Ashley Gaerlan, Audit Staff
Rodalyn Gerardo, CIA, CGFM, CPA, CGAP, CGMA, Audit Supervisor
Doris Flores Brooks, CPA, CGFM, Public Auditor

MISSION STATEMENT

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The Government of Guam is the model for good governance in the Pacific.

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Professionalism: To adhere to ethical and professional standards.

Accountability: To be responsible and transparent in our actions.

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- **Call our office at 475-0390**
- **Fax our office at 472-7951**
- **Or visit us at Suite 401, DNA Building in Hagåtña**

All information will be held in strict confidence.