

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 17-007

1 **FISHER & ASSOCIATES**  
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BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
HAGÁTÑA, GUAM

8 IN RE THE APPEAL OF )  
9 MEGA UNITED CORP. LTD. )

OPA-PA-17-007

10 ) **REPLY TO AN OPPOSITION**  
11 ) **TO A MOTION TO DISMISS**  
12 ) **AN APPEAL and**  
13 ) **STAY AN ORDER**  
14 )  
15 )

16 \*\*\* Reply \*\*\*

17 Mega United Corporation (MUC) argues that 5 Guam Code Ann. §5427 is a  
18 grant of jurisdiction to the Office of Public Accountability (OPA). *See Opposition*  
19 *at pp. 1 and 2,*

20 “5 GCA §5427(a) and (e) make clear that the OPA has jurisdiction to  
21 resolve contract and breach of contract controversies, specifically  
22 “controversies between the Territory and a contractor and which  
23 arise under, or by virtue of, a contract between them. This includes  
24 without limitation controversies based upon breach of contract,  
25 mistake, misrepresentation, or other cause for contract  
modification or rescission”

1 *Id at 2, emphasis in the original.*

2 This code section is not a grant of jurisdiction to the OPA though, it is a  
3 description of an administrative discretionary step taken at the agency level.

4 “(a) Applicability. This Section applies to controversies between  
5 the Territory and a contractor and which arise under, or by virtue  
6 of, a contract between them. This includes without limitation  
7 controversies based upon breach of contract, mistake,  
8 misrepresentation, or other cause for contract modification or  
9 rescission.

10 (b) Authority. *The Chief Procurement Officer, the Director of*  
11 *Public Works, the head of a purchasing agency, or a designee of*  
12 *one of these officers* is authorized, prior to commencement of an  
13 action in a court concerning the controversy, to settle and resolve a  
14 controversy described in Subsection (a) of this Section. This  
15 authority shall be exercised in accordance with regulations  
16 promulgated by the Policy Office.”

17 *Id at §5427, ¶¶ (a) and (b), emphasis added.*

18 Accordingly, where a contract controversy arises between the Territory and a  
19 contractor, the chief Procurement officer (or others) may resolve it.

20 In accordance with the architecture of Section 5427, where a contract  
21 controversy exists, the agency may resolve it, render a decision, provide the  
22 contractor notice of the decision, and that decision is final unless that decision is  
23 “[appealed] administratively to the Public Auditor in accordance with § 5706 of  
24 this Chapter.” *See Id at ¶¶ (a)-(e).* Additionally, where an agency renders no  
25

1 decision, “within sixty (60) days after written request for a final decision, or  
2 within such longer period as may be agreed upon by the parties, then the  
3 contractor may proceed as if an adverse decision had been received.” *Id at ¶(f)*

4  
5 Section 5706 is not a grant of jurisdiction either but states in part,

6 (a) Scope. This § 5706 applies to a review by the Public Auditor of a  
7 decision under § 5427 of this Chapter.

8 (b) Time Limitation on Filing an Appeal. The aggrieved contractor shall  
9 file his/her appeal with the Public Auditor within sixty (60) days of the  
10 receipt of the decision or within sixty (60) days following the failure to  
11 render a timely decision as provided in § 5427 of this Chapter.

12 *5 Guam Code Ann. §5706(a) (b).*

13 While the OPA may render decisions on an appeal of such an  
14 agency determination, it must nevertheless be an issue properly before  
15 the Office. 5 Guam Code Ann. §5703 describes the OPA’s jurisdiction,  
16 “The Public Auditor shall have the power to review and determine de  
17 novo any matter properly submitted to her or him. The Public Auditor  
18 shall not have jurisdiction over disputes having to do with money owed  
19 to or by the government of Guam.” *5 Guam Code Ann. §5703.*

20 Accordingly, whatever else may be within its jurisdiction “disputes  
21 having to do with money owed to or by the government of Guam” are  
22 not.  
23  
24  
25

1 But MUC attempts to move its camel through this jurisdictional  
2 needle by characterizing its complaint as one for contract modification.  
3  
4 “Mega United’s claim with GEDA was a Request for Adjustment of  
5 Contract Price due to Prolonged Delay. Clearly a request for adjustment  
6 of contract price is ‘contract modification ...’” *Opposition at pp.2-3.*  
7  
8 MUC does not state how this is a *modification* of the contract though. In  
9 fact, the request doesn’t change the contract at all; put otherwise, had  
10 GEDA agreed to pay MUC the amount claimed, the contract would not  
11 have been modified. MUC merely dislikes an agency determination  
12 made pursuant to the contract. Article 11 of the contract governs price  
13 adjustments and Article 12.3 states that “any adjustment in the contract  
14 price made pursuant to this clause shall be determined in accordance with  
15 the Price Adjustment Clause of this Contract.” *See Notice of Appeal at*  
16 *Exhibit 1, p. 13.* In reality, this is not an issue of contract modification,  
17 interpretation or controversy, rather a complaint for **more money**.  
18  
19

20 MUC states, “[i]n correspondence with GEDA, counsel for Mega United  
21 did occasionally loosely describe Mega United’s claim as one for  
22 ‘compensation’ rather than using the lengthier description of ‘request for  
23 adjustment of contract price.’ Regardless, GEDA correctly understood Mega  
24 United’s claim as one for an adjustment of contract price, rather than for money  
25

1 owed as compensation.” *See Opposition at pp.4-5.* Absent a change order  
2 modifying performance obligations (there were none relevant here), it is  
3 difficult to see daylight between a claim for an adjustment of contract price and  
4 one for money owed as compensation.<sup>1</sup> In any case, MUC is being  
5 uncharitable to former counsel; after all, they themselves have asked the OPA to  
6 “approve Mega United’s Request for Adjustment of Contract Price due to  
7 Prolonged Delay in the amount of \$460,081, in addition to attorney’s fees  
8 and interest.” *See Notice of Appeal at p. 3, emphasis added.*

11 MUC states that GEDA “argues that Mega United’s appeal is untimely,  
12 by simply ignoring the governing language of the parties’ Contract.” *Opposition*  
13 *at p. 5.* “Here, GEDA still has not provided the Denial Letter to Mega United, at  
14 Mega United’s address in the Contract as required by Contract Article 21.11.  
15 Further, counsel for GEDA (the author may mean Mega United) did not receive  
16 the email purportedly sent by GEDA, which email purportedly included  
17 GEDA’s Denial Letter as an attachment. *See Declaration of Jon A. Visosky.” Id*  
18 *at p. 6.* As a preliminary matter, attorney for MUC does not deny that MUC’s  
19 law firm (Roberts Fowler & Visosky LLP) received the notice<sup>2</sup>, rather the  
20  
21  
22

---

23  
24 <sup>1</sup> MUC creates an exception which eats the rule. What person, lawyer or not,  
25 couldn’t convert a claim for money owed into a contract performance argument?

<sup>2</sup> It most likely did. *See Declaration, L. Toves at Exhibit E*

1 attorney states that *he* “did not receive the email attached to the Motion to  
2 Dismiss and (sic) Appeal and Stay and (sic) Order (“Motion”) filed by the Guam  
3 Economic Development Authority (“GEDA”) described as ‘GEDA’s response’  
4 on 13 April 2017.” *Declaration of Jon A. Viskosky at ¶ 2.*

6 In any case and with reference to the contract, no claim of MUC for a  
7 change of contract price is timely. “Any claim for an adjustment in the Contract  
8 Price shall be based on written notice submitted by the party making the Claim  
9 to the Program Management Office and Owner’s Representative the other party  
10 to the Contract in accordance with the provisions of paragraph 10.D.” *Notice of*  
11 *Appeal, Exhibit 2 at Vol I: 00700-45.* “Written notice stating the general nature  
12 of each Claim , dispute or other matter shall be delivered by the claimant to  
13 Program Management Office, Owner’s Representative, and Designer ant the  
14 other party to the Contract promptly (but in no event later than 10 days) after the  
15 start of the event giving rise thereto.” *Id at 00700-41.* “No Claim for an  
16 adjustment in Contract Price or Contract Times (or Milestones) will be valid if  
17 not submitted in accordance with this paragraph 10.” *Id.* Here, no claim met the  
18 requirements of paragraph 10.

22 MUC’s claim is untimely as a matter of contract and untimely under the  
23 procurement law. Despite this, MUC states, “GEDA’s conduct in mailing the  
24 Denial Letter to Mega United’s counsel, in non-compliance with Contract  
25

1 Article 21.11, and GEDA’s failure to ‘inform the contractor of its rights to  
 2 judicial or administrative review’ as expressly required under §5427(c)(2) is  
 3 sufficient to equitably estop GEDA from now arguing that Mega United’s  
 4 reliance bars Mega United’s appeal.” *Opposition at pp. 8-9*. Should an estoppel  
 5 be raised, it is to MUC and not GEDA. The following table summarizes MUC’s  
 6 claim history;  
 7

Date	Event	Reference
29 August 2014	The last of MUC’s “claims” arise	Exhibit A
08 October 2014	MUC informs GEDA 40 days later	Exhibit A
05 May 2015	MUC makes a claim for price adjustment upon GEDA. Per MUC GEDA does not reply	Exhibit B
08 July 2015	MUC makes a claim for price adjustment upon GEDA. Per MUC GEDA does not reply	Exhibit B
04 December 2015	MUC makes a claim for price adjustment and demand for response upon GEDA.	Exhibit B
24 December 2015	GEDA responds to MUC and notes all claims arose no later than 29 August 2014.	Exhibit C
02 February 2016	MUC reiterates its claim and admits GEDA did not respond to prior demands.	Exhibit D

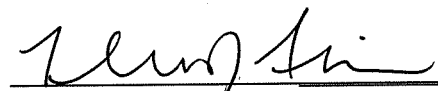
03 April 2016	MUC's demand is constructively denied by agency silence.	5 Guam Code Ann. §5427(f).
02 June 2016	60 <sup>th</sup> day following agency "denial". MUC does not appeal to OPA. Claim precluded.	5 Guam Code Ann. §5706(b).

Assuming this "claim" is within the jurisdiction of the Public Auditor, and assuming it is not also barred by the plain language of the contract, it must have been made no later than the 120<sup>th</sup> day (60 days of agency silence begets 60 days to appeal to the OPA) following the date it was made to the agency, i.e. 08 October 2014 or charitably, 04 December 2015. In any case, there were numerous occasions which called for action, no estoppel can arise against GEDA simply because MUC was asleep.

**WHEREFORE** the Guam Economic Development Authority Prays for relief as follows;

1. Stay an order to produce a procurement record and agency report pending resolution of the issue of jurisdiction.
2. Dismiss this Appeal for want of jurisdiction.

**FISHER & ASSOCIATES**



Thomas J. Fisher, Esq.  
Guam Economic Development Authority



# Exhibit A

# MEGA UNITED CORP.

P.O. Box 8620 | Tamuning, GU 96933 | 671-689-3293 | wnh@netpci.com

October 08, 2014

Mrs. Mana Siva Taijeron/Acting Administrator  
Guam Economic Development Authority (GEDA)  
590 S. Marine Corps, Dr.  
Suite 511 ITC Building  
Tamuning, GUAM 96913

**Re: Request for adjustment of contract price due to prolonged delay of Guam Farmer's Co-Op Project.**

Dear Mrs. Taijeron,

The above mentioned project was bid on 12/11/2013 and supposed to proceed no later than 03/11/2014. Unfortunately Our company was able to jump-start the project on 07/07/2014 due to reasons totally out of our controls as listed on prior letters presented to you. As a result of almost 120 days of prolonged delay, a lot of our suppliers/subcons had either adjusted their quotations or withdrawn their discounts creating a disastrous budget hole for our company. We had to re-negotiate and re-affirm all price quotes with our suppliers/subcons very patiently under the instruction and advise of respected RA. Andy Laguana Ever since the permit was granted on 07/07/2014. In the meantime our company had diligently and loyally carried out the project in a professional manner so that no adverse impacts were effectuated to GEDA all at the sacrifices of our company. After such detailed re-affirming works, a summary of materials which had incurred substantial price escalations are listed as below with detailed evidences presented for your review and reference.

**Construction Materials Price Escalations as below**

1. Construction Rebars, Plyforms and lumbers From Tsang Brothers Corporation

Price dated on 02/17/2014:	\$90318
Price dated on 07/18/2014:	\$96852
Net Price Escalation:	\$6534

EXHIBIT I Attached.
  
2. Stego Vapor Barrier & Accessories for Slab on Grade From Winland Enterprise Ltd.

Price dated on 01/20/2014:	\$2525
Price dated on 07/19/2014:	\$3668
Net Price Escalation:	\$1143

EXHIBIT II Attached
  
3. Green Waste Trucking & Disposal From UMS Equipment Rental.

Price dated on 02/25/2014:	\$36,000
Price dated on 07/28/2014:	\$64,000
Net Price Escalation:	\$28,000

EXHIBIT III Attached.
  
4. 2" Minus Basecourse Supply & Delivery From JMC Equipment Rental.

Price dated on 02/17/2014:	4720cy x \$11.87/cy = \$56,026
Price dated on 07/16/2014:	4720cy x \$16.25/cy = \$76,700
Net Price Escalation:	\$20,674

EXHIBIT IV Attached.

5. Exterior Aluminum Doors, Windows etc. From EMI Equatorial Manufacture Inc.  
 Price dated on 02/14/2014: \$31,860  
 Price dated on 06/18/2014: \$40,180  
 Net Price Escalation: \$8,320  
 EXHIBIT V Attached.
6. Interior Doors & Hardware etc. From AIM Enterprises/LYPCO International.  
 Price dated on 02/15/2014: \$12,705  
 Price dated on 08/22/2014: \$14,346  
 Net Price Escalation: \$1,641  
 EXHIBIT VI Attached.
7. Toilet Partition Doors From The Door Store.  
 Price dated on 02/14/2014: \$2,385  
 Price dated on 08/18/2014: \$3,490  
 Net Price Escalation: \$1,105  
 EXHIBIT VII Attached.
8. Electrical Rough-in Materials From CPS Electric Construction & Power Sources Inc.  
 Price dated on 02/18/2014: \$50,442  
 Price dated on 08/26/2014: \$67,125  
 Net Price Escalation: \$16,683  
 EXHIBIT VIII Attached.
9. Electrical Fixtures, Panels, Meters, Fans etc. From Source Lighting & Electric.  
 Price dated on 02/03/2014: \$75,966  
 Price dated on 08/20/2014: \$103,240  
 Net Price Escalation: \$27,274  
 EXHIBIT IX Attached.
10. Mitsubishi AC & Refrigeration System, Exhaust Fans and Make-up Airs etc.  
 From MJM International Corporation.  
 Price dated on 02/17/2014:  $(\$43,729 + \$15,288 + \$11,807 + \$7,832) = \$78,656$   
 Price dated on 07/16/2014:  $(\$57,577 + \$20,330 + \$15,760 + \$20,052) = \$113,719$   
 Net Price Escalation: \$35,063  
 (This Price Escalation also reflects change of equipment schedule from Bid Set drawings  
 to Permit Set Drawings)  
 EXHIBIT X Attached.
11. Plumbing Fixtures and Bathroom Accessories From American Plumbing Supply International.  
 Price dated on 02/16/2014: \$12,271  
 Price dated on 07/31/2014: \$16,327  
 Net Price Escalation: \$4,056  
 EXHIBIT XI Attached.
12. Road Signs and Room Labels From Pacific Sign Shop.  
 Price dated on 02/18/2014: \$3,408  
 Price dated on 08/29/2014: \$4,544  
 Net Price Escalation: \$1,136  
 EXHIBIT XII Attached.
13. Supply and Installation of Pavement Markings From Highway Safety Services LLC.  
 Price dated on 02/18/2014: \$6,764

Price dated on 08/29/2014: \$9,018  
Net Price Escalation: \$2,254  
EXHIBIT XIII Attached.

14. Elastomeric Roof Waterproofing Coatings From Isla Paint & Roofing Supply.  
Price dated on 02/25/2014: \$16,138  
Price dated on 08/15/2014: \$19,786  
Net Price Escalation: \$3,648  
EXHIBIT XIV Attached.

The total of net price escalations for those materials are \$157,531; There were also numerous other materials price escalations not listed hereby such as diesel fuels, rock products, off-island orders directly by our company etc. Those factors combined with Insurance surcharges(Performance and Payment bonds, Builder's risk etc.), Government Taxes, Overheads and our profit margin will convert **Our total material claim equivalent to  $2.0 \times \$157,531 = \$315,062$ .**

On the other hand we had suffered financially due to loyally maintain the workforce in standby and good-faith preparation for this project.

**Labor Compensation for the delay as below**

**From 03/11/2014 to 5/01/2014** (This period started from expiration of Bid Bond until Notice to Proceed was issued). We considered 50% off to GEDA due to non-availability of signed contract.

1.) Wages of Workers Summarized:  $\$61,108 \times 1.0765(\text{SS Match}) \times 0.5 = \$32,891$ .  
EXHIBIT XV Certificated Payroll Reports Attached

2.) Salaries of two Engineers Summarized: (March & April)  
Mr. Albert Oftana and Mr. Zumin Zhang  
 $(\$10,000 + \$9,000) \times 1.0765(\text{SS Match}) \times 0.5 = \$10,227$   
EXHIBIT XVI Salary Check Stubs Attached.

Subtotal Labor Refund Claimed From 03/11/2014 to 05/01/2014: \$43,118 Even.

**From 05/01/2014 to 07/07/2014** (This period started from Notice to Proceed to the receipt of Building Permit). We were 100% locked by the contract and fully committed to this project.

1.) Wages of Workers Summarized:  $\$34,372 \times 1.0765(\text{SS Match}) = \$37,001$ .  
EXHIBIT XV Certificated Payroll Reports Attached

2.) Salaries of two Engineers Summarized: (May & June)  
Mr. Albert Oftana and Mr. Zumin Zhang  
 $(\$10,000 + \$9,000) \times 1.0765(\text{SS Match}) = \$20,453$   
EXHIBIT XVI Salary Check Stubs Attached.

Subtotal Labor Refund Claimed From 05/01/2014 to 07/07/2014: \$57,454 Even.


**Total Labor Compensation/Refund:  $\$43,118 + \$57,454 = \$100,572$  Even.**

We are currently faced with severe budget shortages, rely and resort to personal savings and personal loans to sustain the project and make certain that quality and timely works are still guaranteed. We hereby appeal to your great sympathy and consideration toward our company so that speedy processing of delay claims will replenish shorted budget and provide necessary relief and guarantee for the smooth completion and handover of a brand new and quality Co-Op Facility without any

disputes. Thanks again for your immediate consideration on our above claims and adjust the contract price accordingly so as to properly compensate the contractor for delay damages it suffers.

**Total Combined Claims for both Materials and Labors: (\$315,062+\$100,572) = \$415,634 Even  
(Four Hundred Fifteen Thousand Six Hundred and Thirty-Four Even US Dollars**

Best Regards

  
Zumin Zhang/President  
Mega United Corp.

# Exhibit B

BAUMANN, KONDAS AND XU, LLC

ATTORNEYS AT LAW

SUITE 903, DNA BUILDING  
238 ARCHBISHOP FLORES STREET  
HAGĀTÑA, GUAM 96910

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MARK E. KONDAS  
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TELEPHONE  
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E-MAIL  
Ladd.Baumann@baumannguam.com

December 4, 2015

Thomas J. Fisher, Esq.  
FISHER & ASSOCIATES  
Suite 101 De La Corte Bldg.  
167 East Marine Corps Drive  
Hagatna, Guam 96910  
**VIA HAND-DELIVERY**

**Re: Demand by Mega United Corp.  
DEDA IFB 14-002**

Dear Tom:

As previously discussed on the phone, I have been retained by Mega United Corp. in its claims against Guam Economic Development Authority ("GEDA") pursuant to the construction contract (IFB No. 14-002) and its amendments ("Contract") between GEDA and Mega United Corp. This letter is sent to you in your official capacity as legal counsel for GEDA.

As you correctly pointed out, Article 12 of the Contract governs Contractor's claims based on government acts or omissions. Article 12 not only allows damages to be paid to the contractor due to government's delay; it also calls for continuing performance by the contractor despite of the claims against the government. Section 00700 of Volume One of Project Manual, "General Conditions," also allows compensation to contractors if delays are beyond contractor's control. "Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, Program Management Office, Owner's Representative, Designer, or Owner's separate contractors as contemplated by paragraph 7." (Paragraph 12.C.1)

Please be advised that Mega United Corp. has fulfilled all its obligations and complied with the claim requirements throughout the contract period. As you will find from the discussion below, the delays were caused beyond Mega United Corp.'s control. Furthermore, Mega United Corp. has complied all notice requirements under Article 12 when filed for the claims.

//

Several significant dates are provided as following:

- Bid Opening Date: December 11, 2013
- Notice of Intent to Award Date: January 16, 2014
- Notice to Proceed Date: May 1, 2014
- Building Permit Date: July 7, 2014

It is a common practice that a construction contract should start within 90 days after bid opening with original contract price being kept firm. If the owner delays beyond 90 days, the bid bond and contractor's original price will no longer valid. A close review of Section 00700 of Volume One of Project Manual, "General Conditions," reveals that contractors are permitted an adjustment in the Contract Price if any delays cause the Contract Time to be increased by more than sixty (60) days. (Paragraph 12.F.3.) As you see, from the Bid Opening Date to Building Permit Date, more than 200 days have lapsed.

GEDA was put on notice of possible contract price increase as a result of such undue delay from early on. On March 24, 2014, Mr. Zumin Zhang, President of Mega United Corp. wrote to Mr. Henry Taitano, GEDA Administrator, that GEDA PMO promised at February 28, 2014 meeting that NTP would be issued within a week or two but no NTP was issued as of the date of the letter. Mr. Zhang wrote, "in the meantime we hope to have your due consideration at a later time on a reasonable compensation to the contractor corresponding to increased costs resulting from delay and rushed-up time."

On June 2, 2014, Mr. Zhang wrote to Mrs. Mana Siva Taijeron, Acting GEDA Administrator that "the above mentioned project has encountered severe setbacks during permitting process" Mr. Zhang argued that the delay not only caused direct damages due to increased prices by suppliers, labor costs to maintain the required standby-ready status, but also opportunity costs due to Mega United Corp.'s inability to bid on other qualifying projects such as the Gam Library extension project, GWA bond projects and GHURA projects. He pleaded that GEDA sought "all possible venues to expedite fire-flow design and fast-track permitting process in order to minimize further delay on this project. "The sooner those matters are resolved the better the contract will get relieved, the less GEDA will have to pay for delay claims."

On October 8, 2014, Mega United Corp. submitted a detailed Request for Adjustment of Contract Price due to Prolonged Delay of Guam Farmer's Co-Op Project. Said demand is attached to this letter for your reference.

On May 5, 2015, Mr. Zhang wrote to Mr. Henry Taitano again regarding the delay claim.



Thomas J. Fisher, Esq.  
FISHER & ASSOCIATES  
December 4, 2015  
Page Three

On July 8, 2015, Mr. Zhang wrote to Mr. John Rios, GEDA Administrator regarding the delay claim.

GEDA never replied to any of these demand letters in writing. In the meantime, Mega United Corp. has continued performance as required by the contract.

Please be mindful that none of the delays was caused by Mega United Corp. Rather, they were caused entirely by Government acts and omissions:

- Design Deficiency.

Capacity of the public water system could not handle Guam Fire Department requirements for water flow in the project area. GEDA was aware of this deficiency well in advance and should address this issue before it put the project for bid. However, due to GEDA's omission, Mega United Corp. had to shoulder all deals during the prolonged permitting process.

- Leadership Dispute within the Board of Farmers' Co-Op.

The fierce disputes about leadership within the Board of Farmers' Co-Op had resulted in indecisions concerning which critical options should be exercised for actual construction. This dispute had to be brought to the Superior Court of Guam for a final judgment. Mega United Corp. again had to shoulder all damages caused by the delays.

- The Poor Performance of GEDA designated PMO  
CHA Company retained by GEDA as PMO initially subcontracted TCM to handle the project at the beginning. Unfortunately, it terminated TCM's subcontract in February 2014 and assigned its own engineer Galvin Thomas to the project. It took nearly one month for Mr. Thomas to familiarize the project. When he first contacted Mega United Corp. in March 2014, he overruled all previous arrangement made between TCM and Mega United Corp., and demanded Mega United Corp. to accept his own arrangement.

In summary, the said project was delayed for more than 200 days due to government acts and omissions. Mega United Corp. has completely fulfilled its obligations under the contract by completing the project. In the meantime, Mega United Corp. has timely notified GEDA of the delays and the additional cost as a result of the prolonged delays. GEDA has never responded to Mega United Corp.'s demand. All delays are caused beyond Mega United Corp.'s control.

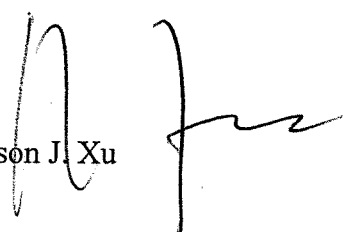
Thomas J. Fisher, Esq.  
FISHER & ASSOCIATES  
December 4, 2015  
Page Four

Consequently, Mega United Corp. has suffered \$460,081 in direct damages in addition to attorney's fees and punitive damages. A detailed compilation of direct damages is provided for your reference.

Therefore, Mega United Corp. hereby demands immediate payment of \$460,081 from GEDA. Given the history of nonresponses to Mega United Corp.'s previous repeated demands, I urge GEDA to respond on later than Friday, December 18, 2015. Mega United Corp. reserves the right to all legal means including litigation in its pursuit to reasonable compensation for its losses.

Best Regards,  
BAUMANN, KONDAS and XU, LLC.

Nelson J. Xu

A handwritten signature in black ink, appearing to be 'Nelson J. Xu', written over the printed name.

Attachments

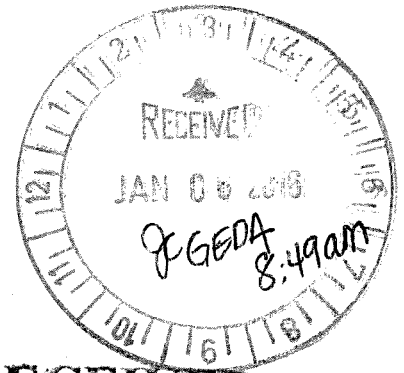
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# Exhibit C

FISHER ASSOCIATES  
ATTORNEYS AT LAW

24 December 2015

Mr. Nelson L. Xu, Esq.  
Baumann, Kondas and Xu, LLC  
Ste. 903 DNA Bldg.  
238 Archbishop Flores St.  
Hagåtña, Guam 96910



RECEIVED

DEC 28 2015

BAUMANN, KONDAS and XU, LLC  
BY: lx TIME: 9:08

In re Demand, Mega United Corp., GEDA IFB 14-002

Dear Nelson,

Thank you for your letter of 04 December 2015 concerning Mega United Corp., Ltd. (Mega United). Please note that all correspondence directed to GEDA concerning this matter must be directed to the Administrator. *See Contract, Mega United Corp., Ltd. and Guam Economic Development Authority, IFB 14-002 at ¶21.11.* Accordingly, your letter is not, and cannot be construed to be a demand upon Guam Economic Development Authority (hereinafter "GEDA").

It may be that you will serve GEDA with the same, or similar demand. In your letter, you reference an 08 October 2014 letter sent to Ms. Mana Silva Taijeron in her capacity as acting administrator for GEDA. Attached to that letter are numerous invoices submitted as evidence of an increase in material costs. In that letter, Mega United Corp. states, "The total of net price escalations for those materials are (sic) \$157,531. There were also numerous other materials price escalations not listed hereby such as diesel fuels, rock products, off-island orders directly by our company etc. Those factors combined with insurance surcharges (performance and payment bonds, builder's risk etc.), government taxes, overheads (sic) and our profit margin will convert our total material claim equivalent to  $2.0 \times \$157,531 = \$315,062$ ." *Letter, 08 October 2014 at p. 3.* In that same letter Mega United also claims labor compensation for the period 11 March 2014 to 07 July 2014 in the amount of \$100,572. *Id.* In total, the 08 October 2014 request for adjustment of contract price is \$415,634<sup>1</sup>. I note, and I think you will agree, that the invoices attached to the letter were received by Mega United at various times and none later than 29 August 2014. Additionally, Mega United was aware of an increase in labor costs no later than 07 July 2014.

You believe that Article 12 of the Contract controls these various claims. *See your letter, 04 December 2015 at p. 1.* Article 12 states;

12.1. Notice of Claim. If any action or omission on the part of the Administrator or his designee requiring performance changes within the scope of this Contract constitutes the basis for a claim by

<sup>1</sup> Your letter of 04 December 2015 asks for \$460,081, a difference of \$44,447.

CONTRACTOR for additional compensation, damages, or an extension of time for completion, CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

12.1.1. DESIGN-BUILDER shall have given written notice to the Administrator or his designee:

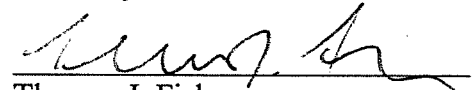
12.1.1.2. within 30 days after CONTRACTOR knows of the occurrence of such action or omission, if CONTRACTOR did not have such knowledge prior to the commencement of the work; or

12.1.1.3. within such further time as may be allowed by the Administrator in writing.

*Contract at Article 12.* Although you state that Mega United has complied with all notice requirements under Article 12 (*letter at id*), it does not appear that your client met those of Article 12.1.1.2. Additionally, it seems clear that Mega United did not meet the requirements of paragraph 10, Section 0700, Volume 1 of the Project Manual. Paragraph 10.D.2. of the Project Manual required delivery of notice of a claim for adjustment of contract price no later than ten (10) days after the event giving rise to the claim. *Section 0700, Volume 1, Project Manual at ¶10.D.2.* Additionally, “[n]o claim for an adjustment in contract price . . . will be valid if not submitted in accordance with this paragraph 10.” *Id at 10.D.5.*

In the event Mega United does serve GEDA with a demand or claim for a price adjustment to the contract, please explain how it met the requirements of Article 12 of the Contract as well as all requirements of paragraphs 12 and 10 of Section 0700, Volume 1, of the Project Manual. Thank you for your attention in this matter.

Sincerely,



Thomas J. Fisher  
Attorney for GEDA

# Exhibit D

# BAUMANN, KONDAS AND XU, LLC

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February 2, 2016

Thomas J. Fisher, Esq.  
FISHER & ASSOCIATES  
Suite 101 De La Corte Bldg.  
167 East Marine Corps Drive  
Hagatna, Guam 96910  
**VIA HAND-DELIVERY**

**Re: Demand by Mega United Corp.  
GEDA IFB 14-002**

Dear Tom:

This responds to your reply dated December 24, 2015 in the above-mentioned matter. Please be advised that my December 4 letter to you reaffirms Mega United Corp.'s October 8, 2014 to Mrs. Mana Silva Taijeron, Acting Administrator at the time. I contacted GEDA seeking response to Mega United's demand and was advised by Ms. Tina Garcia to send the demand to you directly. Nevertheless, I will copy all correspondence to Mr. Jay Rojas, the current Acting Administrator in the future.

Your chief opposition to Mega United claims seems to arise from the procedural issue of the timing of the claim rather than the substantive nature of the claim. You are correct that the demand is for escalated labor and material cost between March and August 2014. However, you failed to acknowledge that the October 8, 2014 demand is merely the compilation of demands made to GEDA since March 24, 2014, i.e. the March 24, 2014 demand to Mr. Henry Taitano, June 2, 2014 demand to Ms. Taijeron, and lastly the October 8, 2014 demand to Ms. Taijeron. None of these demands was responded in any shape and form. Mega United made two more demands on May 5, 2015 to Mr. Henry Taitano and on July 8, 2015 to Mr. John Rios. GEDA was fully aware of my client's demands and has contacted some suppliers to verify the cost increases. However, GEDA has continued to turn deaf ear to all these demands, which prompted Mega United to seek legal assistance from counsel.

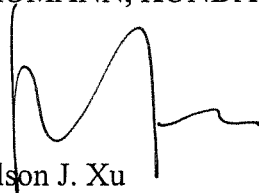
//

Thomas J. Fisher, Esq.  
FISHER & ASSOCIATES  
February 2, 2016  
Page Two

Throughout the construction period, Mega United has bent over backwards to complete the project on time to satisfy the Governor's desire for a December 2015 ribbon-cutting ceremony. Ignoring Mega United's demand sets up a bad example for future GEDA cooperation with private businesses.

Once again, Mega United demands that GEDA meets its demand as soon as possible. I would appreciate a response by February 15.

Best Regards,  
BAUMANN, KONDAS and XU, LLC.



Nelson J. Xu

Cc: Jay Rojas, GEDA Acting Administrator  
Mega United Corporation



# Exhibit E

1 **FISHER & ASSOCIATES**  
2 *Thomas J. Fisher, Esq.*  
3 Suite 101 De La Corte Building  
4 167 East Marine Corps Drive  
5 Hagåtña, Guam 96910  
6 Telephone: (671) 472-1131  
7 Facsimile: (671) 472-2886

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
9 **HAGÁTÑA, GUAM**

10 IN RE THE APPEAL OF ) OPA-PA-17-007  
11 MEGA UNITED CORP. LTD. )  
12 )  
13 ) **DECLARATION**  
14 ) **of**  
15 ) **Mr. LARRY TOVES**  
16 )  
17 )

18 \_\_\_\_\_  
19 **COMES NOW** your Declarant Mr. Larry Toves and states as follows;

- 20 1. I am an employee of the Guam Economic Development Authority.  
21 2. I have personal knowledge of the things and matter stated herein. These  
22 things and matters are stated under penalty of perjury of the laws of Guam.  
23 3. On 17 July 2017, I and others looked through the GEDA computer server  
24 for email transmissions as well as indications that an email transmission  
25 had not been successfully sent.  
26 4. Our server contains a transmission to visosky@guamlawoffice.com on 13  
27 April 2017 and no indication that the transmission was not successfully  
28 sent.

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5. Upon information and belief, when such a transmission is not successfully transmitted, the sender (in this case GEDA) is noticed of the failure. GEDA received no such notice concerning that email transmission.

**FURTHER** your Declarant sayeth naught.



---

Mr. Larry Toves  
Guam Economic Development Authority