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

# EXECUTIVE ORDER NO. 2013-007

## RELATIVE TO THE EXECUTION OF CHANGE ORDERS AND CONTRACT AMENDMENTS FOR HOT BOND PROJECTS ADMINISTERED BY THE GUAM ECONOMIC DEVELOPMENT AUTHORITY

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

**WHEREAS,** management of the design and construction of various capital improvement projects (the "HOT Bond Projects") have been assigned to the Guam Economic Development Authority's ("GEDA") Program Management Office ("PMO") by the Office of the Governor of Guam ("OOGG") pursuant to a June 15, 2011 Memorandum of Agreement ("MOA") between GEDA and the OOGG, as amended; and

**WHEREAS**, the HOT Bond Projects are part of the Capital Improvement Program established by Public Law 30-228, as amended by Public Law 31-196, which utilizes proceeds from the Hotel Occupancy Revenue Bonds, Series 2011A to fund various projects enumerated in the law; and

**WHEREAS,** the Department of Public Works ("DPW") has delegated its procurement authority under the Guam Procurement Law to GEDA, via a written Delegation of Procurement Authority dated September 16, 2011, to procure or supervise the procurement of the HOT Bond Projects; and

**WHEREAS,** pursuant to the Guam Procurement Law, 5 G.C.A. § 5030(b), and the Procurement Regulations, 2 G.A.R. Div. 4 § 1106(2), the Administrator of GEDA ("Administrator"), as the designee of 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 Administrator is not precluded from seeking the consent of a Contractor; and

**WHEREAS,** the standard changes clause found in the Guam Procurement Regulations provide at 2 G.A.R. Div. 4 § 5106(3)(a)-(c) provides that "the Director of Public Works or the head of a Purchasing Agency, 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 Administrator 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 GEDA as required by 5 G.C.A. § 5307 and 2 G.A.R. Div. 4 § 5107; and

**WHEREAS,** in order to minimize costs, expenses, and liabilities associated with delayed construction, it is essential that change orders for the HOT Bond Projects be timely processed, particularly where minor change orders or contract amendments are involved. *"Minor change orders and contract amendments"* are hereby defined as change orders or amendments to HOT Bond Project contracts which are:

(1) "No cost" or deductive change orders or amendments; or
(2) Change orders or amendments whose value does not exceed Ten Percent (10%) of the original contract amount or Five Hundred Thousand Dollars ($500,000) whichever is less; or
(3) Change orders or amendments which increase the time of performance by not more than one-hundred eighty (180) calendar days.

**NOW, THEREFORE, I, RAYMOND S. TENORIO**, *I Segundo Maga'Låhen Guåhan*, Acting Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do ORDER:

1. **Execution of Minor Change Orders and Contract Amendments to HOT Bond Project Contracts.** The Administrator of GEDA is authorized to execute Minor Change Orders and Contract Amendments (as defined above) to HOT Bond Project Contracts, including, without limitation, construction contracts and professional services contracts, without further approval of the Governor of Guam.

2. **Application of Executive Order 87-2.** The provisions of Executive

Order 87-2 requiring that all contracts of executive agencies be approved by the Bureau of Budget and Management Research approve contracts of executive agencies shall not apply to Minor Change Orders and Contract Amendments (as defined above).

**SIGNED AND PROMULGATED** at Hagatna, Guam this 13th day of June, 2013.

**RAYMOND S. TENORIO**
*I Segundo Maga'Låhen Guåhan*
Acting Governor of Guam