

TWENTY-FIRST GUAM LEGISLATURE  
1992 (SECOND) Regular Session

Bill No. 723

Substitute Bill by Committee on Ways and Means

Introduced by:

H.D. Dierking, Chairperson, Committee on Rules  
At the request of the Governor

AN ACT TO REPEAL AND REENACT SECTION 1504 OF TITLE 5 OF THE GUAM CODE ANNOTATED REGARDING THE ISSUANCE OF LIMITED OBLIGATION HIGHWAY BONDS OF THE GOVERNMENT OF GUAM FOR FUNDING AND CAPITAL IMPROVEMENT HIGHWAY PROJECT PURPOSES; TO PROVIDE FOR ENVIRONMENTAL HEALTH SPECIALIST SUPERVISOR AT GUAM ENVIRONMENTAL PROTECTION AGENCY (GEPA) AND APPROPRIATE TWO HUNDRED TWENTY THOUSAND EIGHT HUNDRED TWENTY-TWO DOLLARS (\$220,822) FOR RETROACTIVE PAYMENTS TO ELEVEN (11) GEPA EMPLOYEES AND FORTY-FOUR THOUSAND FOUR HUNDRED FORTY-ONE DOLLARS (\$44,441) TO PAY RETROACTIVE PAYMENTS TO THREE FORMER GEPA EMPLOYEES; AND TO APPROPRIATE EIGHTEEN THOUSAND FIVE HUNDRED EIGHTY DOLLARS (\$18,580) AND FOURTEEN THOUSAND NINE HUNDRED FIFTY EIGHT DOLLARS (\$14,958) TO THE GUAM FUTURE FARMERS OF AMERICA ASSOCIATION FOR FFA WASHINGTON LEADERSHIP CONFERENCE AND NATIONAL FFA CONVENTION.

1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2           **Section 1.**   Section 1504 of Title 5 of the Guam Code Annotated is repealed  
3 and reenacted to read:

4                   "Section 1504.     Limited Obligation Highway Refunding Bonds.

5                   (a)    Authorization of Issuance of Limited Obligation Highway  
6 Bonds.   The Governor of Guam is authorized to issue new bonds of the  
7 Government of Guam in an aggregate principal amount not to exceed Sixty Five

1 Million Dollars (\$65,000,000) for the purposes of refunding all or a portion of  
2 Government of Guam Limited Obligation Highway Bonds, 1985 Series  
3 implementing the Capital Improvement Highway Projects enumerated  
4 Subsection (j) of this Section, and paying expenses incurred in connection with  
5 issuance of such new bonds; provided, however, that the issuance of the new bonds  
6 shall not cause a violation of the debt limitation provisions of 48 USC 1423a.

7 (b) Terms and Conditions Determined by Indenture. The terms  
8 conditions of the bonds shall be as determined by the Governor by the execution  
9 of an indenture securing the bonds upon or prior to the issuance of the bonds.  
10 The indenture shall contain such terms and conditions as are consistent with  
11 this Section.

12 (c) Valid and Binding Obligation. To the extent that the debt  
13 limitation provisions of 48 USC 1423a are not violated, any bonds authorized  
14 under this Section shall constitute the valid and legally binding limited obligations of the  
15 Government of Guam payable solely from and secured by a pledge of the revenues  
16 pledged pursuant to Subsection (d) of this Section. The validity of any such bonds  
17 shall not be affected by the validity or regularity of any proceedings for  
18 implementation of Capital Highway Improvement Projects funded by the new  
19 bonds or the bonds being refunded or by the application of any escrow created to pay  
20 debt service on the bonds being refunded.

21 (d) Pledge of Revenues; Not a General Obligation. All or any part  
22 of the revenues from the taxes levied pursuant to Article 4 of Chapter 26 of Title 11  
23 of the Guam Code Annotated and from the license fees and penalties imposed  
24 pursuant to Section 7146, 7159, 7170, 7171, 3102, 7173 and 11101 of Title 16 of  
25 the Guam Code Annotated may be pledged to secure the repayment of any bonds issued  
26 under this Section and to pay costs incurred in the issuance or administration of  
27 such bonds. Any pledge made to secure the bonds shall be valid and binding from

1 time the pledge is made. The revenues pledged and thereafter received by the  
2 Government of Guam or by any trustee, depository or custodian shall be deposited  
3 in a separate account and shall be immediately subject to the lien of such pledge  
4 without any physical delivery thereof or further act, and the lien of such pledge  
5 shall be valid and binding against all parties having claims of any kind in tort,  
6 contract or otherwise against the Government of Guam or such trustee, depository  
7 or custodian, irrespective of whether the parties have notice thereof. The indenture  
8 or agreement by which such pledge is created need not be recorded. All such taxes,  
9 fees and penalties, to the extent so pledged, are hereby continuously appropriated for  
10 such purpose. The bonds shall not be, and shall state on their face that they are not,  
11 general obligations of the Government of Guam.

12 (e) Waiver of Immunity. Notwithstanding any substantive or  
13 procedural provision of Chapter 6 of Title 5 of the Guam Code Annotated the  
14 Government of Guam waives immunity from any suit or action in contract on the  
15 bonds, but does not waive sovereign immunity as to the personal liability of elected  
16 officials and employees of the Government of Guam.

17 (f) Form of Bonds; Covenants; Appointment of Fiduciaries. The  
18 technical form and language of the bonds, including provisions for execution,  
19 exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability,  
20 cancellation and other terms or conditions not inconsistent with this Section,  
21 including covenants relating to the maintenance of revenues, shall be as specified  
22 in the indenture approved by the Governor, authorizing the issuance of the bonds.  
23 The indenture may appoint one or more trustees or other fiduciaries authorized to  
24 receive and hold in trust the proceeds of the bonds and revenues relating thereto, to  
25 protect the rights of bondholders and to perform such other duties as may be  
26 specified in the indenture. The Governor is also authorized to execute, on behalf of  
27 the Government of Guam, any appropriate agreements, certificates or other

1 instruments relating to the bonds, the sale of the bonds and payment of the bonds  
2 being refunded.

3 (g) Authorization for Credit Enhancement. The Governor is  
4 authorized to enter into such contracts or agreements with such banks, insurance  
5 companies or other financial institutions as he determines are necessary or desirable  
6 to improve the security and marketability of the bonds issued under this Section.  
7 Such contracts or agreements may contain an obligation to reimburse, with interest,  
8 any such banks, insurance companies or other financial institutions for advances  
9 used to pay principal or interest on the bonds. Any such reimbursement obligation  
10 shall be payable solely from, and may be secured by a pledge of, the revenues  
11 described in Subsection (d) of this Section.

12 (h) Use of Proceeds from the Sale of the Bonds. Proceeds from the  
13 sale of the bonds shall be used solely to refund all or a portion of the Government of  
14 Guam Limited Obligation Highway Bonds, 1985 Series A, to implement the Capital  
15 Improvement Highway Projects enumerated in Subsection (j) of this Section, and to  
16 pay expenses relating to the authorization, sale and issuance of the bonds and the  
17 payment of the bonds being refunded, including, without limitation, printing costs,  
18 costs of reproducing documents, bond insurance premiums, underwriting, legal and  
19 accounting fees and charges, fees paid to banks or other financial institutions  
20 providing credit enhancement, costs of credit ratings, fees and charges for execution,  
21 transportation and safekeeping of bonds, escrow agent fees and other costs, charges  
22 and fees in connection with the issuance, sale and delivery of the bonds and the  
23 payment of the bonds being refunded.

24 (i) No Personal Liability except for failure to perform ministerial  
25 duty. No employee or elected official of the government of Guam shall be  
26 individually or personally liable for the payment of any amounts due on any bonds  
27 issued under this Section, or for any other liability arising in connection with the

1 bonds; provided, however, that nothing in this Section shall relieve any employee  
2 or elected official from the performance of any ministerial duty required by law.

3 (j) The proceeds shall be expended for the following highway  
4 capital improvement projects:

5	Project	Costs
6		
7	1. Reconstruction of Route 1 from	
8	Polaris Point Intersection to Route 2A	
9	(Commissary Junction near Naval Station)	\$6.0 Million
10		
11	2. Reconstruction of Route 2A from	
12	Commissary Junction to Namu River in Agat	\$4.0 Million
13		
14	3. Design and Reconstruction of three (3) lane highway	
15	on Route 30 (Camp Watkins Road) from its	
16	intersection with Route 1 (Marine Drive) to	
17	Guam Memorial Hospital including Farenholt Avenue	
18	and land acquisition required for the project	\$10.0 Million
19		
20	4. Design and Construction of Harmon Access	
21	Road including Land Acquisition (Road from	
22	Harmon Strip connecting to Route 16 at the	
23	Harmon Loop Intersection)	\$3.0 Million
24		
25	5. Land Acquisition for the Agat-Umatac Project	
26	and for unacquired land on Route 1, land acquisition	
27	of unacquired Route 6 property, land acquisition	
28	Macheche Road, Bello Road, and Alegeta St.	\$4.0 Million
29		
30	6. Resurfacing of approximately 5 miles of Route 4	
31	through Merizo including spot repair, minor	
32	drainage improvements and safety treatments	
33	as needed	\$3.0 Million
34		
35	7. Design and construction of San Ramon Hill roadway	
36	network encompassing Route 7, Senator Gibson Road,	
37	and Esperanza Street, including installation of	
38	underground drainage with sidewalks, spot repair as	
39	necessary, widening, and installation of anti-skid	
40	wearing course	\$2.0 Million
41		
42	8. A sidewalk 6 feet in width on the South side of San	

1	Vitores Road from John F. Kennedy High School	
2	to the traffic circle	\$0.5 Million
3		
4	9. Planning, design and initial construction of bike/jogging	
5	paths in central and northern Guam	\$1.0 Million
6		
7	<b>GRAND TOTAL</b>	<b>\$33.5 Million</b>

8           **Section 2.**    Local Sale of Bonds. The Governor of Guam shall undertake his  
9 best efforts to cause a portion of any bonds issued pursuant to Section 1504 of Title 5  
10 of the Guam Code Annotated to be offered for sale in Guam, as well as in other  
11 jurisdictions, if and to the extent that such offer and any sales resulting from such  
12 offer do not increase the cost to the Government of Guam of issuing and repaying  
13 such bonds.

14           **Section 3.**    The Legislature hereby finds and declares as follows:

15                   (a)    Section 1504 of Title 5 of the Guam Code Annotated provides  
16 that the Governor is authorized to issue bonds of the Government of Guam in  
17 aggregate principal amount not to exceed Sixty-Five Million Dollars (\$65,000,000) for  
18 the purposes of refunding all or a portion of the Government of Guam Limited  
19 Obligation Highway Bonds, 1985 Series A, previously issued, implementing Capital  
20 Improvement Highway Projects as enumerated in Subsection (j) of Section 1 of this  
21 Act, and paying expenses incurred in connection with the issuance of such bonds.

22                   (b)    Section 1504 of Title 5 of the Guam Code Annotated provides  
23 that the terms and conditions of the bonds shall be approved by the Legislature by  
24 statute.

25                   (c)    Title 12 Guam Code Annotated Section 2103(k) provides that  
26 agencies and instrumentalities of the Government of Guam shall issue bonds and  
27 other obligations only by means of and through the agency of the Guam Economic  
28 Development Authority.

1 (d) The Board of Directors of the Guam Economic Development  
2 Authority has adopted a resolution approving the sale of bonds of the Government  
3 of Guam for the purposes of refunding all or a portion of the Government of  
4 Limited Obligation Highway Bonds, 1985 Series A, previously issued, implementing  
5 Capital Improvement Highway Projects, and paying expenses incurred in  
6 connection with the issuance of such bonds.

7 (e) Title 12 Guam Code Annotated Section 2103(k) provides that  
8 Guam Economic Development Authority shall not sell any bond without  
9 approval of the Legislature of the terms and conditions of the issuance of the bond.

10 (f) A proposed form of Indenture relating to Government of Guam  
11 Limited Obligation Highway Bonds pursuant to which the bonds are proposed  
12 issued and secured has been presented to this Legislature.

13 **Section 4.** This Legislature, pursuant to Section 1504 of Title 5 of the Guam  
14 Code Annotated, and pursuant to Title 12 Guam Code Annotated Section 2103(k),  
15 approves the issuance by the Government of Guam of Limited Obligation Highway  
16 Bonds in principal amount not to exceed Sixty Five Million Dollars (\$65,000,000)  
17 with a final maturity not exceeding twenty (20) years and bearing interest at a rate  
18 exceeding ten percent (10%) per annum pursuant to the Indenture in substantially  
19 the same form as presented to this Legislature.

20 **Section 5. (a)** Subsections (c), (d) and (e) of Section 19576 of the  
21 Government Code enacted in Section 10 of Public Law No. 18-33 are repealed.

22 (b) Section 26503 of Title 11 of the Guam Code Annotated is  
23 repealed and reenacted to read:

24 "Section 26503. Mass Transit Automotive Surcharge. (a)  
25 There is hereby levied a Mass Transit Automotive Surcharge of Four Cents (4¢)  
26 per gallon on all liquid fuel taxed pursuant to Subsection (a) of Section 26403 of the

1 Title. This Mass Transit Automotive Surcharge shall be in addition to the liquid  
2 fuel tax levied pursuant to Subsection (a) of Section 26403 of this Title.

3 (b) The proceeds of the Mass Transit Automotive Surcharge levied  
4 pursuant to Subsection (a) of this Section, as and to the extent released from the  
5 pledge of such proceeds pursuant to Subsection (d) of Section 1504 of Title 5 of the  
6 Guam Coded Annotated, are to be placed in a separate fund hereby created and  
7 known as the Public Transit Fund. For purposes of such pledge and release, the  
8 proceeds of the Mass Transit Automotive Surcharge shall be deemed to be the last  
9 revenues used pursuant to such pledge and the first revenues released from such  
10 pledge.

11 (c) All revenues in the Public Transit Fund shall be transferred to  
12 the Guam Mass Transit Authority within sixty (60) days after the last day of the  
13 month in which the revenues are released from such pledge. All revenue from  
14 fares generated by the Guam Mass Transit Authority shall also be placed in the  
15 Public Transit Fund."

16 **Section 6. No Side Agreements.** Except as authorized by Section 1 of  
17 this Act, there shall be no separate or side agreement or agreements between the  
18 government of Guam and any party or consultant involved in the issuance of the  
19 bonds authorized in this Act that have not been approved by the Legislature, and  
20 any such separate or side agreement or agreements not so approved shall be void.

21 **Section 7. (a)** Eighteen Thousand Five Hundred Eighty Dollars (\$18,580)  
22 are appropriated from any available remaining balance of the appropriation made to  
23 the government of Guam from the General Fund for FY 1992 to the Guam Future  
24 Farmers of America to fund eight (8) students and two (2) advisors to travel to the  
25 FFA 1992 Washington Leadership Conference July 27 through August 1, 1992.

26 (b) Fourteen Thousand Nine Hundred fifty-eight Dollars  
27 (\$14,958) are appropriated from Fiscal year 1993 revenues of the General Fund to the



1 Guam Future Farmers of America to fund eight (8) students and three (3)  
2 to travel to the 65th National FFA Convention from November 12 to 14, 199

3 Section 8. (a) Section 13 (n) of Chapter V (Miscellaneous Provi  
4 Public law 21-42, as amended in Section 7 (b) of Public Law 21-59, is repe  
5 reenacted to read:

6 "(n) Section 7 of Public Law 20-218 as amended by Section 37 of Publ  
7 20-221 is further amended by adding the following positions after the line n

8	'Coastal Program Administrator	55	5
9	'Environmental Health Specialist I (GEPA)	34	4
10	Environmental Health Specialist II (GEPA)	40	4
11	Environmental Health Specialist III (GEPA)	46	5
12	Environmental Health Specialist Supervisor (GEPA)	49	5
13	Air and Land Administrator		6

14 (b) Two Hundred Twenty Thousand Eight Hundred Twe  
15 Dollars (\$220,822) are appropriated from any available remaining balance  
16 appropriations to the government of Guam from the General Fund for Fisci  
17 1992 to the Guam Environmental Protection Agency to pay retroactive paym  
18 eleven (11) incumbent employees affected by Section 7 of Public Law 20-  
19 amended, and as repealed and reenacted in Subsection (a) of this Section, as sp  
20 in Section 7 of Public Law 20-218.

21 (c) Forty-four Thousand Four Hundred-one Dollars (\$44,40  
22 appropriated from any available remaining balance of the appropriations  
23 government of Guam from the General Fund for Fiscal Year 1992 to the  
24 Environmental Protection Agency to pay retroactive payments to three (3)  
25 employees who are affected by Section 7 of Public Law 20-218, as amended,  
26 repealed and reenacted in Subsection (a) of this Section, as specified in Secti  
27 Public Law 20-218.

17-11

GOVERNMENT OF GUAM

AND

[TRUSTEE],

as Trustee

AND

[DEPOSITARY],

as Depositary

INDENTURE

Dated as of \_\_\_\_\_ 1, 1992

\$\_\_\_\_,000,000

GOVERNMENT OF GUAM

LIMITED OBLIGATION HIGHWAY BONDS  
including the  
1992 SERIES A BONDS

TABLE OF CONTENTS

Section

Parties .....  
Preambles .....

ARTICLE I

DEFINITIONS; CERTIFICATES

1.01 Definitions .....  
1.02 Content of Certificates and Opinions .....  
1.03 Equal Security .....

ARTICLE II

THE BONDS

2.01 Authorization of Bonds .....  
2.02 Terms of 1992 Series A Bonds .....  
2.03 Execution of Bonds .....  
2.04 Transfer of Bonds .....  
2.05 Exchange of Bonds .....  
2.06 Bond Register .....  
2.07 Ownership of Bonds .....  
2.08 Temporary Bonds .....  
2.09 Bonds Mutilated, Lost, Destroyed  
or Stolen .....  
2.10 Book Entry Registration of Exchanges .....

ARTICLE III

ISSUE OF BONDS; APPLICATION OF PROCEEDS

3.01 Issuance, Sale and Delivery  
of 1992 Series A Bonds .....  
3.02 Application of Proceeds of  
1992 Series A Bonds and Other Amounts .....  
3.03 Establishment and Application of  
Construction Fund .....  
3.04 Issuance of Additional Series of Bonds .....  
3.05 Proceedings for Issuance of  
Additional Series of Bonds .....  
3.06 Validity of Bonds .....

Section

ARTICLE IV

REDEMPTION OF BONDS

- 4.01 Terms of Redemption .....
- 4.02 Selection of Bonds for Redemption .....
- 4.03 Notice of Redemption .....
- 4.04 Partial Redemption .....
- 4.05 Effect of Redemption .....
- 4.06 Rescission of Notice of Redemption .....

ARTICLE V

REVENUES

- 5.01 Pledge and Assignment; Revenue Fund .....
- 5.02 Allocation of Revenues .....
- 5.03 Application of Bond Fund .....
- 5.04 Application of Bond Reserve Fund .....
- 5.05 Application of Maintenance  
and Operation Fund .....
- 5.06 Rebate Fund; 1992 Series A Rebate Account ..
- 5.07 Application of Surplus Fund .....
- 5.08 Deficiencies in Bond Fund .....
- 5.09 Investment of Moneys in Funds .....

ARTICLE VI

PARTICULAR COVENANTS

- 6.01 Punctual Payment .....
- 6.02 Extension of Payment of Principal  
and Interest on the Bonds .....
- 6.03 Against Encumbrances .....
- 6.04 Power to Issue Bonds and  
Make Pledge .....
- 6.05 Payment of Taxes and Claims .....
- 6.06 Accounting Records and Financial  
Statements .....
- 6.07 Maintenance of Powers .....
- 6.08 Maintenance of Bond Reserve Fund .....
- 6.09 Tax Covenants .....
- 6.10 Compliance with Indenture,  
Contracts, Laws and Regulations .....
- 6.11 Collection of Liquid Fuel Taxes  
and Vehicle Registration  
and License Fees .....
- 6.12 Annual Budgets .....

Section

6.13	Construction and Maintenance of Highways ...	
6.14	Waiver of Laws .....	
6.15	Further Assurances .....	

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF BONDHOLDERS

7.01	Events of Default .....	4
7.02	Acceleration of Maturities .....	4
7.03	Application of Revenues and Other Funds After Default .....	4
7.04	Trustee to Represent Bondholders .....	4
7.05	Bondholders' Direction of Proceedings .....	4
7.06	Limitation on Bondholders' Right to Sue .....	4
7.07	Absolute Obligation of Government .....	4
7.08	Termination of Proceedings .....	4
7.09	Remedies Not Exclusive .....	5
7.10	No Waiver of Default .....	5

ARTICLE VIII

THE FIDUCIARIES

8.01	Duties, Immunities and Liabilities of Trustee and Depositary .....	51
8.02	Compensation .....	51
8.03	Liability of Trustee and Depositary .....	51
8.04	Right of Trustee and Depositary to Rely on Documents .....	51
8.05	Preservation and Inspection of Documents .....	54
8.06	Paying Agents .....	51

ARTICLE IX

MODIFICATION OR AMENDMENT OF THE INDENTURE

9.01	Amendments Permitted .....	55
9.02	Effect of Supplemental Indenture .....	57
9.03	Endorsement of Bonds; Preparation of New Bonds .....	57
9.04	Amendment of Particular Bonds .....	58

Section

ARTICLE X

DEFEASANCE

- 10.01 Discharge of Indenture .....
- 10.02 Discharge of Liability on Bonds .....
- 10.03 Deposit of Money or Securities with  
Trustee .....
- 10.04 Payment of Bonds after Discharge of  
Indenture .....

ARTICLE XI

MISCELLANEOUS

- 11.01 Liability of Government Limited to  
Revenues .....
- 11.02 Successor Is Deemed Included in All  
References to Predecessor .....
- 11.03 Limitation of Rights to Parties and  
Bondholders .....
- 11.04 Waiver of Notice .....
- 11.05 Destruction of Bonds .....
- 11.06 Severability of Invalid Provisions .....
- 11.07 Notice to Government, Trustee and  
Depositary .....
- 11.08 Evidence of Rights of Bondholders .....
- 11.09 Disqualified Bonds .....
- 11.10 Money Held for Particular Bonds .....
- 11.11 Funds and Accounts .....
- 11.12 Article and Section Headings and  
References .....
- 11.13 Waiver of Personal Liability .....
- 11.14 Saturdays, Sundays and Legal Holidays.....
- 11.15 Execution in Several Counterparts .....
- 11.16 Governing Law .....

Execution .....

Exhibit A Form of 1992 Series A Bond

THIS INDENTURE, made and entered into as of the first day of \_\_\_\_\_, 1992, by and among the GOVERNMENT OF GUAM, duly organized and existing under and by virtue of the laws of the United States of America (the "Government"), and [TRUSTEE], a \_\_\_\_\_ duly organized and existing under and by virtue of the laws of the \_\_\_\_\_, having a corporate trust office in \_\_\_\_\_, and being qualified to accept and administer the trusts here created (the "Trustee"), and [DEPOSITARY], a \_\_\_\_\_ banking \_\_\_\_\_ organized under the laws of the \_\_\_\_\_ and authorized to do business within Guam (the "Depositary"),

W I T N E S S E T H

WHEREAS, pursuant to Sections 6123 et seq. of the Government Code of Guam, as amended (the "Act"), the Legislature of Guam has authorized the Governor of Guam to borrow money for the purpose of implementing Capital Improvement Highway Projects, as defined herein; provided, however, that the terms and conditions of such borrowing shall be approved by the Legislature;

WHEREAS, the Legislature of Guam has, by P.L. No. \_\_\_\_\_ of the \_\_\_\_\_ Guam Legislature, 1992 (FIRST) Regular Session, approved the terms and conditions of the issuance of not to exceed \_\_\_\_\_ million Dollars (\$\_\_\_\_,000,000) principal amount of Government of Guam Limited Obligation Highway Bonds, 1992 Series A, the proceeds of which are to be used for such purposes and for the purpose of refunding bonds of the Government previously issued for such purpose;

WHEREAS, the Guam Economic Development Authority has approved the issuance and sale of said bonds as provided by the Act and by 12 Guam Code Annotated § 2103(k); and

WHEREAS, all acts, conditions and things required by the laws of the United States of America and the Government of Guam to exist, to have happened and to have been performed precedent to and in connection with the issuance of said Bonds exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the Government is now duly authorized and empowered, pursuant to each and every requirement of law, to issue said Bonds for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, and the premium, if any, and interest on, all Bonds at any time issued

and outstanding under this Indenture, according to tenor, and to secure the performance and observance covenants and conditions therein and herein set for declare the terms and conditions upon and subject t Bonds are to be issued and received, and in consid the premises and of the mutual covenants herein con of the purchase and acceptance of the Bonds by the thereof, and for other valuable considerations, the whereof is hereby acknowledged, the Government does covenant and agree with the Trustee and the Deposit the benefit of the respective holders from time to Bonds, as follows:

## ARTICLE I

### DEFINITIONS; CERTIFICATES

Section 1.01. Definitions. Unless the co otherwise requires, the terms defined in this Sectio for all purposes of this Indenture, and of any inder supplemental hereto and of any certificate, opinion document herein mentioned, have the meanings herein to be equally applicable to both the singular and pl of any of the terms herein defined.

#### Account

"Account" means each account established a designation pursuant to this Indenture or any Supple Indenture.

#### Accreted Value

"Accreted Value" means, with respect to any particular Bonds as of any given date of calculation amount equal to the sum of the principal amount of s plus accrued and unpaid interest on such Bonds as of date, but not including interest payable on a current least annually.

#### Act

"Act" means Sections 6123 et seq. of the G Code of Guam, as amended, and as it may from time to hereafter be amended or supplemented with respect to

#### Annual Debt Service

"Annual Debt Service" means, for any Bond Y sum of (1) the interest falling due on then Outstandi



(assuming that all then Outstanding Serial Bonds are retired on their respective maturity dates and that all then Outstanding Term Bonds are retired at the times of and in amounts provided for by the Mandatory Sinking Account Payments applicable to such Term Bonds), but not including Capitalized Interest, (2) the principal amount of then Outstanding Serial Bonds falling due by their terms (except any Serial Bonds due as part of a balloon payment on any Series of Bonds), and (3) the aggregate amount of all Mandatory Sinking Account Payments required (except any Sinking Fund Installments due as part of a balloon payment on any Series of Bonds); all as calculated for said Bond Year. For the purpose of determining the interest payable on Variable Rate Bonds, the interest rate used in the foregoing calculation shall be as specified in the provision using the term "Annual Debt Service", or if not so specified, shall be the actual interest rate for periods prior to the date of calculation and the prevailing interest rate of such Variable Rate Bonds as of the date of calculation for periods subsequent to the date of calculation.

#### Authorized Officer

"Authorized Officer" of the Trustee means and includes the chairman of the board of directors, the president, every vice president, every trust officer and any other officer or assistant officer of the Trustee, other than those specifically above mentioned, designated by a certificate of an Authorized Officer of the Trustee as an Authorized Officer for purposes of this Indenture.

#### Bond Counsel

"Bond Counsel" means an attorney or firm of attorneys having a national reputation for expertise in matters relating to governmental obligations the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code.

#### Bond Fund

"Bond Fund" means the fund by that name established pursuant to Section 5.01.

#### Bond Reserve Fund

"Bond Reserve Fund" means the fund by that name established pursuant to Section 5.01.

### Bond Reserve Fund Requirement

"Bond Reserve Fund Requirement" means an amount equal to Maximum Annual Debt Service, or such higher amount may be specified by Supplemental Indenture providing for issuance of a Series of Bonds, but not to exceed, with respect to any Series, an amount equal to 10% of the original principal amount of such Series. For purposes of this definition, the interest rate on each Variable Rate Bond shall be assumed to be \_\_\_\_\_.

### Bond Year

"Bond Year" means, with respect to the 1992 Series A Bonds, the period of twelve consecutive months ending on \_\_\_\_\_ 1 in any year in which 1992 Series A Bonds are or will be Outstanding, and, with respect to any other Series, any other annual 12-month period as may be specified by the Supplemental Indenture authorizing such Series.

### Bonds, Serial Bonds, Term Bonds, 1992 Series A Bonds

"Bonds" means the Government of Guam Highway Bonds authorized by, and at any time Outstanding pursuant to, the Supplemental Indenture.

"1992 Series A Bonds" means the Government of Guam Limited Obligation Highway Bonds, 1992 Series A, issued hereunder.

"Serial Bonds" means the Bonds, falling due by terms on specified dates, for which no Mandatory Sinking Fund Account Payments are provided.

"Term Bonds" means the Bonds payable at or before their specified maturity date or dates from Mandatory Sinking Fund Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

"Variable Rate Bonds" means Bonds which bear interest at a rate which may change from time to time.

### Business Day

"Business Day" means any day on which banks in the cities in which the Principal Offices of the Trustee and the Credit Provider are located are not required or authorized to close and on which the New York Stock Exchange is not closed.

### Capital Improvement Highway Projects

"Capital Improvement Highway Projects" means any project that expands or upgrades any portion of the territorial highway and village street network, including not limited to projects for new construction, relocation, reconstruction, major and minor widening, restoration and rehabilitation, resurfacing, replacement, safety improvements, traffic control improvements and environmentally related improvements. For purposes of this definition, the territorial highway and village street network includes, but is not limited to, routes, roads, bridges and other structures and traffic, control, service and safety facilities of the territorial highway and village street network.

### Capitalized Interest

"Capitalized Interest" means interest to be paid from the original proceeds of Bonds (including proceeds constituting accrued interest on the Bonds) and from income derived from the investment of such proceeds.

### Certificate, Order, Request, Requisition, or Statement of Government

"Certificate," "Order," "Request," "Requisition," and "Statement" mean, respectively, a written certificate, order, request, requisition, or statement, executed by the Governor or such other person as may be designated and authorized by the Governor to sign for the Government. Any such instrument and supporting opinions or representations, any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.02, each such instrument shall include the statements provided for in Section 1.02.

### Code

"Code" means the Internal Revenue Code of 1986 or any similar or successor federal law, including any applicable regulations thereunder.

### Construction Account

"Construction Account" means an account within the Construction Fund established with respect to a particular Series of Bonds and designated by reference to such Series.

### Construction Fund

"Construction Fund" means the fund by that name created pursuant to Section 3.03.

### Costs of Issuance

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Government and related to the authorization, issuance, and delivery of the Bonds, including but not limited to advertising costs, Bond and official statement printing costs of preparation and reproduction of documents, filing recording fees, initial fees and charges of the Trustee Depositary, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, Credit Facility fees or premiums, and expenses of counsel to any Credit Provider and any cost, charge or fee in connection with the original issuance of Bonds.

### Credit Agreement

"Credit Agreement" means any agreement between the Government and a Credit Provider pursuant to which such Provider agrees to provide a Credit Facility or pursuant to which the Government agrees to reimburse a Credit Provider for draws or advances under or claims made against a Credit Facility.

### Credit Facility

"Credit Facility" means the \_\_\_\_\_ dated as of \_\_\_\_\_, 1992, issued by the Credit Provider for the 1992 Series A Bonds, and any other instrument designated by a Supplemental Indenture as providing supplemental credit support for a Series of Bonds (including any such instrument substituting for a deposit in the Bond Reserve Fund).

### Credit Provider

"Credit Provider" means \_\_\_\_\_ a natural person or other person, firm or entity designated in a Supplemental Indenture as providing supplemental credit support for a Series of Bonds.

### Depository

"Depository" means, with respect to the 1992 Series A Bonds, [Depository], a \_\_\_\_\_ banking \_\_\_\_\_ organized under the laws of \_\_\_\_\_ and authorized to do business within Guam, or its successor, as Depository hereunder as provided in Section 8.01, and, with respect to any other Series of Bonds or any particular Fund Account, any bank or trust company or other financial institution with similar powers designated by a Supplemental Indenture or a Statement of the Government to act as Depository hereunder for such Series or such Fund or Account and, in each case, its successors and assigns.

### Escrow Agreement

"Escrow Agreement" means the Escrow Agreement of even date herewith, between the Government and the Prior Trustee.

### Escrow Fund

"Escrow Fund" means the fund of that name to be established by the Prior Trustee pursuant to the Escrow Agreement.

### Event of Default

"Event of Default" means any of the events specified in Section 7.01.

### Federal Securities

"Federal Securities" means (1) direct obligations of the United States of America for which the full faith and credit of the United States of America are pledged for the payment of principal and interest (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America); (2) obligations for which the payment of principal and interest is guaranteed directly by the full faith and credit of the United States of America; (3) obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (collectively, "Municipal Obligations") (a) which are fully secured as to principal and interest and redemption premium, if any, by an escrow or trust fund consisting only of cash or obligations of the character described in clauses (1) or (2) of this definition ("Government Obligations"), which fund may be applied only to the payment of interest on such municipal obligations when due and principal of and redemption premium,

if any, on such municipal obligations on the maturity date dates thereof or the redemption date or dates specified in irrevocable notice, as appropriate, (b) as to which the cash and the principal of and interest on the Government Obligations in such escrow or trust fund will be sufficient pay such interest, principal and redemption premium on such date or dates, and (c) which at the time of purchase are rated in the highest rating category by each Rating Agency; and (4) certificates which evidence ownership of the right to the payment of any specified portion of the principal of and interest on obligations described in clauses (1), (2) or (3) of this definition, provided that such obligations are held in a segregated account in the custody of a bank or trust company which is a member of the Federal Deposit Insurance Corporation (or its successor) and which has combined capital and surplus of not less than \$100,000,000.

#### Fiduciaries

"Fiduciaries" means the Trustee, the Depositary and any Paying Agents.

#### Fiscal Year

"Fiscal Year" means the period beginning on October 1 of each year and ending on the next succeeding September 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the Government.

#### Fund

"Fund" means each fund established and given a designation pursuant to this Indenture or any Supplemental Indenture.

#### Government

"Government" means the Government of Guam.

#### Governor

"Governor" means the Governor of Guam or any successor to the rights, powers and obligations thereof under the Act with respect to the Bonds.

#### Holder or Bondholder

"Holder" or "Bondholder" means the person in whose name a Bond is registered.

### Indenture

"Indenture" means this Indenture, as original executed or as it may from time to time be supplemented modified or amended by any Supplemental Indenture.

### Independent

"Independent" means, when used with respect to a given Person, that such Person (who may be selected and approved by the Government) is acceptable to the Trustee and (1) is in fact independent and, not under domination of the Government; (2) does not have any substantial interest, direct or indirect, with the Government; and (3) is not connected with the Government as an officer or employee of the Government but who may be regularly retained to provide services to the Government.

### Independent Consultant

"Independent Consultant" means any Independent certified public accountant, Independent engineer or other Independent consultant, who is in any case nationally recognized as being experienced in the preparation of feasibility studies for use in connection with the financing of highways.

### Interest Accrual Period

"Interest Accrual Period" means, for any particular Bond, each period between successive Interest Payment Dates for such Bond, including in each case in such period the concluding Interest Payment Date but not the beginning Interest Payment Date, and treating the date of original issuance of such Bond as if it were an Interest Payment Date for such Bond for this purpose.

### Interest Payment Date

"Interest Payment Date" means, for any particular Bond, each date specified as an Interest Payment Date for such Bond or Bonds by this Indenture or by the Supplemental Indenture authorizing the issuance of such Bond or Bonds for all Bonds, all such dates.

### Investment Securities

"Investment Securities" means any of the following which at the time are legal investments under the laws of the Government of Guam for moneys held hereunder and then proposed to be invested therein: (1) Federal Securities;

(2) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Bank for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Federal Land Banks, Federal National Mortgage Association, Government National Mortgage Association, Farmer's Home Administration, or Federal Home Loan Mortgage Corporation; (3) interest-bearing demand time deposits (including certificates of deposit) in banks and savings and loan associations, secured at all times, in the manner and to the extent provided by law, by Federal Securities and of a market value of no less than the amount of moneys so invested, but in no event shall the total amount of such deposits exceed 25% of the amount of the capital and undivided surplus or reserves of the bank or savings and loan association, less good will; (4) repurchase agreements with banks or savings and loan associations or with primary broker-dealers reporting to the Federal Reserve Bank of New York, the underlying securities of which are specifically designated and are Federal Securities, provided that, unless such seller's general obligations are rated "AA" or equivalent or better by at least one nationally recognized rating agency, the underlying securities are required to be maintained at a market value (valued at least weekly by the Trustee or the Depository) of not less than 103% of the amount of the repurchase price from time to time payable with respect thereto and are to be held in a separate, segregated account by or in the name of the Trustee or the Depository; (5) investment agreements (a) with banks or savings and loan associations which have general obligations, or whose holding companies have general obligations rated "AA" or equivalent or better highest rating categories by at least one nationally recognized rating agency or (b) which agreements are continuously secured by Federal Securities which have a market value (valued at least weekly by the Trustee or the Depository) of not less than 103% of the amount so invested; (6) obligations of any State of the United States of America or any political subdivision of such a State which are rated "AAA" or equivalent by at least one nationally recognized rating agency and payment of the principal of and interest on which is secured by an irrevocable escrow containing only noncallable Federal Securities principal of and interest on which, if paid when due, will be sufficient to pay the principal of and interest on such State or political subdivision obligations when due; (7) corporate bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation whose long-term debt is rated in one of the two highest rating categories of at least one nationally recognized rating agency; (8) Treasury bond coupon and principal strips; (9) taxable and tax-exempt commercial paper; (10) variable rate demand debt; (11) any cash sweep or



similar account arrangement the investments of which consist of other permitted Investment Securities; and (12) any other investment permitted under the laws of Guam for which confirmation is received from the two leading national rating agencies that such investment will not adversely affect the agencies' ratings on outstanding Bonds. Neither the Trustee nor the Depositary shall be deemed, by entering into this Indenture, to have agreed to make the valuation required by clauses (4) and (5) above, but such agreement by either the Trustee or the Depositary shall be a condition precedent to investment in obligations of the type described in such clauses.

#### Legislature

"Legislature" means the Legislature of Guam or its successor to the rights, powers and obligations thereof under the Act with respect to the Bonds.

#### Liquid Fuel Taxes

"Liquid Fuel Taxes" means the taxes or other similar charges on the sale of liquid fuel, including without limitation gasoline, diesel, aviation or marine fuel, whether now or hereafter levied or imposed by the Government pursuant to subchapter D of Chapter VI of Title XX of the Government Code of Guam, as amended, or any other provision of law.

#### Maintenance and Operation Expenses

"Maintenance and Operation Expenses" means the costs and expenses of the Fiduciaries and any Credit Providers, and amounts required to be deposited in the Rebate Fund and a portion of the costs of the maintenance of condition of the territorial highway and village street network, including but not limited to the routes, roads, bridges and other structures and traffic control, service and safety facilities of the territorial highway and village street network. Such expenses include, but are not limited to the costs of maintenance, operation and routine repair of,

- (a) roadway surface, shoulders, roadsides, drainage,
- (b) bridges and other structures (including substructures, superstructures and streambeds), and
- (c) traffic control, service and safety facilities, utilities

Maintenance and Operation Fund

"Maintenance and Operation Fund" means the fund by that name established pursuant to Section 5.01.

Mandatory Sinking Account Payment

"Mandatory Sinking Account Payment" means, as of a date of calculation with respect to any Series of Bonds, the amount required by this Indenture or any Supplemental Indenture to be paid by the Government on a given date for the retirement of Term Bonds of such Series.

Maximum Annual Debt Service

"Maximum Annual Debt Service" means, for any particular Bonds as of any date of calculation, Annual Debt Service on such Bonds for the Bond Year commencing on or after such date for which such sum shall be largest.

Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel (who may be counsel for the Government) selected by the Government. If and to the extent required by the provisions of Section 1.02, each Opinion of Counsel shall include the statements provided for in Section 1.02.

Outstanding

"Outstanding," when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the Government shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) referred to in Section 11.10; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

Paying Agent

"Paying Agent" means any paying agent appointed by or pursuant to Section 8.06 and its successors and assigns as provided in said Section.

### Person

"Person" means an individual, corporation, association, partnership, trust, or other legal entity, group of entities, including a governmental entity, agency or political subdivision thereof.

### Principal Office

"Principal Office" means, with respect to Trustee, the office of the Trustee in \_\_\_\_\_, and with respect to any other Fiduciary the office of such Fiduciary designated in the Supplemental Indenture; in each case at such address as the party may have designated for such purpose. The Principal Office of any Credit Provider shall be as specified in the Credit Provider pursuant to its Credit Facility or Agreement.

### Principal Payment Period

"Principal Payment Period" means, with respect to 1992 Series A Bonds, each period \_\_\_\_\_ with respect to any Bond of any other Series, each designated by the Supplemental Indenture authorizing the issuance of such Series.

### Prior Bonds

"Prior Bonds" means the Government of Guam Obligation Highway Bonds, 1985 Series A.

### Prior Indenture

"Prior Indenture" means the indenture, dated May 1, 1985, pursuant to which the Prior Bonds were issued.

### Prior Trustee

"Prior Trustee" means Bankers Trust Company, Trustee under the Prior Indenture, and its successors, assigns, and any other institution which may at any time be substituted in its place.

### Rebate Fund

"Rebate Fund" means the Fund by that name established pursuant to Section 5.01.

Record Date

"Record Date" means, for any particular payment of principal of or interest or premium on particular Bonds, each date specified as a Record Date for such Bonds by Section 2.02 or by the Supplemental Indenture authorizing the issuance of such Bonds.

Redemption Price

"Redemption Price" means, with respect to any Bond (or portion thereof if less than all of a Bond is to be redeemed) the principal amount of such Bond (or portion) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Indenture.

Revenues

"Revenues" means all amounts received by the Government, the Trustee or the Depository as proceeds of Liquid Fuel Taxes or as Vehicle Registration and License Fees, all interest, profits or other income derived from the investment of amounts in any Fund or Account established pursuant to this Indenture (other than investment income from the Rebate Fund), and any other amounts received by the Government, the Trustee or the Depository and pledged by any Supplemental Indenture in accordance with Section 3.04(B).

Revenue Fund

"Revenue Fund" means the fund by that name established pursuant to Section 5.01.

Series

"Series" or "Series of Bonds" means and refers to all Bonds of like designation authenticated and delivered on original issuance at the same time pursuant to this Indenture and any Bonds thereafter delivered in lieu of or substitution for any of such Bonds pursuant to this Indenture.

Sinking Accounts

"Sinking Accounts" means any special account or accounts established by any Supplemental Indenture or Indentures in the Bond Fund for the payment of Term Bonds.

### Supplemental Indenture

"Supplemental Indenture" means any indenture hereafter duly authorized under and in compliance with the Act, and entered into by and among the Government, the Trustee, and the Depository, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

### Surplus Fund

"Surplus Fund" means the fund by that name established pursuant to Section 5.01.

### Tax Certificate

"Tax Certificate" means a Certificate of the Government concerning the calculation of any amount due to the United States of America pursuant to Section 108 of the Code and any other matters relating to the exclusion of interest on Bonds from gross income for federal income tax purposes.

### Trustee

"Trustee" means \_\_\_\_\_, appointed by the Government and acting as an independent trustee hereunder with the duties and powers herein provided, and any corporation or association which may at any time be substituted in its place as such trustee, as provided in Section 8.01.

### Vehicle Registration and License Fees

"Vehicle Registration and License Fees" means fees and penalties now or hereafter imposed by Sections 7146, 7159, 7170, 7171, 7173 and 11101 of Title 16 of the Code Annotated, as amended, together with all other vehicle registration and license fees and penalties required to be charged and collected under the Act and this Indenture, plus the payment of the Bonds, the interest thereon and Maintenance Expenses and the maintenance of the Bond Redemption Fund.

Section 1.02. Content of Certificates and Opinions. Every certificate or opinion provided for hereunder with respect to compliance with any provision hereof, including each Certificate of the Government, shall include (1) a statement that the person making or giving the certificate or opinion has read such provision and that

definitions herein relating thereto; (2) a brief statement to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (3) a statement that, in the opinion of such person, he or she has made or caused to be made such examination or investigation is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in such instrument; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate or opinion made or given by an officer of the Government may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel or an accountant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Government) upon a certificate or opinion or representation by an officer of the Government, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the Government or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel or accountants may certify to different matters, respectively.

SECTION 1.03. Equal Security. In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Government and the Holders from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Government shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the Series, number or date thereof or the time of issue, sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.