

MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

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[Signature]

Bill No. 399(Ec)

Introduced by:

Committee on Calendar
By request of I Maga'láhen
Guåhan in accordance with
the Organic Act of Guam.

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ISSUE SOLID WASTE MANAGEMENT SYSTEM REVENUE BONDS FOR THE PURPOSE OF FINANCING THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM; APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF THE CLOSURE AND REPLACEMENT OF THE ORDOT LANDFILL AND OTHER SYSTEM COSTS; AND PROVIDING SECURITY FOR THE COLLECTION OF CHARGES FOR THE PROVISION OF SOLID WASTE MANAGEMENT SERVICES

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.**

3 (a) *I Liheslaturan Guåhan* finds that the condition of Guam's solid waste
4 infrastructure has seriously deteriorated over the past decades. The Ordot Dump
5 continues to be a threat to health and safety of the residents of Guam, and specifically
6 for the residents of Ordot-Chalan Pago, Yona and the villages downriver and
7 downwind. The Ordot Dump reached its capacity in the 1990's, and the closure of the
8 dump is necessary in order to eliminate this existing serious environmental hazard. The
9 severe limitations of the government of Guam to provide an environmentally sound
10 solid waste disposal facility have negatively impacted the quality of life of the people

1 of Guam. Additionally, it is reasonable to assert that Guam’s economic development is
2 also being negatively impacted by the inability of a failed system to deliver the most
3 basic of all utility services.

4 (b) This finding is further supported by action of the U.S. Environmental
5 Protection Agency (U.S. EPA). The dump is on the National Priorities List of highly
6 contaminated sites. After many years of administrative orders and warnings from the
7 U.S. EPA about the inability of the Department of Public Works (“DPW”) to control
8 discharges from the Dump and of the government of Guam to construct a landfill in
9 compliance with federal and Guam law, the U.S. EPA filed a lawsuit in the U.S. District
10 Court of Guam (the “District Court”) against the government. A Consent Decree
11 between the government of Guam and the U.S. EPA was approved by the District Court
12 in February 2004. The Consent Decree provided timelines for the Government to plan,
13 finance and execute the closure of the Ordot Dump and the construction of a new
14 municipal landfill. The Government has made efforts to identify a source of financing
15 for the closure of the Ordot Dump and the construction of a new landfill, but the
16 District Court determined that the Government has not met the milestones required
17 under the Consent Decree. On March 17, 2008, the Court placed the DPW in
18 receivership, appointing Gershman, Brickner & Bratton, Inc. (the “Receiver”) to take
19 over the government’s solid waste operations in order to correct the longstanding
20 deficiencies. All the costs incurred in connection with the U.S. EPA lawsuit will
21 ultimately have to be paid for by the ratepayers of Guam.

22 (c) The Receiver’s most recent quarterly report to the District Court, presented
23 October 23, 2008, estimated that approximately \$159.7 million of capital funding will
24 be needed to meet the requirements of the Consent Decree, \$40.1 million of which
25 would be required for the closure of the Ordot Dump and \$119.6 million of which
26 would be required for the construction of the new landfill. Indeed, despite the fact that
27 the Receiver’s quarterly report places a stringent timeline for the financing and
28 construction of the new landfill, an even more compelling reason to ensure the timely

1 improvements of Guam’s solid waste disposal infrastructure is simply because the
2 people of Guam deserve no less.

3 (d) The Governor and DPW, in coordination with the Guam Economic
4 Development Authority (GEDA), have been diligently working on completing the
5 administrative prerequisites to borrow from the bond market the capital required to
6 accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of the
7 tasks that lie ahead and the need for timely action to be taken. It is in this spirit that *I*
8 *Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient and
9 timely achievement of goals and objectives aimed at improving the quality of life of the
10 people of Guam.

11 **Section 2.** Article 8 of Title 10, Chapter 51 of the Guam Code Annotated, is
12 hereby enacted to read as follows:

13 **Article 8**

14 **Solid Waste Management System Revenue Bonds**

15 **§51801. Short Title.** This Article may be cited as the Guam Solid
16 Waste Management System Revenue Bond Act.

17 **§51802. Definitions.** The following terms wherever used or
18 referred to in this Article or in any indenture entered into pursuant hereto
19 (except to the extent modified therein in accordance with this Article),
20 shall have the following meanings, respectively, unless a different meaning
21 appears from the context:

22 (a) “Bonds” means bonds, notes or other evidences of
23 indebtedness.

24 (b) “Bondholder” or “holder of bonds” or any similar term means
25 any person who shall be:

26 (i) the bearer of any outstanding bond or bonds registered
27 to bearer or not registered; or

1 (ii) the registered owner of any such outstanding bond or
2 bonds which shall at the time be registered other than to
3 bearer.

4 (c) "Department" means the Department of Public Works.

5 (d) "Director" means the Director of the Department of Public
6 Works.

7 (e) "Guam Solid Waste Management and Litter Control Act"
8 means Chapter 51 of Title 10 of the Guam Code Annotated.

9 (f) "Indenture" means an agreement pursuant to which bonds are
10 issued, regardless of whether such agreement is expressed in the form of a
11 certificate of the director and the Governor or by other instrument.

12 (g) "Organic Act" means the Organic Act of Guam as amended
13 and in effect on the effective date of this Article (Title 48, §1421 et seq. of
14 the United States Code.).

15 (h) "Payment agreement" has the meaning given such term in 10
16 G.C.A. §51838.

17 (i) "Person" includes any individual, firm, corporation,
18 association, partnership, trust, business trust or receiver or trustee or
19 conservator for any thereof, and also includes the United States, Guam or
20 any public corporation, political subdivision, city, county or district or any
21 agency or instrumentality of the United States or of Guam.

22 (j) "Pledged revenue" means any revenue of the system and any
23 Section 30 revenue pledged to the repayment of bonds.

24 (k) "Rates, fees and charges" means all rates, fees and charges
25 (including tipping fees, residential pick-up fees, collection fees, self-drop
26 fees and all other solid waste management service charges), received or
27 receivable by or on behalf of the department (by the treasurer or otherwise)
28 for providing solid waste management services.

1 (l) “Revenue of the system” means all gross income and other
2 amounts received by or on behalf of the department (by the treasurer or
3 otherwise) as revenues of any kind from the ownership or operation of any
4 part of the system, including all rates, fees and charges received by the
5 department, all amounts received by the department pursuant to any
6 payment agreement, and all proceeds of insurance or grants covering
7 business interruption loss (and related losses and expenses) relating to the
8 system, and all other income and revenue howsoever derived by the
9 department from the ownership or operation of, or arising from, the
10 system, together with all interest, profits or other income derived from the
11 investment of amounts in the Solid Waste Operations Fund, to be
12 deposited to the Solid Waste Operations Fund in accordance with
13 10 G.C.A. §51833.

14 (m) “Section 30 revenue” means revenues derived by the
15 government of Guam under Section 30 of the Organic Act.

16 (n) “Solid Waste Operations Fund” means the fund by that name
17 established pursuant to 10 G.C.A. §51118(f).

18 (o) “System” means the solid waste management system, now or
19 hereafter existing, owned and/or operated by the department or its
20 contractors, agents or subcontractors, including but not limited to landfills
21 (whether closed or open), transfer stations, recycling facilities, collection
22 trucks, appurtenant equipment such as scales, ground water monitoring
23 equipment and pollution control equipment, and administrative facilities
24 supporting the provision of solid waste management services, including
25 facilities for payroll, billing and collections.

26 (p) “System operation and maintenance costs” means such
27 reasonable and necessary current expenses of the department, paid or

1 accrued, for operation, maintenance and repair of the system, including,
2 without limiting the generality of the foregoing:

3 (i) legal and overhead expenses of the department directly
4 related and reasonably allocable to the administration of the system;

5 (ii) fidelity bond and insurance premiums appertaining to
6 the system or a reasonably allocable share of a premium of any
7 blanket bond or policy pertaining to the system;

8 (iii) contractual services, professional services, salaries,
9 administrative expenses, and costs of labor appertaining to system;
10 and

11 (iv) the costs incurred in the collection of all or any part of
12 the revenues.

13 (q) “United States” means the United States of America.

14 **§51803. Power to Incur Indebtedness.** The Governor, through the
15 agency of GEDA pursuant to 12 G.C.A. §50103(k), and with the approval
16 of *I Liheslaturan Guåhan* by statute, has the power and is hereby
17 authorized, in addition to and in amplification of all other powers
18 conferred by the Guam Solid Waste Management and Litter Control Act or
19 any other provision of this Chapter or by any law of Guam or of the United
20 States, to incur limited obligation indebtedness on behalf of the
21 government of Guam, by the issuance of bonds pursuant to this Article to
22 raise funds for the purpose of acquiring, constructing, improving,
23 equipping, maintaining, repairing, renewing, replacing, reconstructing or
24 insuring the system, or any part thereof, or for the purpose of refunding
25 any such bonds or any other prior obligations of the government issued for
26 any of such purposes, or for any combination of such purposes for which
27 bonds may be issued and secured as provided in this Article.

28 It is hereby declared that the system is and shall be a public

1 improvement or undertaking as that term is used in Section 11 of the
2 Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the
3 government pursuant to this Article that is repayable only from funds in
4 the Solid Waste Operations Fund available therefor or solely from
5 revenue of the system will not be and shall not be deemed to be public
6 indebtedness of Guam as that term is used in said Section 11.
7 Indebtedness that is issued by the government pursuant to this Article
8 and that is repayable from both Section 30 revenue and revenue of the
9 system may not be issued in an amount that would cause a violation of
10 the debt limitation provisions of said Section 11.

11 **§51804. Powers of Department.** Notwithstanding any provision of
12 law or regulation, the Department has power and is hereby authorized, in
13 addition to and in amplification of all other powers conferred upon the
14 Department by the Guam Solid Waste Management and Litter Control Act
15 or any other provision of this Chapter or by any law of Guam, to exercise
16 any or all of the powers granted to the Department by this Article. The
17 Department has jurisdiction over and may collect and transport to
18 permitted solid waste facilities, or contract for the collection and
19 transportation to permitted solid waste facilities of, solid waste from all
20 individual dwelling units, single-family residences, duplexes, and
21 government-managed housing units or residences. The Department does
22 not have jurisdiction over the collection and transportation of solid waste
23 from any hotels, commercial or industrial establishments, government
24 agencies or from any multiple dwelling units other than duplexes. The
25 Department may operate the Ordot Dump, or it may contract for the
26 operation of the Ordot Dump, in accordance with Guam law and its permit
27 under this Chapter. The Department shall contract for the operation of the
28 landfill; however the Department may operate the landfill in the extreme
29 situation where both the contractor fails to perform and the Governor
30 declares an emergency not to exceed 90 days for the continued operations
31 pending contractor replacement. The Department may also operate, or

1 contract for the operation of, all other permitted solid waste management
2 facilities and operations not addressed above and within the policy
3 guidelines of the Integrated Solid Waste Management Plan.

4 **§51805. Rates, Fees and Charges; Refunds.** Notwithstanding any
5 provision of law or regulation to the contrary, the Department is authorized
6 to establish and modify from time to time, with approval by the Public
7 Utilities Commission, reasonable rates, fees and charges for solid waste
8 services at least adequate to cover the full cost of such services, including
9 the costs of debt service for capital improvements of permitted solid waste
10 facilities, and to collect money from all users or customers, and to refund
11 charges collected in error. Rates, fees and charges may be collected before
12 or after the provision of the service for which they are charged.

13 Except to the extent otherwise permitted or required by an indenture
14 pursuant to which bonds are issued, rates, fees and charges shall at all
15 times be fixed to yield annual revenue of the system at least equal to the
16 sum of annual principal payments and interest charges and coverage and
17 reserve fund requirements on all bonds then outstanding and the annual
18 system operation and maintenance costs; provided, however, that Section
19 30 revenue may be used for the purposes and treated as satisfying the
20 requirements of this paragraph with respect to the costs of the closure of
21 the Ordot Dump and the bonds related thereto.

22 An indenture or contract of indebtedness may provide for payment
23 from revenue of the system of refunds of rates and charges that are
24 collected in error and that are refundable by the department.

25 **§51806. Validity of Authorization and Issuance of Bonds.** The
26 validity of the authorization and issuance of any bonds by the government
27 pursuant to this Article is not dependent on nor affected in any way by:

1 (a) Proceedings taken by the department for the acquisition,
2 construction or improvement of the system or any part thereof;

3 (b) Any contracts made by the department in connection with the
4 acquisition, construction or improvement of the system or any part thereof;
5 or

6 (c) The failure to complete the system or any part thereof for
7 which bonds are authorized to be issued.

8 **§51807. Governor to Determine Issuance of Bonds and**
9 **Incurring of Other Indebtedness; Government Only Liable as**
10 **Provided by Indenture or Contract.**

11 (a) The Governor shall determine the time, form and manner of
12 issuance of bonds.

13 (b) No bond issued or sold pursuant to this Article and no other
14 obligation undertaken by the government under any indenture shall be or
15 become a lien, charge or liability against the government of Guam or
16 against the department or against any property or funds of the government
17 of Guam or the department, except to the extent of the pledge of revenue
18 of the system and, if applicable, Section 30 revenues provided by the
19 indenture pursuant to which such bonds are issued. Every such bond shall
20 contain a recital on its face stating that it is a limited obligation of the
21 government of Guam and shall not be deemed to be secured by the faith
22 and credit of the government of Guam.

23 **§51808. Governor to Declare Purpose and Maximum Amount of**
24 **Bonds to be Issued.** Before issuing any bond or bonds, the Governor shall
25 declare the purpose for which the proceeds of the bonds proposed to be
26 issued shall be expended and shall specify the maximum amount of bonds
27 to be issued or sold for such purpose. Bonds shall not be issued or sold for
28 such purpose in an amount exceeding such specified maximum.

1 **§51809. Indenture Providing Terms and Conditions of Bonds.**

2 The Governor may enter into one or more indentures on behalf of the
3 government providing for the aggregate principal amount, date or dates,
4 maturities, interest rates or methods for determination thereof,
5 denominations, form, registration, transfer and interchange of any bonds
6 issued pursuant to this Article and the terms and conditions on which the
7 same shall be executed, issued, secured, sold, paid, redeemed, funded and
8 refunded. Each taker and subsequent holder of the bonds has recourse to
9 all the provisions of the indenture and of this Article and is bound thereby.

10 **§51810. Issues of Bonds.** An indenture may provide for one or
11 several series of bonds and that any series may be divided into one or more
12 divisions with different maturities or dates of issue, different rates of
13 interest or methods for determining such rates, or different terms and
14 conditions for the bonds of the several series or divisions. It is not
15 necessary that all bonds of the same authorized series be of the same kind
16 or character, have the same security, or be of the same interest rate, but the
17 terms thereof shall in each case be as authorized by the Governor.

18 **§51811. Covenants and Agreements That May Be Contained in**
19 **Indenture.** An indenture pursuant to which bonds are issued may include
20 any and all covenants and agreements on the part of the government as the
21 Governor deems necessary or advisable, including without limiting the
22 generality of the foregoing, any one or more of the following:

23 (a) A provision that payments of principal and interest of bonds
24 shall be secured by a pledge of all or by part of the revenue of the system
25 or the Section 30 revenue;

26 (b) Provisions creating one or more funds or accounts into which
27 all or any part of pledged revenue shall be deposited:

1 (i) for payment of the principal of and interest on bonds at
2 or prior to maturity; or

3 (ii) for reserve or sinking funds for the further security of
4 bonds.

5 (c) A provision requiring the government to operate the system
6 continuously, to the extent reasonably practicable under conditions as they
7 may from time to time exist, in an efficient and economical manner.

8 (d) A provision requiring the government to maintain the system
9 and to make all necessary repairs, renewals and replacements to the system
10 and to keep the system at all times in good working order and condition.

11 (e) A provision requiring the government to preserve and protect
12 the security of the bonds and the rights of the holders thereof and to
13 warrant and defend such rights.

14 (f) A provision requiring the government to pay and discharge or
15 cause to be paid and discharged all lawful claims for labor, materials and
16 supplies or other charges which, if unpaid, might become a lien or charge
17 upon pledged revenue or any part thereof, or which might impair the
18 security of the bonds.

19 (g) A provision which limits, restricts or prohibits any right,
20 power or privilege of the government to mortgage or otherwise encumber,
21 sell, lease or dispose of the system or any part thereof, in any manner that
22 impairs or impedes the operation of the system or any part thereof
23 necessary to secure adequate pledged revenue or that otherwise impairs or
24 impedes the right of the holders of bonds with respect to such pledged
25 revenue.

26 (h) A provision requiring the government to fix, prescribe and
27 collect annually rates or other charges in connection with the solid waste
28 management services furnished from the system which, together with other

1 available revenues, including, to the extent provided by 10 G.C.A. §51805,
2 Section 30 revenue, will be:

3 (i) sufficient to pay the principal of and interest on the
4 bonds as they become due and payable, together with such
5 additional sums as may be required for any bond reserve fund or
6 account or other fund or account created by the indenture for the
7 security of such bonds;

8 (ii) sufficient to pay the annual system operation and
9 maintenance costs; and

10 (iii) in such additional amount as shall be provided in the
11 indenture for the further security or protection of such bonds.

12 (i) A provision that no solid waste management service shall be
13 furnished free of charge to any person, except to the extent permitted by
14 the indenture.

15 (j) A provision requiring the government to hold or cause to be
16 held in trust the pledged revenue or any part thereof, or to any fund or
17 account created by any indenture for the further security or protection of
18 such bonds and to apply such pledged revenue or cause it to be applied
19 only as provided in the indenture and to invest all or any part of such
20 pledged revenue pending such application in such securities and subject to
21 such limitations as are specified in the indenture.

22 (k) A provision defining the power of the government in applying
23 the proceeds of the sale of any issue of bonds for the acquiring,
24 constructing or completing of the system or any part thereof.

25 (l) A provision permitting the government to issue additional
26 bonds or one or more additional series of bonds, equally secured with
27 bonds theretofore issued under the indenture, for the purpose of acquiring,
28 constructing or completing, improving or extending the system or any part

1 thereof, or for the purpose of refunding any prior bonds or any other prior
2 obligations of the government relating to the system; and a provision
3 limiting the power of the government to issue any additional bonds so
4 secured or any other additional bonds for such purpose.

5 (m) A provision requiring, specifying or limiting the kind, amount
6 and character of insurance (or any reserve fund or funds in lieu of
7 insurance) to be maintained by the government on the system or any part
8 thereof and the use and disposition of the proceeds of any such insurance
9 thereafter collected or of the moneys in any such reserve fund.

10 (n) A provision specifying the events of default and the terms and
11 conditions upon which any or all of the bonds then or thereafter issued
12 may become or be declared due and payable prior to maturity, and the
13 terms and conditions upon which such declaration and its consequences
14 may be waived.

15 (o) A provision designating the rights, limitations, powers and
16 duties arising upon breach by the government of any of the covenants,
17 conditions or obligations contained in the indenture.

18 (p) A provision prescribing a procedure by which the terms and
19 conditions of the indenture may be subsequently amended or modified
20 with the consent of the government and the vote or written consent of the
21 holders of a specified principal amount or specified proportion of the
22 bonds issued and outstanding, including provisions for meetings of
23 bondholders and for the manner in which the consent of the bondholders
24 may be given and specifically stating the effect of such amendment or
25 modification upon the rights of the holders of all of the bonds.

26 (q) With respect to any provision relating to the
27 modification or amendment of an indenture, the government
28 may agree that bonds held by the government, the United

1 States or any instrumentality of either thereof (including
2 every public corporation, political subdivision, agency or
3 instrumentality of any kind or class) shall not be counted as
4 outstanding bonds, or be entitled to vote or assent, but shall,
5 nevertheless, be subject to any such modification or
6 amendment.

7 (r) A provision limiting the right of action by individual
8 bondholders in the event of a default by the government or proscribing the
9 procedure for the conduct of any such action by an individual bondholder.

10 (s) A provision permitting the government to purchase
11 outstanding bonds from any moneys or funds or accounts referred to in the
12 indenture or otherwise legally available for such purpose.

13 (t) A provision for any working capital fund or account or
14 contingency fund or account relating to the system.

15 (u) A provision for the replacement of lost, destroyed or mutilated
16 bonds.

17 (v) A provision or provisions relating to such other acts and
18 matters as may be necessary or convenient or desirable in order better to
19 secure the bonds or to make the bonds more marketable.

20 **§51812. Trustee for Government and Holders of Bonds.**

21 (a) The government or any agent designated by the government
22 shall act as trustee for the government and the holders of bonds issued
23 hereunder and the government may authorize the trustee to act on behalf of
24 the holders of the bonds or any stated percentage thereof and to exercise
25 and prosecute on behalf of the holders of the bonds such rights and
26 remedies as may be available to the holders.

27 (b) The government may provide in an indenture:

1 (i) for the deposit of all or any portion of the pledged
2 revenue with the government and for the holding thereof by the
3 government in one or more separate funds or accounts in the Solid
4 Waste Operations Fund; and

5 (ii) for the transfer to the trustee of all or any portion of the
6 pledged revenue as are provided as security for the bonds and for the
7 holding thereof by the trustee in one or more separate funds or
8 accounts. All money in each such fund or account shall be
9 disbursed only as provided herein and in the indenture.

10 **§51813. Duties and Powers of Trustee.** The government shall
11 prescribe in any indenture the duties and powers of the trustee with respect
12 to the issuance, authentication, sale and delivery of the bonds provided for
13 in such indenture and with respect to the payment of principal of and
14 interest on such bonds, the redemption thereof, the registration and
15 discharge from registration thereof and the administration of any and all
16 funds provided as security therefore.

17 **§51814. Issuance and Interchange of Bearer and Registered**
18 **Bonds.** An indenture may provide that bonds may be issued as bearer
19 bonds or as registered bonds and for the interchange of bearer bonds for
20 registered bonds and registered bonds for bearer bonds, and may provide
21 that bonds shall be registered as to principal only or as to both principal
22 and interest or otherwise as the Governor may determine.

23 **§51815. Redemption of Bonds Prior to Maturity.** An indenture
24 may provide that bonds may be redeemed prior to maturity upon such
25 terms, conditions and upon such notice as are stated in the indenture and
26 upon the payment of such premium as may be fixed by the indenture.

27 **§51816. Places of Payment.** An indenture may provide for the
28 payment of the principal and interest of bonds at any one or more places in

1 Guam or in the United States and in any specified coin or currency of the
2 United States.

3 **§51817. Execution and Authentication of Bonds.** An indenture
4 may provide for the execution and authentication of bonds by the manual
5 or facsimile signature of any one or more officers of the government and
6 by additional authentication by endorsement by the manual signature or a
7 signature stamp of any one or more officers of the government or of any
8 agent designated by the government as trustee. If any officer or agent
9 whose signature, countersignature or endorsement appears upon the bonds
10 ceases to be an officer or agent before the delivery of the bonds, his
11 signature, countersignature or endorsement is nevertheless valid and of the
12 same force and effect as if he had remained such officer or agent until the
13 delivery of the bonds.

14 **§51818. Dates and Maturities of Bonds.** Bonds shall bear dates
15 prescribed in the indenture providing for their issuance. Bonds may be
16 serial bonds, term bonds or sinking fund bonds with such maturities as the
17 indenture shall specify. No bond by its terms shall mature more than fifty
18 (50) years after its date of issuance.

19 **§51819. Sale of Bonds.** Bonds authorized to be issued under this
20 Article shall be sold for cash, in accordance with the provisions of a
21 certificate or agreement executed by the Governor. The bonds may be sold
22 at either public or private sale, and upon such terms and conditions as shall
23 be authorized by the Governor, which may provide that the bonds may be
24 sold at less than their par or face value.

25 **§51820. Payment of Bonds from Sources Other Than Revenue.**
26 The government may use and expend all or any part of any funds other
27 than revenue or proceeds of any property owned by it other than the
28 system, whether received by gift, appropriation or otherwise (if not

1 restricted as to the use of such funds or proceeds of property by the terms
2 of gift or trust or provision of law) for the payment of bonds issued
3 pursuant to the provisions of this Article and of interest due thereon.

4 **§51821. Payments Which May be Made Out of Proceeds of Sale**
5 **of Bonds.** The proceeds of sale of any bonds may be expended for any one
6 or more of the following purposes, all as provided in the indenture relating
7 to such bonds:

8 (a) For payment of any costs or expenses of the acquisition,
9 construction or improvement of the system or any part thereof or any costs
10 or expenses incidental thereto, including payment to the United States or
11 any other public body for the portion to be borne by the government of the
12 cost of any work done by the United States or such public body for or
13 jointly or in conjunction with the department;

14 (b) For payment of any engineering, inspection, legal,
15 consultants' or paying agents' fees relating or incidental to:

16 (i) the acquisition, construction or improvement of the
17 system or any part thereof; or

18 (ii) the authorization, issue or sale of bonds;

19 (c) For payment of any costs or expenses relating to the
20 authorization, issuance or sale of bonds;

21 (d) For deposit in any one or more reserve funds or accounts in
22 lieu of insurance or in any working capital fund or account or contingency
23 fund or account relating to the system;

24 (e) For payment of interest on bonds during the projected period
25 of acquisition, construction or improvement of the system or any part
26 thereof for the acquisition, construction or improvement of which such
27 bonds have been issued and for a period of not to exceed three (3) years
28 thereafter;

1 (f) For deposit in any reserve or sinking fund; or

2 (g) For the payment of any prior bonds or other obligations of the
3 government for solid waste management purposes.

4 **§51822. Bonds May be Secured by Revenue of the System.** An
5 indenture may provide that payment of the bonds and the interest thereon
6 shall be secured by a pledge of and lien upon all or any portion of the
7 revenue of the system. Any such pledge and lien shall be valid and
8 binding from the time the pledge is made. The revenue of the system
9 pledged and thereafter received by the government or by any trustee,
10 depository or custodian shall be deposited in a separate subaccount of the
11 revenue account in the Solid Waste Operations Fund and shall be
12 immediately subject to the lien of such pledge without any physical
13 delivery thereof or further act, and the lien of such pledge shall be valid
14 and binding against all parties having claims of any kind in tort, contract or
15 otherwise against the government or such trustee, depository or custodian,
16 irrespective of whether the parties have notice thereof. The indenture by
17 which such pledge is created need not be recorded.

18 **§51823. Bonds May be Secured by Section 30 Revenue.** If and to
19 the extent determined by *I Maga'lahañ Guåhan*, all or any part of the
20 revenues derived by the government of Guam under Section 30 of the
21 Organic Act (Section 30 revenue) may also be pledged to secure the
22 repayment of any bonds issued pursuant to this Article, subject to any
23 previously created lien on or pledge of such Section 30 revenue. Any
24 pledge of Section 30 revenue shall be valid and binding from the time the
25 pledge is made. The Section 30 revenue pledged and thereafter received
26 by the government of Guam or by any trustee, depository or custodian
27 shall be deposited in a separate subaccount of the revenue account in the
28 Solid Waste Operations Fund and shall be immediately subject to the lien

1 of such pledge without physical delivery thereof or further act, and the lien
2 of such pledge shall be valid and binding against all parties having claims
3 of any kind in tort, contract or otherwise, against the government or such
4 trustee, depository or custodian, irrespective of whether the parties have
5 notice thereof. The indenture by which such pledge is created need not be
6 recorded. All Section 30 revenue so pledged are hereby continuously
7 appropriated for the purpose for which they have been pledged.
8 Indebtedness issued by the government pursuant to this Article that is
9 repayable from both Section 30 revenue and revenue of the system may not
10 be issued in an amount that would cause a violation of the debt limitation
11 provisions of Section 11 of the Organic Act.

12 **§51824. Temporary Bonds.** An indenture may provide that
13 pending the actual issuance or delivery of definitive bonds, the
14 government may issue temporary or interim bonds, certificates or receipts
15 or any denomination whatsoever, to be exchanged for definitive bonds
16 when ready for delivery.

17 **§51825. Replacement of Bonds.** The government may provide for
18 the replacement of lost, destroyed or mutilated bonds.

19 **§51826. Tax Exemption.** Bonds issued pursuant to the provisions
20 of this Article and the interest or income therefrom are exempt from
21 taxation to the extent permitted by the provisions of Section 11 of the
22 Organic Act.

23 **§51827. Bonds as Legal Investments and as Security For**
24 **Performance of Any Act.** Notwithstanding any other provision of law, all
25 bonds issued pursuant to the provisions of this Article are legal
26 investments for all trust funds and for the funds of all banks, both
27 commercial and savings and may be deposited as security for the
28 performance of any act whenever any evidence of indebtedness of Guam

1 may be so deposited and may also be used as security for the deposit of
2 public moneys in banks in Guam.

3 **§51828. Refunding Bonds.** The Governor may, on behalf of the
4 government, provide for the issuance, sale or exchange of refunding bonds
5 for the purpose of retiring indebtedness issued to finance all or any portion
6 of the system. All provisions of this Article applicable to the issuance of
7 bonds are applicable to refunding bonds and to the issuance, sale or
8 exchange thereof.

9 **§51829. Use of Other Funds for System.** In addition to the
10 proceeds of any bonds issued and sold pursuant to this Article, the
11 department may use for the payment of the costs of acquisition,
12 construction or improvement of the system or any part thereof any
13 available money or funds of the department and any money or funds made
14 available to the department by any person or provided from any source
15 which may be expended for the accomplishing of the purposes set forth in
16 this Article or in the Guam Solid Waste Management and Litter Control
17 Act.

18 **§51830. Insurance.** The department may insure against loss of
19 revenue of the system from any cause whatsoever. The department may
20 insure against public liability or property damage from any cause. An
21 indenture may provide for the carrying of such insurance or any other
22 insurance in such amount and of such character as shall be specified in
23 such indenture, for the payment of the premiums thereon and for the
24 disposition of all proceeds received from any such insurance. At the
25 option of the director, subject to the requirements of any indenture, any
26 insurance may be provided by funded reserves or any other means.

27 **§51831. Pledge by the Government of Guam.** The government of
28 Guam is fully committed to ensuring that the department has the ability to

1 implement the capital improvements authorized to be paid by this
2 legislation in order to meet the needs of Guam ratepayers for reliable and
3 affordable services. The government also is fully committed to ensuring
4 that bondholders are protected to ensure full and timely repayments of
5 their loans. In accordance with prior similar situations and precedents, the
6 government hereby pledges, while any bonds issued under this Article
7 remain outstanding and not fully performed or discharged, (a) to maintain
8 the rights, powers and duties of the director, the department and the Guam
9 Public Utilities Commission, or their respective successors in accordance
10 with law, to fulfill the terms of any agreements made with bondholders in
11 accordance with this Article, (b) to maintain the rights and remedies of
12 bondholders provided in this Article and any indenture, (c) to protect the
13 right of the department to operate or maintain within Guam any solid waste
14 management system operated by the government or its designees or
15 contractors by preventing the acquisition, operation, maintenance or
16 permitting of any instrumentality of the government or any other public or
17 private agency, entity or person to operate a separate and competitive solid
18 waste management system, and (d) not to transfer any additional non-
19 system operating responsibilities or other unfunded mandates to the system
20 without providing for the payment of the costs of such additional
21 responsibilities.

22 **§51832. Construction Account.** The proceeds from the sale of all
23 bonds authorized by this Article shall be deposited to the credit of a
24 construction account, which account is hereby created within the Solid
25 Waste Operations Fund. The money in the account shall be expended in
26 the manner provided by law for any of the purposes authorized by this
27 Article, including any or all of the purposes specified by 10 G.C.A.

1 §51821, and for such other purposes, subject to the restrictions provided
2 by law or by such indenture, as may be authorized by such indenture.

3 **§51833. Revenue Account.** All revenue of the system and, to the
4 extent provided by 10 G.C.A. §51805, the Section 30 revenue, shall be
5 deposited to the credit of the applicable subaccount of the Revenue
6 Account, which account is hereby created within the Solid Waste
7 Operations Fund. The money in such subaccounts may be used for any of
8 the following purposes in the order of priority set forth in any indenture as
9 provided in 10 G.C.A. §51811(j):

- 10 (a) to pay principal or interest on any bonds;
- 11 (b) to pay any amounts due and owing under any payment
12 agreement or any credit provider reimbursement agreement;
- 13 (c) to pay the annual system operation and maintenance costs;
14 and
- 15 (d) for any other purposes of the system;

16 all as provided in any indenture or indentures and subject to any
17 restrictions provided by law or any indenture.

18 **§51834. Investment of Money in Funds and Accounts.** Moneys
19 in the revenue account and construction account in the Solid Waste
20 Operations Fund may be invested by the government or the trustee under
21 any indenture, as the case may be, in any investment authorized by any
22 indenture providing for the issuance of bonds. All interest or other
23 earnings received pursuant to such investments shall be deposited to the
24 credit of the fund or account from which such interest or other earnings are
25 derived, unless otherwise provided in an indenture.

26 **§51835. Use of Balances of Funds and Accounts and Surplus**
27 **Money in Funds and Accounts.** Any balance remaining in any of the
28 funds or accounts created by this Article or any indenture, including the

1 Construction Account established pursuant to 10 G.C.A. §51832, after
2 payment of all costs, expenses and charges required or authorized to be
3 expended therefrom, may be allocated and used for such other purposes
4 relating to the acquisition, construction, improvement, operation and
5 maintenance of the system, subject to the limitations and restrictions in any
6 indenture. After all bonds shall have been fully paid and discharged or
7 provision for their payment and discharge irrevocably made, any surplus
8 moneys in any fund or account created by this Article or any indenture
9 shall, subject to the limitations and restrictions in any indenture, be
10 transferred to the department and shall be and remain available for the
11 acquisition, construction, improvement, maintenance or operation of the
12 system or for any other purposes of the department herein or hereafter
13 authorized by law.

14 **§51836. Appropriation of Money in Funds and Accounts.** All
15 money in the funds and accounts created by this Article or any indenture is
16 hereby continuously appropriated for expenditure to carry out the purposes
17 herein and therein provided.

18 **§51837. Payment Agreements.** The Governor is hereby authorized
19 to enter into any contracts on behalf of the government in connection with,
20 or incidental to, the issuance of bonds or other indebtedness, or the
21 carrying of any investment or program of investment or entering into or
22 maintaining any agreement which secures bonds or other indebtedness
23 (each, a “payment agreement”), which the Governor determines to be
24 necessary or appropriate to place the obligation or investment of the
25 government, as represented by the bonds or such indebtedness, investment,
26 program of investment or agreement and the contract or contracts, in whole
27 or in part, on the interest rate, currency, cash-flow, or other basis desired
28 by the Governor in furtherance of the purposes of this Article, including,

1 without limitation, contracts commonly known as interest rate swap
2 agreements or contracts providing for payments based on levels of, or
3 changes in, interest rates, or contracts to exchange cash flows or a series of
4 payments, or contracts, including, without limitation, interest rate floors or
5 caps, options, put or call to hedge payment, rate, spread, or similar
6 exposure with the parties, selected by the means, and containing the
7 payment, security, default, remedy, and other terms and conditions,
8 authorized by the Governor, after giving due consideration for the
9 creditworthiness of the counterparties, where applicable, including any
10 rating by a nationally recognized rating agency or any other criteria as may
11 be appropriate; provided, that any amounts received by the government
12 pursuant to any payment agreement shall constitute pledged revenue and
13 that any obligation of the government under any payment agreement shall
14 be payable solely from pledged revenue.

15 Any payment agreement may include a provision that any obligation
16 of the government under any such payment agreement shall be secured by
17 all or by part of pledged revenue; provided that, at the time of execution
18 and delivery of each payment agreement, any such provision shall be in
19 compliance with and shall not violate or breach any provision of any
20 indenture then in effect with respect to bonds.

21 **§51838. Credit Enhancement.** The Governor is hereby authorized
22 to enter into such contracts or agreements on behalf of the government
23 with such banks, insurance companies or other financial institutions as it
24 determines are necessary or desirable to improve the security and
25 marketability of the bonds or the security of the government's obligations
26 under any contract or agreement entered into under 10 G.C.A. §51837.
27 Such contracts or agreements may contain an obligation to reimburse, with
28 interest, any such banks, insurance companies or other financial

1 institutions for advances used to pay principal of or interest on the bonds
2 and to indemnify any such banks, insurance companies or other financial
3 institutions for costs and expenses incurred in connection with any such
4 advance; provided, that any obligation of the government under any
5 reimbursement agreement shall be payable solely from pledged revenue.

6 Any reimbursement agreement may include a provision that the
7 obligations of the government under the agreement shall be secured by all
8 or by part of pledged revenue; provided that, at the time of execution and
9 delivery of each such agreement, any such provision shall be in
10 compliance with and shall not violate or breach any provision of any
11 indenture then in effect with respect to bonds.

12 **§51839. No Personal Liability.** Neither the Governor, the director,
13 any employee of the department, any employee of the government nor any
14 elected official of the government shall be individually or personally liable
15 for the payment of any amounts due on any bonds, or for any other liability
16 arising in connection with the bonds; provided, however, that nothing in
17 this 10 G.C.A. §51839 shall relieve any employee or elected official from
18 the performance of any ministerial duty required by law.

19 **§51840. Waiver of Immunity.** Notwithstanding any substantive or
20 procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the
21 government shall not be entitled to immunity from any suit or action in
22 contract on the indebtedness authorized by this Article. For the purposes
23 of this Act only, immunity is waived as to the award of attorney fees in
24 connection with any suit brought to enforce any right or obligation given
25 under this Act or in connection with the enforcement of the terms of any
26 agreement or indenture that arises directly from the issuance of bonds.

27 **§51841. Construction of Article.** This Article shall be liberally
28 construed to carry out the objects and purposes and the declared policy of

1 the government of Guam as in this Article set forth. Nothing contained in
2 this Article shall be construed directly or by implication to be in any way
3 in derogation or limitation of powers conferred upon or existing in the
4 department, the director or the Governor by virtue of any provisions of the
5 Organic Act or laws of Guam.”

6 **Section 3. Local Sales of Bonds.** GEDA shall undertake its best efforts to
7 cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10, Guam
8 Code Annotated and approved pursuant to Section 4 of this Act, to be offered for sale
9 to residents of Guam, as well as to residents of other jurisdictions, if and to the extent
10 that such offer and any sales resulting from such offer do not increase the costs to the
11 government of issuing and repaying such bonds. Notwithstanding any other provision
12 of law to the contrary, these bonds may be sold to employees of the Department of
13 Public Works.

14 **Section 4. Approval of Government of Guam Solid Waste Management System**
15 **Revenue Bonds.** The Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103
16 of Title 12 of the Guam Code Annotated, hereby approves the issuance and sale by the
17 government of revenue bonds pursuant to Article 8, Chapter 51, Title 10, Guam Code
18 Annotated (the “Act”) in one or more series or issues (together with any related
19 reimbursement obligations); provided that the issuance, terms and conditions of the
20 bonds and any reimbursement agreements shall have been approved by the Guam
21 Public Utilities Commission, and further provided that such bonds shall have a
22 principal amount not to exceed Two Hundred and Two Million Four Hundred Twenty-
23 Five Thousand Dollars (\$202,425,000), as shown in Appendix A, shall have a final
24 maturity not later than 2041, shall bear interest at such rate or rates and shall be sold for
25 such price or prices as shall result in a yield to the bondholders not exceeding Eight
26 Percent (8.0%) per annum (treating payments and receipts under any interest rate
27 hedging contracts as if they were payments to and receipts from the bondholders), and

1 shall be issued and sold in the manner, for the purposes and subject to the requirements
2 and limitations provided in Article 8, Chapter 51, Title 10, Guam Code Annotated.

3

4

SOURCES AND USES OF FUNDS

GUAM Department of Public Works
 \$159 Million New Money Series 30 Year

Sources:

Bond Proceeds:	
Par Amount	202,425,000.00
	202,425,000.00

Uses:

Project Fund Deposits:	
\$159.9 MM Project Fund	156,506,908.86
Other Fund Deposits:	
Debt Service Reserve Fund	14,552,338.50
CAPI Fund	29,337,644.27
	43,889,982.77
Delivery Date Expenses:	
Cost of Issuance	1,012,125.00
Underwriter's Discount	1,012,125.00
	2,024,250.00
Other Uses of Funds:	
Additional Proceeds	3,858.37
	202,425,000.00

ATTACHMENT A