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Office of the Governor of Guam

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Felix P. Camacho
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Lieutenant Governor

2009 JAN 29 PM 2:51 *pm*

29 JAN 2009

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

I would like to thank Speaker Won Pat and other members of the Legislature for providing their input into the development of this legislation. I believe we must continue to foster and encourage this cooperation if we are to once and for all solve the issue that confronts us – the closure of the Ordot dump and the opening of a new landfill. I cannot overemphasize the urgency of this matter – as elected leaders, we must act decisively so future generations will no longer have to concern themselves with an issue that is in our power to resolve.

Transmitted herewith is proposed legislation that would authorize alternative financing options for the government of Guam to finance the Consent Decree projects. In addition to the financing option proposed by the Receiver and previously accepted by the District Court, I ask the members of the Guam Legislature to consider this legislation in light of the urgency of the timelines imposed by the Court and the Consent Decree.

The proposed legislation provides the government the flexibility to utilize the best, most affordable financing option(s) to meet the timelines adopted by the federal court. The proposal provides three financing authorizations to the government of Guam.

As previously stated, the first option is to issue solid waste management system bonds to be repaid by fees collected in the operation of solid waste management programs and backed with Section 30 revenue. This bond authorization adopts the Receiver's recommended financing option. The Receiver has noted that if the authorization becomes law, he would withdraw his recommendation of a weekly cash deposit of \$1 million. Clearly, this is a critical need and regardless of any changes or amendments to the legislation this authorization must be passed by the Legislature.

30-09-0142
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 1/29/09
Time 11:20
Received by [Signature]

0136

Bank of America, Financial Advisor to the government of Guam, recently provided a Market Update to my Fiscal Policy Committee, stating that non-investment credits continue to await a return to normalcy in the municipal bond market, and there currently exists no appetite amongst investors for less than investment grade credits. "While a cautious optimism may bring institutional investors back into the market, this momentum is building slowly and will take time," the report states.

Bank of America advises the government of Guam to remain flexible until such time as the market for low to non-investment grade municipal bonds returns. Furthermore, the advisor cautions against the implementation of depositing \$1 million per week as this could undermine Guam's recent upgrade by Standard and Poor's and could set back the work this Administration has done to upgrade our rating.

It is also my belief that the government of Guam should have the flexibility to use other financing mechanisms available. I stress that these options must adhere to the timelines imposed by the Consent Decree, the Court, and the remaining capacity of the Ordot dump itself. It is my belief that, with the state of technology today and the ability of the private sector to respond immediately without the restrictions of cumbersome government procurement regulations, these options may provide the government more affordable means of complying with the Consent Decree. It would also expand the government's access to financing through private capital markets and potentially from foreign investors.

There have been public claims of a more affordable way for the government to construct and operate a new landfill and close the Ordot dump. As such, the proposed legislation authorizes lease financing and performance management contract tools.

These options are not mutually exclusive but rather could be combined to maximize government savings. For example, the new landfill could be constructed and operated through lease financing and the Ordot dump closure could be financed by bonds. Under the flexible terms described in the proposed legislation, a contractor would be fully responsible for carrying out "the construction, financing, operation and maintenance of the solid waste facility," or new landfill. This approach would alleviate the burden of the government of Guam in securing funds in a very turbulent capital market that currently has no appetite for non-investment grade credit. The capital financing would be secured by the contractor who would then be paid in annual or semi-annual increments from fees paid by commercial and residential trash collection and potentially fees paid by the military for its use of the new landfill. Under this scenario the government of Guam would only need to secure capital financing for the closure of the Ordot dump which would be secured after the new landfill has opened. By that time, it is anticipated that the capital markets will have returned to normalcy and the government of Guam could then float bonds at reasonable rates.

Again, I ask the Legislature to act expeditiously on this measure to avert the \$1 million in cash deposits beginning March 1 as required by the Receiver. I thank you all for the cooperative efforts put forth between my Administration, the Receiver and this Legislature and its leadership.

Sinseru yan Magâhet,

A handwritten signature in black ink, appearing to read 'Camacho', with a long horizontal flourish extending to the right.

FELIX P. CAMACHO

I Maga'låhen Guåhan

Governor of Guam

Attachment: copy of Bill

1 I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2 2009 (FIRST) Regular Session

3 Bill No. _____ (_)

4 Introduced by:

5 By request of I Maga'låhen
6 Guåhan in accordance with the
7 Organic Act of Guam

8 AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF
9 TITLE 10 OF THE GUAM CODE ANNOTATED,
10 RELATIVE TO AUTHORIZING GOVERNMENT OF
11 GUAM TO ISSUE SOLID WASTE MANAGEMENT
12 SYSTEM REVENUE BONDS FOR THE PURPOSE OF
13 FINANCING FACILITIES OF THE SOLID WASTE
14 MANAGEMENT SYSTEM OF GUAM; APPROVING
15 THE TERMS AND CONDITIONS OF THE ISSUANCE
16 OF ONE OR MORE SERIES OF SUCH BONDS
17 PURSUANT TO SUCH ARTICLE TO PAY THE
18 COSTS OF A NEW LANDFILL AND THE CLOSURE
19 OF THE ORDOT LANDFILL AND OTHER SYSTEM
20 COSTS.

21 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

23 (a) *I Liheslaturan Guåhan* finds that the condition of Guam's solid waste
24 infrastructure has seriously deteriorated over the past decades. The Ordot Dump
25 continues to be a threat to the health and safety of the residents of Guam, and
26 specifically for the residents of Ordot-Chalan Pago, Yona and the villages
27 downriver and downwind. The Ordot Dump reached its capacity in the 1990's,
28 and the closure of the dump is necessary in order to eliminate this existing serious

1 environmental hazard. The severe limitations of the government of Guam to
2 provide an environmentally sound solid waste disposal facility have negatively
3 affected the quality of life of the people of Guam. Additionally, it is reasonable to
4 assert that Guam's economic development is also being negatively affected by the
5 inability of a failed system to deliver the most basic of all utility services.

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

25 (c) The Receiver's quarterly report to the District Court, presented
26 October 22, 2008, estimated that approximately \$159.7 million of capital funding
27 will be needed to meet the requirements of the Consent Decree, \$40.1 million of
28 which would be required for the closure of the Ordot Dump and \$119.6 million of

1 which would be required for the construction of the new landfill, associated
2 facilities, equipment and technology. Indeed, despite the fact that the Receiver's
3 quarterly report places a stringent timeline for the financing and construction of the
4 new landfill, an even more compelling reason to ensure the timely improvements
5 of Guam's solid waste disposal infrastructure is simply because the people of
6 Guam deserve no less.

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

15 **Section 2. Enactment of the Guam Solid Waste Management System**
16 **Revenue Bond Act.** Article 8 of Title 10, Chapter 51 of the Guam Code
17 Annotated, is hereby enacted to read as follows:

18 **Article 8**

19 **Solid Waste Management System Revenue Bonds**

20 **§51801. Short Title.** This Article may be cited as the Guam
21 Solid Waste Management System Revenue Bond Act.

22 **§51802. Definitions.** The following terms wherever used or
23 referred to in this Article or in any indenture entered into pursuant
24 hereto (except to the extent modified therein in accordance with this
25 Article), shall have the following meanings, respectively, unless a
26 different meaning appears from the context:

27 (a) "Bonds" means bonds, notes or other evidences of
28 indebtedness issued pursuant to this Chapter.

1 (b) "Bondholder" or "holder of bonds" or any similar term
2 means any person who shall be:

3 (i) the bearer of any outstanding bond or bonds
4 registered to bearer or not registered; or

5 (ii) the registered owner of any such outstanding bond
6 or bonds which shall at the time be registered other than
7 to bearer.

8 (c) "Department" means the Department of Public Works,
9 acting on behalf of the government of Guam.

10 (d) "Director" means the Director of the Department of
11 Public Works.

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

14 (f) "Indenture" means an agreement pursuant to which
15 bonds are issued, regardless of whether such agreement is expressed
16 in the form of a certificate of the director and *I Maga'lahaen Guåhan*
17 or by other instrument.

18 (g) "Organic Act" means the Organic Act of Guam as
19 amended and in effect on the effective date of this Article (Title 48,
20 §1421 et seq. of the United States Code.).

21 (h) "Person" includes any individual, firm, corporation,
22 association, partnership, trust, business trust or receiver or trustee or
23 conservator for any thereof, and also includes the United States, Guam
24 or any public corporation, political subdivision, city, county or district
25 or any agency or instrumentality of the United States or of Guam.

26 (i) "Pledged revenue" means any revenue of the system and
27 any Section 30 revenue pledged to the payment of bonds.
28

1 (j) "Rates, fees and charges" means all rates, fees and
2 charges (including tipping fees, residential pick-up fees, collection
3 fees, self-drop fees and all other solid waste management service
4 charges), received or receivable by or on behalf of the department for
5 providing solid waste management services.

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

17 (l) "Section 30 revenue" means revenues derived by the
18 government of Guam under Section 30 of the Organic Act.

19 (m) "Solid Waste Operations Fund" means the fund by that
20 name established pursuant to 10 G.C.A. §51118(f).

21 (n) "System" means the solid waste management system,
22 now or hereafter existing, owned and/or operated by the department or
23 its contractors, agents or subcontractors, including but not limited to
24 landfills (whether closed or open and including Ordot dump), transfer
25 stations, recycling facilities, collection trucks, appurtenant equipment
26 such as scales, ground water monitoring equipment and pollution
27 control equipment, and administrative facilities supporting the
28

1 provision of solid waste management services, including facilities for
2 payroll, billing and collections.

3 (o) "System operation and maintenance costs" means such
4 reasonable and necessary current expenses of the department, paid or
5 accrued, for operation, maintenance and repair of the system,
6 including, without limiting the generality of the foregoing:

7 (i) legal and overhead expenses of the department
8 directly related and reasonably allocable to the administration
9 of the system;

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

13 (iii) contractual services, professional services, salaries,
14 administrative expenses, and costs of labor appertaining to
15 system; and

16 (iv) the costs incurred in the collection of all or any
17 part of the revenues.

18 (p) "United States" means the United States of America.

19 **§51803. Power to Incur Indebtedness.** *I Maga'laha*
20 *Guåhan*, through the agency of GEDA pursuant to 12 G.C.A.
21 §50103(k), and with the approval of *I Liheslaturan Guåhan* by statute,
22 has the power and is hereby authorized, in addition to and in
23 amplification of all other powers conferred by the Guam Solid Waste
24 Management and Litter Control Act or any other provision of this
25 Chapter or by any law of Guam or of the United States, to incur
26 limited obligation indebtedness on behalf of the government of Guam,
27 by the issuance of bonds pursuant to this Article to raise funds for the
28 purpose of acquiring, constructing, improving, equipping,

1 maintaining, repairing, renewing, replacing, reconstructing or insuring
2 the system, or any part thereof, or for the purpose of refunding any
3 such bonds or any other prior obligations of the government issued for
4 any of such purposes, or for any combination of such purposes for
5 which bonds may be issued and secured as provided in this Article.

6 It is hereby declared that the system and each facility of the
7 system is and shall be a public improvement or undertaking as that
8 term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S.
9 Code). Indebtedness issued by the government pursuant to this
10 Article that is payable only from funds in the Solid Waste Operations
11 Fund available therefor and from revenue of the system will not be
12 and shall not be deemed to be public indebtedness of Guam as that
13 term is used in said Section 11. Indebtedness that is issued by the
14 government pursuant to this Article and that is payable from both
15 Section 30 revenue and revenue of the system may not be issued in an
16 amount that would cause a violation of the debt limitation provisions
17 of said Section 11.

18 No obligation undertaken by the government pursuant to this
19 Article shall be or become a lien, charge or liability against the
20 government of Guam or against the department or against any
21 property or funds of the government of Guam or the department,
22 except to the extent of the pledge of revenue of the system and, if
23 applicable, Section 30 revenues provided by the indenture.

24 **§51804. Powers of Department.** Notwithstanding any
25 provision of law or regulation, the department has power and is
26 hereby authorized, in addition to and in amplification of all other
27 powers conferred upon the department by the Guam Solid Waste
28 Management and Litter Control Act or any other provision of this

1 Chapter or by any law of Guam, to exercise any or all of the powers
2 granted to the department by this Article. The department has
3 jurisdiction over and may collect and transport to permitted solid
4 waste facilities, or contract for the collection and transportation to
5 permitted solid waste facilities of, solid waste from all individual
6 dwelling units, single-family residences, duplexes, and government-
7 managed housing units or residences. The department does not have
8 jurisdiction over the collection and transportation of solid waste from
9 any hotels, commercial or industrial establishments, government
10 agencies or from any multiple dwelling units other than duplexes.
11 The department may operate the Ordot Dump, or it may contract for
12 the operation of the Ordot Dump, in accordance with Guam law and
13 its permit under this Chapter. The department may contract for the
14 operation of the landfill.

15 The department may also operate, or contract for the operation
16 of, all other permitted solid waste management facilities and
17 operations not addressed above and within the policy guidelines of the
18 Integrated Solid Waste Management Plan. Any such contract for the
19 operation of the Ordot Dump or the landfill may be entered into
20 pursuant hereto or pursuant to Article 9 of this Chapter and may be
21 with any person or corporation duly qualified to provide such
22 services, whether public or private, domestic or foreign.

23 **§51805. Rates, Fees and Charges; Refunds.**

24 Notwithstanding any provision of law or regulation to the contrary,
25 the department is authorized to establish and modify from time to
26 time, with prior approval by the Public Utilities Commission,
27 reasonable rates, fees and charges for solid waste services at least
28 adequate to cover the full cost of such services, including the costs of

1 debt service for capital improvements of permitted solid waste
2 facilities, and to collect money from all users or customers, and to
3 refund charges collected in error. Rates, fees and charges may be
4 collected before or after the provision of the service for which they are
5 charged.

6 Except to the extent otherwise permitted or required by an
7 indenture pursuant to which bonds are issued, rates, fees and charges
8 shall at all times be fixed to yield annual revenue of the system at least
9 equal to the sum of annual principal payments and interest charges on
10 all bonds then outstanding, all coverage and reserve fund requirements
11 relating to such bonds, any obligations undertaken pursuant to Article
12 9 of this Chapter, and the annual system operation and maintenance
13 costs; provided, however, that Section 30 revenue may be used for the
14 purposes and treated as satisfying the requirements of this paragraph
15 with respect to the costs of the closure of the Ordot Dump and the
16 bonds or other obligations related thereto.

17 An indenture, lease or contract of indebtedness may provide for
18 payment from revenue of the system of refunds of rates and charges
19 that are collected in error and that are refundable by the department.

20 **§51806. Validity of Authorization and Issuance of Bonds.**

21 The validity of the authorization and issuance of any bonds by the
22 government pursuant to this Article is not dependent on nor affected
23 in any way by:

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

26 (b) Any contracts made by the department in connection
27 with the acquisition, construction or improvement of the system or
28 any part thereof; or

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

3 **§51807. Governor to Determine Issuance of Bonds and**
4 **Incurring of Other Indebtedness; Government Only Liable as**
5 **Provided by Indenture or Contract.**

6 (a) *I Maga'lahaen Guåhan* shall determine the time, form and
7 manner of issuance of bonds.

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

19 **§51808. Governor to Declare Purpose and Maximum**
20 **Amount of Bonds to be Issued.** Before issuing any bond or bonds, *I*
21 *Maga'lahaen Guåhan* shall declare the purpose for which the proceeds
22 of the bonds proposed to be issued shall be expended and shall specify
23 the maximum amount of bonds to be issued or sold for such purpose.
24 Bonds shall not be issued or sold for such purpose in an amount
25 exceeding such specified maximum.

26 **§51809. Indenture Providing Terms and Conditions of**
27 **Bonds.** *I Maga'lahaen Guåhan* may enter into one or more indentures
28 on behalf of the government providing for the aggregate principal

1 amount, date or dates, maturities, interest rates or methods for
2 determination thereof, denominations, form, registration, transfer and
3 interchange of any bonds issued pursuant to this Article and the terms
4 and conditions on which the same shall be executed, issued, secured,
5 sold, paid, redeemed, funded and refunded. Each taker and
6 subsequent holder of the bonds has recourse to all the provisions of
7 the indenture and of this Article and is bound thereby.

8 **§51810. Issues of Bonds.** An indenture may provide for one
9 or several series of bonds and that any series may be divided into one
10 or more divisions with different maturities or dates of issue, different
11 rates of interest or methods for determining such rates, or different
12 terms and conditions for the bonds of the several series or divisions.
13 It is not necessary that all bonds of the same authorized series be of
14 the same kind or character, have the same security, or be of the same
15 interest rate, but the terms thereof shall in each case be as authorized
16 by *I Maga'lahen Guåhan*.

17 **§51811. Covenants and Agreements That May Be**
18 **Contained in Indenture.** An indenture pursuant to which bonds are
19 issued may include any and all covenants and agreements on the part
20 of the government as *I Maga'lahen Guåhan* deems necessary or
21 advisable, including without limiting the generality of the foregoing,
22 any one or more of the following:

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

26 (b) Provisions creating one or more funds or accounts into
27 which all or any part of pledged revenue shall be deposited:
28

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

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

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

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

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

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

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

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1 (h) A provision requiring the government, with the prior
2 approval of the Guam Public Utilities Commission, to fix, prescribe
3 and collect annually rates or other charges in connection with the solid
4 waste management services furnished from the system which,
5 together with other available revenues, including, to the extent
6 provided by 10 G.C.A. §51805, Section 30 revenue, will be:

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

12 (ii) sufficient to pay any payments due under any lease
13 or lease-back entered into pursuant to Article 9 of this Chapter.

14 (iii) sufficient to pay the annual system operation and
15 maintenance costs; and

16 (iv) in such additional amount as shall be provided in
17 the indenture for the further security or protection of such
18 bonds.

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

22 (j) A provision requiring the government to hold or cause to
23 be held in trust the pledged revenue or any part thereof, or to any fund
24 or account created by any indenture for the further security or
25 protection of such bonds and to apply such pledged revenue or cause
26 it to be applied only as provided in the indenture and to invest all or
27 any part of such pledged revenue pending such application in such
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1 securities and subject to such limitations as are specified in the
2 indenture.

3 (k) A provision defining the power of the government in
4 applying the proceeds of the sale of any issue of bonds for the
5 acquiring, constructing or completing of the system or any part
6 thereof.

7 (l) A provision permitting the government to issue
8 additional bonds or to enter into one or more lease-back obligations
9 pursuant to Article 9 of this Chapter, in each case equally secured
10 with bonds theretofore issued under the indenture and lease-back
11 obligations previously entered into, for the purpose of acquiring,
12 constructing or completing, improving or extending the system or any
13 part thereof, or for the purpose of refunding any prior bonds or any
14 other prior obligations of the government relating to the system; and a
15 provision limiting the power of the government to issue any additional
16 bonds so secured or any other additional bonds for such purpose.

17 (m) A provision requiring, specifying or limiting the kind,
18 amount and character of insurance (or any reserve fund or funds in
19 lieu of insurance) to be maintained by the government on the system
20 or any part thereof and the use and disposition of the proceeds of any
21 such insurance thereafter collected or of the moneys in any such
22 reserve fund.

23 (n) A provision specifying the events of default and the
24 terms and conditions upon which any or all of the bonds then or
25 thereafter issued may become or be declared due and payable prior to
26 maturity, and the terms and conditions upon which such declaration
27 and its consequences may be waived.

28

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

4 (p) A provision prescribing a procedure by which the terms
5 and conditions of the indenture may be subsequently amended or
6 modified with the consent of the government and the vote or written
7 consent of the holders of a specified principal amount or specified
8 proportion of the bonds issued and outstanding, including provisions
9 for meetings of bondholders and for the manner in which the consent
10 of the bondholders may be given and specifically stating the effect of
11 such amendment or modification upon the rights of the holders of all
12 of the bonds.

13 (q) With respect to any provision relating to the modification
14 or amendment of an indenture, the government may agree that bonds
15 held by the government, the United States or any instrumentality of
16 either thereof (including every public corporation, political
17 subdivision, agency or instrumentality of any kind or class) shall not
18 be counted as outstanding bonds, or be entitled to vote or assent, but
19 shall, nevertheless, be subject to any such modification or amendment.

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

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

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

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

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

6 **§51812. Trustee for Government and Holders of Bonds.**

7 (a) The government or any agent designated by the
8 government shall act as trustee for the government and the holders of
9 bonds issued hereunder and the government may authorize the trustee
10 to act on behalf of the holders of the bonds or any stated percentage
11 thereof and to exercise and prosecute on behalf of the holders of the
12 bonds such rights and remedies as may be available to the holders.

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

14 (i) for the deposit of all or any portion of the pledged
15 revenue with the government and for the holding thereof by the
16 government in one or more separate funds or accounts in the
17 Solid Waste Operations Fund; and

18 (ii) for the transfer to the trustee of all or any portion
19 of the pledged revenue as are provided as security for the bonds
20 and for the holding thereof by the trustee in one or more
21 separate funds or accounts. All money in each such fund or
22 account shall be disbursed only as provided herein and in the
23 indenture.

24 **§51813. Duties and Powers of Trustee.** The government
25 shall prescribe in any indenture the duties and powers of the trustee
26 with respect to the issuance, authentication, sale and delivery of the
27 bonds provided for in such indenture and with respect to the payment
28 of principal of and interest on such bonds, the redemption thereof, the

1 registration and discharge from registration thereof and the
2 administration of any and all funds provided as security therefore.

3 **§51814. Issuance and Interchange of Bearer and Registered**
4 **Bonds.** An indenture may provide that bonds may be issued as bearer
5 bonds or as registered bonds and for the interchange of bearer bonds
6 for registered bonds and registered bonds for bearer bonds, and may
7 provide that bonds shall be registered as to principal only or as to both
8 principal and interest or otherwise as *I Maga'lahaen Guåhan* may
9 determine.

10 **§51815. Redemption of Bonds Prior to Maturity.** An
11 indenture may provide that bonds may be redeemed prior to maturity
12 upon such terms, conditions and upon such notice as are stated in the
13 indenture and upon the payment of such premium as may be fixed by
14 the indenture.

15 **§51816. Places of Payment.** An indenture may provide for the
16 payment of the principal and interest of bonds at any one or more
17 places in Guam or in the United States and in any specified coin or
18 currency of the United States.

19 **§51817. Execution and Authentication of Bonds.** An
20 indenture may provide for the execution and authentication of bonds
21 by the manual or facsimile signature of any one or more officers of
22 the government and by additional authentication by endorsement by
23 the manual signature or a signature stamp of any one or more officers
24 of the government or of any agent designated by the government as
25 trustee. If any officer or agent whose signature, countersignature or
26 endorsement appears upon the bonds ceases to be an officer or agent
27 before the delivery of the bonds, his signature, countersignature or
28 endorsement is nevertheless valid and of the same force and effect as

1 if he had remained such officer or agent until the delivery of the
2 bonds.

3 **§51818. Dates and Maturities of Bonds.** Bonds shall bear
4 dates prescribed in the indenture providing for their issuance. Bonds
5 may be serial bonds, term bonds or sinking fund bonds with such
6 maturities as the indenture shall specify. No bond by its terms shall
7 mature more than fifty (50) years after its date of issuance.

8 **§51819. Sale of Bonds.** Bonds authorized to be issued under
9 this Article shall be sold for cash, in accordance with the provisions of
10 a certificate or agreement executed by *I Maga'lahaen Guåhan*. The
11 bonds may be sold at either public or private sale, and upon such
12 terms and conditions as shall be authorized by *I Maga'lahaen Guåhan*,
13 which may provide that the bonds may be sold at less than their par or
14 face value.

15 **§51820. Payment of Bonds from Sources Other Than**
16 **Revenue.** The government may use and expend all or any part of any
17 funds other than revenue or proceeds of any property owned by it
18 other than the system, whether received by gift, appropriation or
19 otherwise (if not restricted as to the use of such funds or proceeds of
20 property by the terms of gift or trust or provision of law) for the
21 payment of bonds issued pursuant to the provisions of this Article and
22 of interest due thereon.

23 **§51821. Payments Which May be Made Out of Proceeds of**
24 **Sale of Bonds.** The proceeds of sale of any bonds may be expended
25 for any one or more of the following purposes, all as provided in the
26 indenture relating to such bonds:

27 (a) For payment of any costs or expenses of the acquisition,
28 construction or improvement of the system or any part thereof

1 (including any closed landfill or dump) or any costs or expenses
2 incidental thereto, including payment to the United States or any other
3 public body for the portion to be borne by the government of the cost
4 of any work done by the United States or such public body for or
5 jointly or in conjunction with the department;

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

8 (i) the acquisition, construction or improvement of the
9 system or any part thereof; or

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

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

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

16 (e) For payment of interest on bonds during the projected
17 period of acquisition, construction or improvement of the system or
18 any part thereof for the acquisition, construction or improvement of
19 which such bonds have been issued and for a period of not to exceed
20 three (3) years thereafter;

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

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

24 **§51822. Bonds May be Secured by Revenue of the System.**

25 An indenture may provide that payment of the bonds and the interest
26 thereon shall be secured by a pledge of and lien upon all or any
27 portion of the revenue of the system, subject to any parity lien created
28 or to be created pursuant to Article 9 of this Chapter. Any such

1 pledge and lien shall be valid and binding from the time the pledge is
2 made. The revenue of the system pledged and thereafter received by
3 the government or by any trustee, depository or custodian shall be
4 deposited in a separate subaccount of the revenue account in the Solid
5 Waste Operations Fund and shall be immediately subject to the lien of
6 such pledge without any physical delivery thereof or further act, and
7 the lien of such pledge shall be valid and binding against all parties
8 having claims of any kind in tort, contract or otherwise against the
9 government or such trustee, depository or custodian, irrespective of
10 whether the parties have notice thereof. The indenture by which such
11 pledge is created need not be recorded.

12 **§51823. Bonds May be Secured by Section 30 Revenue.** If
13 and to the extent determined by *I Maga'lahen Guåhan*, all or any part
14 of the revenues derived by the government of Guam under Section 30
15 of the Organic Act (Section 30 revenue) may also be pledged to
16 secure the payment of any bonds issued pursuant to this Article,
17 subject to any previously created lien on or pledge of such Section 30
18 revenue and to any parity lien created pursuant to Article 9 of this
19 Chapter. Any pledge of Section 30 revenue shall be valid and binding
20 from the time the pledge is made. The Section 30 revenue pledged
21 and thereafter received by the government of Guam or by any trustee,
22 depository or custodian shall be deposited in a separate subaccount of
23 the revenue account in the Solid Waste Operations Fund and shall be
24 immediately subject to the lien of such pledge without physical
25 delivery thereof or further act, and the lien of such pledge shall be
26 valid and binding against all parties having claims of any kind in tort,
27 contract or otherwise, against the government or such trustee,
28 depository or custodian, irrespective of whether the parties have

1 notice thereof. The indenture by which such pledge is created need
2 not be recorded. All Section 30 revenue so pledged is hereby
3 continuously appropriated for the purpose for which they have been
4 pledged. Indebtedness issued by the government pursuant to this
5 Article that is repayable from both Section 30 revenue and revenue of
6 the system may not be issued in an amount that would cause a
7 violation of the debt limitation provisions of Section 11 of the Organic
8 Act.

9 **§51824. Temporary Bonds.** An indenture may provide that
10 pending the actual issuance or delivery of definitive bonds, the
11 government may issue temporary or interim bonds, certificates or
12 receipts or any denomination whatsoever, to be exchanged for
13 definitive bonds when ready for delivery.

14 **§51825. Replacement of Bonds.** The government may
15 provide for the replacement of lost, destroyed or mutilated bonds.

16 **§51826. Tax Exemption.** Bonds issued pursuant to the
17 provisions of this Article and the interest or income therefrom are
18 exempt from taxation to the extent permitted by the provisions of
19 Section 11 of the Organic Act.

20 **§51827. Bonds as Legal Investments and as Security For**
21 **Performance of Any Act.** Notwithstanding any other provision of
22 law, all bonds issued pursuant to the provisions of this Article are
23 legal investments for all trust funds and for the funds of all banks,
24 both commercial and savings and may be deposited as security for the
25 performance of any act whenever any evidence of indebtedness of
26 Guam may be so deposited and may also be used as security for the
27 deposit of public moneys in banks in Guam.

1 **§51828. Refunding Bonds.** *I Maga'lahaen Guåhan* may, on
2 behalf of the government, provide for the issuance, sale or exchange
3 of refunding bonds for the purpose of retiring indebtedness or other
4 obligations issued to finance all or any portion of the system. All
5 provisions of this Article applicable to the issuance of bonds are
6 applicable to refunding bonds and to the issuance, sale or exchange
7 thereof.

8 **§51829. Use of Other Funds for System.** In addition to the
9 proceeds of any bonds issued and sold pursuant to this Article, the
10 department may use for the payment of the costs of acquisition,
11 construction or improvement of the system or any part thereof any
12 available money or funds of the department and any money or funds
13 made available to the department by any person or provided from any
14 source which may be expended for the accomplishing of the purposes
15 set forth in this Article or in the Guam Solid Waste Management and
16 Litter Control Act.

17 **§51830. Insurance.** The department may insure against loss
18 of revenue of the system from any cause whatsoever. The department
19 may insure against public liability or property damage from any
20 cause. An indenture, lease or other instrument may provide for the
21 carrying of such insurance or any other insurance in such amount and
22 of such character as shall be specified in such indenture, lease, or
23 other instrument 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,
26 lease, or other instrument, any insurance may be provided by funded
27 reserves or any other means.

1 **§51831. Pledge by the Government of Guam.** The
2 government of Guam is fully committed to ensuring that the
3 department has the ability to implement the capital improvements
4 authorized to be paid by this legislation in order to meet the needs of
5 Guam ratepayers for reliable and affordable services. The government
6 also is fully committed to ensuring that bondholders are protected to
7 ensure full and timely payments of their bonds. In accordance with
8 prior similar situations and precedents, the government hereby
9 pledges, while any bonds issued under this Article remain outstanding
10 and not fully performed or discharged, (a) to maintain the rights,
11 powers and duties of the director, the department and the Guam Public
12 Utilities Commission, or their respective successors in accordance
13 with law, to fulfill the terms of any agreements made with
14 bondholders in accordance with this Article, (b) to maintain the rights
15 and remedies of bondholders provided in this Article and any
16 indenture, and (c) not to transfer any additional non-system operating
17 responsibilities or other unfunded mandates to the system without
18 providing for the payment of the costs of such additional
19 responsibilities.

20 **§51832. Construction Account.** The proceeds from the sale
21 of all bonds authorized by this Article shall be deposited to the credit
22 of a construction account, which account is hereby created within the
23 Solid Waste Operations Fund. The money in the account shall be
24 expended in the manner provided by law for any of the purposes
25 authorized by this Article, including any or all of the purposes
26 specified by 10 G.C.A. §51821, and for such other purposes, subject
27 to the restrictions provided by law or by such indenture, as may be
28 authorized by such indenture.

1 **§51833. Revenue Account.** All revenue of the system and, to
2 the extent provided by 10 G.C.A. §51805 or by Article 9 of this
3 Chapter, the Section 30 revenue, shall be deposited to the credit of the
4 applicable subaccount of the Revenue Account, which account is
5 hereby created within the Solid Waste Operations Fund. The money
6 in such subaccounts may be used for any of the following purposes in
7 the order of priority set forth in any indenture as provided in 10
8 G.C.A. §51811(j) or any lease or lease-back as provided in Article 9
9 of this Chapter:

10 (a) to pay principal or interest on any bonds or any other
11 obligations of the department;

12 (b) to pay amounts due and owing under any lease or lease-
13 back entered into pursuant to Article 9 of this Chapter;

14 (c) to pay any amounts due and owing under any credit
15 provider reimbursement agreement;

16 (d) to pay the annual system operation and maintenance
17 costs; and

18 (e) for any other purposes of the system;

19 all as provided in any indenture or indentures and subject to any
20 restrictions provided by law or any indenture.

21 **§51834. Investment of Money in Funds and Accounts.**

22 Moneys in the revenue account and construction account in the Solid
23 Waste Operations Fund may be invested by the government or the
24 trustee under any indenture, as the case may be, in any investment
25 authorized by any indenture providing for the issuance of bonds. All
26 interest or other earnings received pursuant to such investments shall
27 be deposited to the credit of the fund or account from which such
28

1 interest or other earnings are derived, unless otherwise provided in an
2 indenture.

3 **§51835. Use of Balances of Funds and Accounts and**
4 **Surplus Money in Funds and Accounts.** Any balance remaining in
5 any of the funds or accounts created by this Article or any indenture,
6 including the Construction Account established pursuant to 10 G.C.A.
7 §51832, after payment of all costs, expenses and charges required or
8 authorized to be expended therefrom, may be allocated and used for
9 such other purposes relating to the acquisition, construction,
10 improvement, operation and maintenance of the system, subject to the
11 limitations and restrictions in any indenture. After all bonds shall
12 have been fully paid and discharged or provision for their payment
13 and discharge irrevocably made, any surplus moneys in any fund or
14 account created by this Article or any indenture shall, subject to the
15 limitations and restrictions in any indenture, be transferred to the
16 department and shall be and remain available for the acquisition,
17 construction, improvement, maintenance or operation of the system or
18 for any other purposes of the department herein or hereafter
19 authorized by law.

20 **§51836. Appropriation of Money in Funds and Accounts.**
21 All money in the funds and accounts created by this Article or any
22 indenture is hereby continuously appropriated for expenditure to carry
23 out the purposes herein and therein provided.

24 **§51837. Credit Enhancement.** *I Maga'lahen Guãhan* is
25 hereby authorized to enter into such contracts or agreements on behalf
26 of the government with such banks, insurance companies or other
27 financial institutions as *I Maga'lahen Guãhan* determines are
28 necessary or desirable to improve the security and marketability of the

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

9 Any reimbursement agreement may include a provision that the
10 obligations of the government under the agreement shall be secured
11 by all or by part of pledged revenue; provided that, at the time of
12 execution and delivery of each such agreement, any such provision
13 shall be in compliance with and shall not violate or breach any
14 provision of any indenture, lease or other instrument then in effect to
15 which the government or the department is a party.

16 **§51838. No Personal Liability.** Neither *I Maga'laha*
17 *Guåhan*, the director, any employee of the department, any employee
18 of the government nor any elected official of the government shall be
19 individually or personally liable for the payment of any amounts due
20 on any bonds, or for any other liability arising in connection with the
21 bonds; provided, however, that nothing in this 10 G.C.A. §51838 shall
22 relieve any employee or elected official from the performance of any
23 ministerial duty required by law.

24 **§51839. Waiver of Immunity.** Notwithstanding any
25 substantive or procedural provision of Chapter 6 of Title 5, Guam
26 Code Annotated, the government shall not be entitled to immunity
27 from any suit or action in contract on the indebtedness authorized by
28 this Article. For the purposes of this Act only, immunity is waived as

1 to the award of attorney fees in connection with any suit brought to
2 enforce any right or obligation given under this Act or in connection
3 with the enforcement of the terms of any agreement or indenture that
4 arises directly from the issuance of bonds.

5 **§51840. Construction of Article.** This Article shall be
6 liberally construed to carry out the objects and purposes and the
7 declared policy of the government of Guam as in this Article set forth.
8 Nothing contained in this Article shall be construed directly or by
9 implication to be in any way in derogation or limitation of powers
10 conferred upon or existing in the department, the director or *I*
11 *Maga'lahaen Guåhan* by virtue of any provisions of the Organic Act or
12 laws of Guam.”

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

21 **Section 4. Approval of Government of Guam Solid Waste**
22 **Management System Revenue Bonds.** The Legislature, *I Liheslaturan Guåhan*,
23 pursuant to Section 50103 of Title 12 of the Guam Code Annotated, hereby
24 approves the issuance and sale by the government of revenue bonds pursuant to
25 Article 8, Chapter 51, Title 10, Guam Code Annotated (the “Act”) in one or more
26 series or issues (together with any related reimbursement obligations); provided
27 that the issuance, terms and conditions of the bonds and any reimbursement
28 agreements shall have been approved by the Guam Public Utilities Commission,

1 and further provided that such bonds shall have, together with any lease-back
2 obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code
3 Annotated, an aggregate principal amount not to exceed Two Hundred Two
4 Million Four Hundred Twenty Five Thousand Dollars (\$202,425,000), shall have a
5 final maturity not later than 2041, shall bear interest at such rate or rates and shall
6 be sold for such price or prices as shall result in a yield to the bondholders not
7 exceeding nine percent (9%) per annum, and shall be issued and sold in the
8 manner, for the purposes and subject to the requirements and limitations provided
9 in Article 8, Chapter 51, Title 10, Guam Code Annotated.

10 **Section 5. Enactment of the Guam Solid Waste Management System**
11 **Lease Financing Act.** Article 9 of Title 10, Chapter 51 of the Guam Code
12 Annotated, is hereby enacted to read as follows:

13 **Article 9**

14 **Solid Waste Management System Lease Financing**

15 **§51901. Short Title and Purpose.** This Article may be cited
16 as the Guam Solid Waste Management System Lease Financing Act.
17 The purpose of this Article is to authorize the use of lease financing in
18 addition to, in lieu of, or in conjunction with the use of bond financing
19 pursuant to Article 8 of this Chapter, in order to achieve the most
20 efficient and lowest cost financing, construction, operation and
21 maintenance of the solid waste management system.

22 **§51902. Definitions.** The following terms wherever used or
23 referred to in this Article or in any indenture, lease or lease-back
24 entered into pursuant hereto (except to the extent modified therein in
25 accordance with this Article) shall have the following meanings,
26 respectively, unless a different meaning appears from the context:

27 (a) “Contractor” shall mean the authorized entity which shall
28 be the signatory on the lease and the lease-back and shall be fully

1 responsible for carrying out the construction, financing, operation and
2 maintenance of the solid waste facility. The contractor may cooperate
3 with another entity or entities in any manner the contractor deems
4 appropriate to provide for the financing, construction, operation and
5 maintenance of the solid waste facility.

6 (b) "Department" means the Department of Public Works,
7 acting on behalf of the government of Guam.

8 (c) "Director" means the Director of the Department of
9 Public Works.

10 (d) "Lease" shall mean a ground or site lease of property
11 from the department, the Chamorro Land Trust Commission, or other
12 government entity, as applicable, to the Contractor.

13 (e) "Lease-back" shall mean the facilities lease or other lease
14 of the property from the Contractor back to the department, over the
15 term of which the costs of the construction, financing, operation and
16 maintenance of a solid waste facility are amortized according to the
17 terms agreed to between the department and the Contractor.

18 (f) "Pledged revenue" means any revenue of the system and
19 any Section 30 revenue pledged to secure lease-back payments.

20 (g) "Property" shall mean any property on which a solid
21 waste facility is located.

22 (h) "Revenue of the system" means all gross income and
23 other amounts received by or on behalf of the department as revenues
24 of any kind from the ownership or operation of any part of the system,
25 including all rates, fees and charges received by the department, and
26 all proceeds of insurance or grants covering business interruption loss
27 (and related losses and expenses) relating to the system, and all other
28 income and revenue howsoever derived by the department from the

1 ownership or operation of, or arising from, the system, together with
2 all interest, profits or other income derived from the investment of
3 amounts in the Solid Waste Operations Fund, to be deposited to the
4 Solid Waste Operations Fund in accordance with 10 G.C.A. §51833.

5 (i) "Section 30 revenue" means revenues derived by the
6 government of Guam under Section 30 of the Organic Act.

7 (j) "Solid waste facility" shall mean all or any portion of any
8 landfills (whether closed or open and including Ordot dump), transfer
9 stations, recycling facilities, appurtenant equipment, and other capital
10 facilities of the system.

11 (k) "Solid Waste Operations Fund" means the fund by that
12 name established pursuant to 10 G.C.A. §51118(f).

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

22 (m) "System operation and maintenance costs" means such
23 reasonable and necessary current expenses of the department, paid or
24 accrued, for operation, maintenance and repair of the system,
25 including, without limiting the generality of the foregoing:

26 (i) legal and overhead expenses of the department
27 directly related and reasonably allocable to the administration
28 of the system;

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

4 (iii) contractual services, professional services, salaries,
5 administrative expenses, and costs of labor appertaining to
6 system; and

7 (iv) the costs incurred in the collection of all or any
8 part of the revenues.

9 **§51903. Authorization to Enter Into Long-Term Leases.** *I*
10 *Maga'lahen Guåhan* may enter into a lease and lease-back on behalf
11 of the department for the financing of the acquisition, construction,
12 improvement, equipping, repair, renewal, replacement, or
13 reconstruction of any solid waste facility, together with operation and
14 maintenance of all or any portion of such solid waste facility over the
15 term of the lease-back, according to the needs of the department and
16 consistent with this Article.

17 The costs of the construction and financing of a solid waste
18 facility financed pursuant to this Article shall be amortized in periodic
19 installments over the term of the lease-back period, which shall be
20 mutually determined by *I Maga'lahen Guåhan* and the contractor, but
21 which will not exceed forty (40) years. The lease and lease-back may
22 provide that if sufficient funds are not appropriated or otherwise
23 available for the payment of such installments, the department will
24 have the obligation to vacate the solid waste facility, and the
25 contractor shall have the right of use and occupancy of the solid waste
26 facility for the remainder of the term of the lease, unless new mutually
27 satisfactory terms are entered into. For this purpose, the lease may
28 provide that its term shall be extended for a period not to exceed the

1 shorter of ten (10) years beyond the original term of the lease-back or
2 such period of time as is necessary to repay in full any financing
3 arranged pursuant to this Article. The department shall pay the
4 operation and maintenance costs of the solid waste facility on a
5 periodic basis as incurred by the contractor on terms to be agreed to in
6 the lease-back for each solid waste facility.

7 It is hereby declared that the system and each solid waste
8 facility is and shall be a public improvement or undertaking as that
9 term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S.
10 Code). Obligations incurred by the government pursuant to this
11 Article that are payable only from funds in the Solid Waste
12 Operations Fund available therefor and from revenue of the system
13 will not be and shall not be deemed to be public indebtedness of
14 Guam as that term is used in said Section 11. Obligations incurred by
15 the government pursuant to this Article and that are payable from both
16 Section 30 revenue and revenue of the system may not be issued in an
17 amount that would cause a violation of the debt limitation provisions
18 of said Section 11.

19 No obligation undertaken by the government pursuant to this
20 Article shall be or become a lien, charge or liability against the
21 government of Guam or against the department or against any
22 property or funds of the government of Guam or the department,
23 except to the extent of the pledge of revenue of the system and, if
24 applicable, Section 30 revenues provided by the lease-back.

25 **§51904. Procurement.** Subject to the approval of I
26 Liheslaturan Guåhan, the government of Guam or the department may
27 solicit proposals, in compliance with the Guam Procurement Law, for
28 the financing and construction of the solid waste facility, together

1 with the operation and maintenance of the solid waste facility over the
2 term of the lease-back, according to the needs of the department and
3 consistent with this Article.

4 **§51905. Powers of Department.** Notwithstanding any
5 provision of law or regulation, the department has power and is
6 hereby authorized, in addition to and in amplification of all other
7 powers conferred upon the department by the Guam Solid Waste
8 Management and Litter Control Act or any other provision of this
9 Chapter or by any law of Guam, to exercise any or all of the powers
10 granted to the department by this Article.

11 **§51906. Assignments.** To facilitate the purposes of this
12 Article and to provide security for the bondholders, the contractor
13 may assign, with the consent of the department, the lease and the
14 lease-back to any trustee, underwriter or other appropriate party as
15 may be necessary to facilitate the issuance of certificates of
16 participation in lease-back payments or other financial instruments to
17 provide the financing for the solid waste facility.

18 **§51907. Use of Tax-Exempt Financing.** To minimize the
19 financing cost to the department, all financing utilized by the
20 contractor to fund the construction, operation and maintenance of a
21 solid waste facility shall be through tax-exempt obligations, if a
22 mechanism to do so is available. The purpose for this requirement is
23 to assure that the department pays the lowest possible interest rate so
24 that the cost of financing the construction, operation and maintenance
25 of a solid waste facility to the department, amortized through the
26 lease-back payments from the department to the contractor, will be
27 lower than regular commercial rates.

28

1 **§51908. Lease-Back May be Secured by Revenue of the**
2 **System.** A lease-back may provide that payment of obligations
3 thereunder shall be secured by a pledge of and lien upon all or any
4 portion of the revenue of the system, subject to any parity lien created
5 pursuant to Article 8 of this Chapter. Any such pledge and lien shall
6 be valid and binding from the time the pledge is made. The revenue
7 of the system pledged and thereafter received by the government or by
8 any trustee, depository or custodian shall be deposited in a separate
9 subaccount of the revenue account in the Solid Waste Operations
10 Fund and shall be immediately subject to the lien of such pledge
11 without any physical delivery thereof or further act, and the lien of
12 such pledge shall be valid and binding against all parties having
13 claims of any kind in tort, contract or otherwise against the
14 government or such trustee, depository or custodian, irrespective of
15 whether the parties have notice thereof. The instrument by which
16 such pledge is created need not be recorded, except to the extent that
17 such instrument conveys an interest in land or improvements thereon.

18 **§51909. Lease-Back May be Secured by Section 30**
19 **Revenue.** If and to the extent determined by *I Maga'lahaen Guåhan*,
20 all or any part of the revenues derived by the government of Guam
21 under Section 30 of the Organic Act (Section 30 revenue) may also be
22 pledged to secure the payment by the department of obligations under
23 any lease-back entered into pursuant to this Article, subject to any
24 previously created lien on or pledge of such Section 30 revenue and to
25 any parity lien created or to be created pursuant to Article 8 of this
26 Chapter. Any pledge of Section 30 revenue shall be valid and binding
27 from the time the pledge is made. The Section 30 revenue pledged
28 and thereafter received by the government of Guam or by any trustee,

1 depository or custodian shall be deposited in a separate subaccount of
2 the revenue account in the Solid Waste Operations Fund and shall be
3 immediately subject to the lien of such pledge without physical
4 delivery thereof or further act, and the lien of such pledge shall be
5 valid and binding against all parties having claims of any kind in tort,
6 contract or otherwise, against the government or such trustee,
7 depository or custodian, irrespective of whether the parties have
8 notice thereof. The instrument by which such pledge is created need
9 not be recorded. All Section 30 revenue so pledged is hereby
10 continuously appropriated for the purpose for which they have been
11 pledged. Lease-back obligations that are payable by the department
12 pursuant to this Article and that are payable from both Section 30
13 revenue and revenue of the system may not be in an amount that
14 would cause a violation of the debt limitation provisions of Section 11
15 of the Organic Act.

16 **§51910. Payment of Lease-back Obligations from Sources**
17 **Other Than Revenue.** The government may use and expend all or
18 any part of any funds other than revenue or proceeds of any property
19 owned by it other than the system, whether received by gift,
20 appropriation or otherwise (if not restricted as to the use of such funds
21 or proceeds of property by the terms of gift or trust or provision of
22 law) for the payment of obligations due under a lease-back entered
23 into pursuant to the provisions of this Article.

24 **§51911. Pledge by the Government of Guam.** The
25 government of Guam is fully committed to ensuring that the
26 department has the ability to implement the capital improvements
27 authorized to be leased by this legislation in order to meet the needs of
28 Guam ratepayers for reliable and affordable services. The

1 government also is fully committed to ensuring that the holders of
2 certificates of participation or other financial instruments are protected
3 to ensure full and timely payment of obligations due under the lease-
4 back. In accordance with prior similar situations and precedents, the
5 government hereby pledges, while any obligations are owing on any
6 lease-back entered into pursuant to this Article, (a) to maintain the
7 rights, powers and duties of the director, the department and the Guam
8 Public Utilities Commission, or their respective successors in
9 accordance with law, to fulfill the terms of any agreements made with
10 a contractor in accordance with this Article, (b) to maintain the rights
11 and remedies of a contractor provided in this Article and any lease or
12 lease-back, and (c) not to transfer any additional non-system operating
13 responsibilities or other unfunded mandates to the system without
14 providing for the payment of the costs of such additional
15 responsibilities.

16 **§51912. Responsibility for Construction, Operation and**
17 **Maintenance of the Solid Waste Facility.** The lease-back may
18 require that the contractor be responsible for all costs, expenses and
19 fees of any kind or nature, associated with the improvements, on-site
20 infrastructure, construction, permits and financing associated with the
21 completion of a solid waste facility, except as expressly provided by
22 the lease-back for costs, expenses and fees previously incurred by the
23 government. The lease-back may require that the contractor be
24 responsible for the ongoing operation and maintenance of the solid
25 waste facility during the term of the lease-back.

26 **§51913. Credit Enhancement.** *I Maga'lahañ Guåhan* is
27 hereby authorized to enter into such contracts or agreements on behalf
28 of the department with such banks, insurance companies or other

1 financial institutions as it determines are necessary or desirable to
2 improve the security and marketability of the lease-back obligations.
3 Such contracts or agreements may contain an obligation to reimburse,
4 with interest, any such banks, insurance companies or other financial
5 institutions for advances used to pay lease-back obligations and to
6 indemnify any such banks, insurance companies or other financial
7 institutions for costs and expenses incurred in connection with any
8 such advance; provided, that any obligation of the department under
9 any reimbursement agreement shall be payable solely from pledged
10 revenue. Any reimbursement agreement may include a provision that
11 the obligations of the department under the agreement shall be secured
12 by all or by part of pledged revenue; provided that, at the time of
13 execution and delivery of each such agreement, any such provision
14 shall be in compliance with and shall not violate or breach any
15 provision of any indenture, lease or other instrument to which the
16 government or the department is a party.

17 **§51914. No Personal Liability.** Neither *I Maga'laha*
18 *Guåhan*, the director, any employee of the department, any employee
19 of the government nor any elected official of the government shall be
20 individually or personally liable for the payment of any amounts due
21 under any lease or lease-back, or for any other liability arising in
22 connection with a lease or lease-back; provided, however, that nothing
23 in this 10 G.C.A. §51914 shall relieve any employee or elected
24 official from the performance of any ministerial duty required by law.

25 **§51915. Rules, Regulations and Restrictions.** The
26 department may promulgate rules and regulations pursuant to Guam
27 law necessary to implement the provisions of this Article.
28

1 **§51916. Construction of Article.** This Article shall be
2 liberally construed to carry out the objects and purposes and the
3 declared policy of the government of Guam as in this Article set forth.
4 Nothing contained in this Article shall be construed directly or by
5 implication to be in any way in derogation or limitation of powers
6 conferred upon or existing in the department, the director or *I*
7 *Maga'lahaen Guåhan* by virtue of any provisions of the Organic Act or
8 laws of Guam.

9 **§51916. Severability.** If any provision of this Article or its
10 application to any person or circumstance is found to be invalid or
11 contrary to law, such invalidity shall not affect other provisions or
12 applications of this Article which can be given effect without the
13 invalid provisions or application, and to this end the provisions of this
14 Article are severable.”

15 **Section 6. Approval of Lease and Lease-Back.** The Legislature,
16 *I Liheslaturan Guåhan*, hereby approves the execution and delivery of the lease
17 and lease-back by the government pursuant to Article 9, Chapter 51, Title 10,
18 Guam Code Annotated; provided that the terms and conditions of the lease and
19 lease-back shall have been approved by the Guam Public Utilities Commission,
20 and further provided that the certificates of participation or other financial
21 instruments shall have, together with any bonds issued pursuant to Article 8,
22 Chapter 51, Title 10, Guam Code Annotated, an aggregate principal amount not to
23 exceed Two Hundred Two Million Four Hundred Twenty Five Thousand Dollars
24 (\$202,425,000), shall have a final maturity not later than 2041, shall result in a
25 yield to the holders of the certificates of participation or other financial instruments
26 not exceeding nine percent (9%) per annum, and shall be entered into for the
27 purposes and subject to the requirements and limitations provided in Article 9,
28 Chapter 51, Title 10, Guam Code Annotated.