OFFICE OF THE GOVERNOR
HAGÅTÑA, GUAM 96910
U.S.A.

EXECUTIVE ORDER NO. 2012-13

RELATIVE TO THE AMENDMENT OF EXECUTIVE ORDER 2010-23 AND THE EXECUTION OF CHANGE ORDERS AND CONTRACT AMENDMENTS FOR HIGHWAY PROJECTS AT THE DEPARTMENT OF PUBLIC WORKS

WHEREAS, the Organic Act of Guam provides that *I Maga'Låhen Guåhan*, Governor of Guam is tasked with responsibility of overseeing the health and safety of the people of Guam, and is further charged with overseeing the roads and public transportation needs of Guam's citizens; and

WHEREAS, the Territorial Highway Program (THP) was created by Section 112 of the Federal-Aid Highway Act of 1970 (U.S. Public Law 91 -605) by adding Section 215 to Title 23, United States Code.

WHEREAS, the THP is a federal program administered locally by the Guam Department of Public Works (DPW) and which grants federal financial assistance for the construction and improvement of Guam's roads and highways; and

WHEREAS, pursuant to the Stewardship Agreement entered into between the Governor of Guam and Federal Highway Administration on May 24, 2007, DPW has been delegated the authority to make final decisions for the Government of Guam in all matters relating to, and to enter into, contracts and agreements for THP projects; and

WHEREAS, the Procurement Law of Guam [5 G.C.A. § 5030(b)] and the Procurement Regulations [2 G.A.R. § 1106(2)] further provide that the Director of DPW may issue a written order for the purpose of making changes to a construction contract without the consent of the contractor, although the Director is not precluded from seeking the consent of a Contractor; and

WHEREAS, the Guam Procurement Regulations provide at 2 G.A.R. Section 5106(3)(a)-(c) that "the Government, acting through the Director of DPW, at any time and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order: (1) changes in the work within the scope of the contract; and (2)

changes in the time for performance of the contract that do not alter the scope of the contract." Change orders may therefore be unilaterally issued and signed by the Director of the DPW provided that a change order which causes or will cause an increase in funds in excess of $5,000 shall not be executed without first having obtained a certification of fund availability from the fiscal officer of the Department of Public Works as required by 5 G.C.A. Section 5307 and 2 G.A.R. Section 5107; and

WHEREAS, the DPW Rules and Regulations provide at 29 G.A.R. §1141 that the Director of DPW may unilaterally approve amendments to professional services contracts whose value does not exceed ten percent (10%) of the original contract amount.

WHEREAS, in order to minimize costs, expenses, and liabilities associated with delayed construction, it is essential that change orders for highway and road projects be timely processed, particularly where minor changes or amendments are involved. *"Minor changes and amendments"* are hereby defined as changes to highway and road construction contracts or amendments to professional service contracts which are:

(1) "No cost" or deductive change orders or amendments;
(2) Change orders or amendments whose value does not exceed $500,000;
(3) Change orders or amendments which increase the time of performance by not more than one-hundred eighty (180) calendar days.

WHEREAS, *Executive Order 2010-23 (Execution of Change Order for Highway Projects at DPW)* was executed on September 23, 2010, and since that date there has been much advancement and progress in the construction of Guam's roads and highways such that a need exists to update Executive Order 2010-23.

NOW, THEREFORE, I, EDDIE BAZA CALVO, *I Maga'Låhen Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, do hereby ORDER as follows:

1. **Execution of Minor Change Orders and Professional Services Contract Amendments.** The Director of the Department of Public Works is authorized to execute on behalf of the Government and the Governor of Guam: (a) written orders for minor changes related to Federal or locally-funded road and highway construction projects; and (b) minor amendments to professional services contracts, including architect-engineer contracts, for all services related to Federal or locally-funded road and highway construction projects.

2. **Application of Executive Order 87-2**. The provisions of *Executive Order 87-2 (Cost Containment Measures)* requiring that contracts of an

executive agency be approved by the Bureau of Budget and Management Research and signed by the Governor of Guam shall not apply to minor change orders and amendments approved and executed by the Director of DPW. However, the Office of the Attorney General shall preliminary review all minor change orders and amendment draft documents prior to finalization and execution by the Director of DPW.

3. **Application of Executive Order 2010-23**. Executive Order 2010-23 is hereby superseded and amended by this Executive Order.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 19 day of September, 2012.

EDDIE BAZA CALVO
I Maga'Låhen Guåhan
Governor of Guam

COUNTERSIGNED:

RAYMOND S. TENORIO
I Segundu Maga'Låhen Guåhan
Lieutenant Governor of Guam