DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

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JON J. P. FERNANDEZ
Superintendent of Education

Vice Speaker Therese M. Terlaje
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CERTIFICATE OF EMERGENCY RE: PROCUREMENT OF INTERIM CUSTODIAL SERVICES

WHEREAS, the Organic Act of Guam at Title 48 United States Code § 1421g requires the Government of Guam to provide an adequate public education to the schoolchildren of Guam; and

WHEREAS, Public Law 28-45 created the Every Child is Entitled to an Adequate Public Education Act, which requires a healthful, safe, and sanitary learning environment; and

WHEREAS, on June 28, 2018 the Guam Department of Education (GDOE) published Invitation for Bid (IFB) 013-2018 for custodial services at various public schools, and which was intended to replace the previous custodial services contract under IFB 030-2013 which expired on September 30, 2018; and

WHEREAS, on August 20, 2018, GDOE received a protest regarding IFB 013-2018 which effectively prohibited GDOE from moving forward with procuring custodial services under IFB 013-2018 pursuant to Guam Procurement Law; and

WHEREAS, on September 6, 2018, GDOE received notice that the protest was appealed to the Office of Public Accountability (OPA); and

WHEREAS, on October 22, 2018, GDOE requested and thereafter received approval from the Governor of Guam for emergency procurement of interim custodial services, which are set to expire on December 5, 2018; and

WHEREAS, the OPA issued an Order of Dismissal with Prejudice on October 24, 2018, thereby dismissing the appeal; however, this did not result in automatic approval and installment of the new custodial services contract under IFB 013-2018; and

WHEREAS, instead, GDOE immediately lifted the stay of procurement for IFB 013-2018 on the same day (October 24, 2018), and moved forward with procurement of the new contract; however, despite GDOE's best efforts to facilitate procurement thereof, the new contract under IFB 013-2018 is still being reviewed by the Attorney General's Office at this time, and still requires approval and signature by both the Attorney General and the Governor of Guam; and

WHEREAS, GDOE students and staff are again faced with having no custodial services at our schools after December 5, 2018, because there is no guarantee that the new contract under IFB 013-2018 will be fully executed and in place before the December 5 expiration of our current emergency procurement for these critical custodial services; and

WHEREAS, unless a new custodial services contract is approved, fully executed and in place by December 5, 2018, there exists an ongoing critical threat to GDOE's ability to provide an Adequate Public Education as defined in Title 1 Guam Code Annotated (GCA) Section 715, and a continued threat to the health, welfare and safety of our students and employees.

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NOW THEREFORE, based on the above reasons, I, JON J.P. FERNANDEZ, certify that the Guam Department of Education, remains in a state of emergency that jeopardizes and presents a continued threat to the health, welfare, and safety of the students and staff of GDOE; and

FURTHERMORE, upon the approval of the Governor and pursuant to Title 5 GCA § 5215, I authorize the third emergency procurement of custodial services as necessary for a period of thirty days to ensure the continued reliable provision of custodial services to our GDOE schools. Such emergency procurement shall be made in accordance with applicable procurement law and regulations; and

FINALLY, pursuant to 5 GCA § 5125 and under penalty of perjury, I certify that the facts stated above are true to the best of my knowledge and that this statement of emergency is not being used solely for the purpose of avoiding the provisions of Article 3 of the Guam Procurement Law at 5 GCA Chapter 5.

JON J.P. FERNANDEZ, Superintendent
Guam Department of Education

Date 12/3/18