

(13) the date or dates of maturity and Principal Payment Periods of Bonds of such Series and the manner of payment of principal of such Bonds;

(14) the rate or rates of interest or the manner of determining such rate or rates borne by the Bonds of such Series and the Record Dates and Interest Payment Dates for such Bonds;

(15) the Bonds of such Series which are Serial Bonds (if any) and the Bonds of such Series which are Term Bonds (if any);

(16) the terms of redemption, if any, of Bonds of such Series;

(17) the date and amount of each Mandatory Sinking Account Payment (if any) required to be paid by the Authority for the retirement of Term Bonds of such Series;

(18) the designation of any accounts to be established pursuant to this Indenture and any other accounts deemed advisable by the Authority;

(19) any tax or other covenants which, in the judgment of the Authority, are designed to insure that interest on such Series of Bonds will be excludable from gross income for federal income tax purposes and which are not inconsistent with the provisions of this Indenture; provided, however, that the Authority may, in its sole and absolute discretion, determine in connection with the authorization of a Series of Bonds that it will not make any such covenants because interest on such Series is not intended to be excludable from gross income for federal income tax purposes; and

(20) any other provisions deemed advisable by the Authority, not in conflict with or in substitution for the provisions of this Indenture (except as expressly permitted in this Indenture).

(B)(1) Before any Series of Bonds other than the initial Series shall be issued and delivered and before any Parity Payment Agreements are entered into, the Authority shall file the following documents with the Trustee:

(a) If and to the extent that an additional Series of Bonds is being issued, an Opinion of Counsel setting forth (i) that such counsel has examined the Supplemental Indenture; (ii) that the execution and delivery of the additional Series of Bonds have been duly authorized by the Authority; and (iii) that said additional Series of Bonds, when duly executed by the Authority and, if required, authenticated and delivered by the Registrar for such Bonds, will be valid and binding special obligations of the Authority, payable from Revenues as provided herein.

(b) A Certificate of the Authority that the requirement of Section 3.04(A)(1) has been met.

(c) (i) If and to the extent that an additional Series of Bonds is being issued for the purpose of providing moneys for deposit in a Construction Account, the following certificates:

(A) A certificate of a Consulting Engineer setting forth (I) the projected Date of Completion for the Project or Projects for which such Series of Bonds is being issued and for any other uncompleted Projects, and (II) an estimate of the cost of construction of such Projects;

(B) A written report of a Consulting Engineer setting forth for each Fiscal Year from the then current Fiscal Year through the later of (I) the first Fiscal Year commencing at least five years after the date of original issuance of such additional Series, or (II) the first Fiscal Year commencing at least three years after the Date of Completion projected by the Consulting Engineer pursuant to subparagraph (A) above, estimates of Revenues, Operation and Maintenance Expenses and Net Revenues; and

(C) A Certificate of the Authority (I) setting forth (a) the estimates of Revenues, Operation and Maintenance Expenses and Net Revenues, as set forth in the written report of a Consulting Engineer pursuant to subparagraph (B) above, for each of the Fiscal Years covered by such report, and (b) the Aggregate Annual Debt Service and Capitalized Interest for each of such Fiscal Years, including Annual Debt Service and Capitalized Interest on all future Series of Bonds, if any, which such Certificate of the Authority shall estimate (based on the estimate of the Consulting Engineer of the cost of construction of such Projects) are required to complete payment of the cost of construction of such Projects, and (II) demonstrating that for each of such Fiscal Years (a) Revenues are projected to be at least equal to the aggregate amount of all transfers required to be made pursuant to Section 5.02(A) through (E) and, to the extent applicable, otherwise required to provide for the payment of all obligations of the Authority to be paid from Revenues, and (b) Net Revenues are projected to be at least equal to 1.25 times Aggregate Annual Debt Service.

(ii) In lieu of the certificates and reports required by subparagraphs (i)(A), (B) and (C) above, the Authority may deliver to the Trustee a Certificate of the Authority to the effect that for the last complete Fiscal Year or any period of 12 consecutive calendar months out of the 18 calendar months next preceding the original issuance of such Series of Bonds, Net Revenues for such Fiscal Year or 12-month period equaled at least 1.25 times the Maximum Annual Debt Service on all Bonds then Outstanding plus the Series of Bonds being issued.

(iii) In addition, a Series of Bonds may be issued for the sole purpose of depositing in a Construction Account the amounts necessary to complete any one or more Projects without filing with the Trustee of the certificates and reports required by subparagraphs (i)(B) and (C), if such certificates and reports demonstrating compliance with such subparagraphs were filed in connection with the issuance of the prior Series of Bonds for each of such Projects and if the principal amount of such Bonds to be issued for completion purposes does not exceed ten percent (10%) of the principal amount of Bonds previously issued for and allocable to such Projects.

(d) If and to the extent that an additional Series of Bonds is being issued for the purpose of refunding Bonds, either (i) a certificate of an Independent Certified Public Accountant that Aggregate Annual Debt Service for each Fiscal Year thereafter will be less than or equal to Aggregate Annual Debt Service for each such Fiscal Year in the absence of such refunding, or (ii) the certificates and reports required by subsection (B)(1)(c)(i)(A) (if any one or more of the Projects for which the Bonds being refunded is not then completed), (B) and (C) of this Section; provided that in lieu of the certificates and reports required by subparagraphs (A), (B) and (C) of said subsection (B)(1)(c)(i), the Authority may deliver to the Trustee the certificate required by subsection (B)(1)(c)(ii).

(e) If and to the extent that a Parity Payment Agreement, other than a Parity Payment Agreement all payments pursuant to which have been taken into account for purposes of determining that the requirements of this subsection (B) have been satisfied with respect to the issuance of the Related Bonds, is being entered into, either (i) a certificate of an Independent Certified Public Accountant that Aggregate Annual Debt Service for each Fiscal Year thereafter will be less than or equal to Aggregate Annual Debt Service for each such Fiscal Year in the absence of such Parity Payment Agreement, or (ii) the certificates and reports required by subsection (B)(1)(c)(i)(B) and (C) of this

Section, in each case treating such Payment Agreement as in effect for purposes of any calculations; provided that in lieu of the certificates and reports required by subparagraphs (B) and (C) of said subsection (B)(1)(c)(i), the Authority may deliver to the Trustee the certificate required by subsection (B)(1)(c)(ii), treating such Payment Agreement as in effect for purposes of any calculations.

(2) In connection with the issuance of an additional Series of Bonds, upon the delivery to the Trustee of the foregoing instruments, the applicable Registrar shall authenticate and deliver said additional Series of Bonds, in the aggregate principal amount specified in such Supplemental Indenture, to, or upon the Order of, the Authority, when such additional Series of Bonds shall have been presented to it for that purpose.

SECTION 3.06 Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent on or affected in any way by any proceedings taken by the Authority for the improvement of the System, or by any contracts made by the Authority in connection therewith, or the failure to construct the System or any part thereof. The recital contained in the Bonds that the same are regularly issued pursuant to the Act shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

## ARTICLE IV

### REDEMPTION OF BONDS

SECTION 4.01 Terms of Redemption. Any Series of Bonds may be made subject to redemption prior to maturity, as a whole or in part, at such time or times, and upon payment of the principal amount thereof plus such premium or premiums, if any, as may be determined by the Authority at the time such Series is authorized and as shall be set forth in the Supplemental Indenture authorizing such Series; provided, however, that such Supplemental Indenture shall provide that the Authority shall have the right, on any date, to redeem the Bonds of any such Series, as a whole, or in part so that the reduction in Annual Debt Service for the Bonds of such Series for each Bond Year after such redemption shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in Section 6.11, at the principal amount thereof plus interest accrued thereon, without premium.

SECTION 4.02 Selection of Bonds for Redemption. For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of portions equal to their respective minimum authorized denomination, and any such portion may be separately redeemed. The applicable Registrar shall promptly notify the Authority, the Trustee and the Co-Trustee in writing of the Bonds or portions thereof selected for redemption. In the event that less than all of the Bonds of any Series and maturity are to be redeemed, the Bonds (or portions thereof) to be redeemed shall be selected by the Authority or, in the absence of such a selection by the Authority, by the applicable Registrar by lot within such maturity in such manner as the Registrar may determine. The amount of each Series and maturity of the Bonds to be redeemed shall be determined by Section 4.01 or the applicable Supplemental Indenture or, if permitted, by Request of the Authority.

In addition, a Supplemental Indenture providing for the issuance of Additional Bonds may specify any other method or order of selection of such Additional Bonds for redemption, subject to Section 4.01.

SECTION 4.03 Notice of Redemption. Notice of redemption (except as provided below) shall be given, not less than thirty (30) nor more than sixty (60) days before the date fixed for redemption, by first class mail to each of the registered owners of Bonds designated for redemption at their addresses appearing on the Bond registration books of the applicable Registrar on the date the Bonds to be redeemed are selected. Each notice of redemption shall state the redemption date, the place or places of redemption, the Series and maturities to be redeemed, and, if less than all of any such maturity, the numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, and shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered, with a written instrument of transfer duly executed by the registered owner thereof or by such registered owner's attorney duly authorized in writing. No defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of such Bonds. Each notice of redemption shall also state the CUSIP number, date of issue and interest rate on each Bond, or portion thereof, to be redeemed, and shall include the redemption agent name and address; provided, however, that failure to include any of such information in any redemption notice, or any inaccuracy in any such information, shall not affect the sufficiency of the proceedings for redemption of any Bonds.

A copy of any notice of redemption given pursuant to the foregoing paragraph shall also be sent by first class mail to each Owner of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed and to each of the Fiduciaries, each of the Credit Providers, the Securities Depositories (as defined below) and two or more Information Services (as defined below); provided, however, that failure to give notice pursuant to this sentence by certified mail to any Bondowners, to any Fiduciaries, to any Credit Providers or to any Securities Depositories or Information Services, or the insufficiency of any such notices, shall not affect the sufficiency of the proceedings for redemption of any Bonds. A second notice shall be sent by first class mail to the registered owner of any Bond which has been called for redemption in whole or in part, and is not surrendered for payment within sixty (60) days after the date fixed for redemption; provided, however, that failure to send any such second notice, or any deficiency of any such notice, shall not affect the sufficiency of the proceedings for redemption of any Bonds. As used in this paragraph, the term "Information Services" means Financial Information, Inc.'s "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services' "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's "Municipal and Government," 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; and Standard and Poor's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then-current guidelines of the Securities and Exchange Commission, and/or such other services providing information with respect to called bonds, or no such services, as the Authority may designate in a Certificate delivered to the Trustee; and the term "Securities Depositories" means: The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; and/or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no such depositories, as the Authority may designate in a Certificate delivered to the Trustee.

Notice of redemption of Bonds shall be given by the applicable Registrar for and on behalf of the Authority.

A Supplemental Indenture providing for the issuance of Bonds may provide that notice of the redemption of such Bonds shall be given at times and in a manner different from that specified above.

SECTION 4.04 Partial Redemption. Upon surrender of any Bond redeemed in part only, the Authority shall execute and the applicable Registrar shall authenticate and deliver to the registered owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations, and of the same Series, maturity and tenor, equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

SECTION 4.05 Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys being held by the Trustee, the Co-Trustee or Paying Agents for payment of the Redemption Price of, and interest accrued to the redemption date on, the Bonds (or portions thereof) so called for redemption on the redemption date designated in such notice, such Bonds (or such portions) shall become due and payable at the Redemption Price specified in such notice plus interest accrued thereon to the date fixed for redemption, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Bonds purchased or redeemed pursuant to the provisions of this Indenture shall be cancelled upon surrender thereof and delivered to or upon the Order of the Authority.

SECTION 4.06 Rescission of Notice of Redemption. The Authority may, at its option and expense, prior to the date fixed for redemption in any notice of redemption rescind and cancel such notice of redemption.

## ARTICLE V

### REVENUES AND FUNDS

SECTION 5.01 Pledge and Assignment of Revenues; Revenue Fund. (A) Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein and to the provisions of that certain Consent Decree dated April 24, 2003 and the related Order dated May 9, 2003, relating to *United States of America v. Government of Guam* (settling a lawsuit filed on behalf of the U.S. Navy against the Government and the Authority), there are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of this Indenture and the payment of Credit Agreement Payments and Parity Payment Agreement Payments in accordance with their terms, all of the Revenues. Said pledge shall constitute a lien on and security interest in such Revenues and shall attach, be perfected and be valid and binding from and after delivery by the applicable Registrar of the first Series of Bonds hereunder, without any physical delivery of such Revenues or further act.

(B) The Depository for the Revenue Fund shall maintain and hold in trust the Revenue Fund so long as any Bonds, Credit Agreement Payments, or Parity Payment Agreement Payments remain Outstanding. The Authority shall deposit all Revenues upon the receipt thereof in the Revenue Fund. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein and therein, the Trustee and the Depository shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, the Co-Trustee and the Depository for the Revenue Fund and shall forthwith be paid by the Authority to such Depository.

(C)(1) In addition to the Revenue Fund, the Depository for the Revenue Fund shall establish within the Revenue Fund and maintain and hold in trust hereunder additional separate funds designated as follows:

- (a) The "Operation and Maintenance Fund";
- (b) The "Subordinate Securities Fund" (which may be held by the applicable trustee or depository for any Subordinate Securities);
- (c) the "Operation, Maintenance, Renewal and Replacement Reserve Fund";
- (d) the "Rate Stabilization Fund";
- (e) the "Capital Improvement Fund"; and
- (f) the "Rebate Fund".

The Operation, Maintenance, Renewal and Replacement Reserve Fund, the Rate Stabilization Fund and the Capital Improvement Fund may also be held by any one or more Depositories other than the Depository for the Revenue Fund.

(2) The Co-Trustee shall establish, maintain and hold in trust the following additional fund and accounts:

- (a) the Debt Service Fund (within the Revenue Fund); and
- (b) the Bond Reserve Fund (within the Revenue Fund).

(D) All moneys at any time deposited with the Trustee, the Co-Trustee or any Depository, as the case may be, shall be held by the Trustee, the Co-Trustee or such Depository, as the case may be, in trust for the benefit of the Owners at any time of the Bonds (and, to the extent any Credit Agreement Payment is due and payable, for the benefit of the applicable Credit Provider), and the Authority shall have no beneficial right or interest in any of such moneys, except as in this Indenture provided. All Revenues and other moneys so deposited shall be held, disbursed, allocated and applied only as provided in this Indenture.

**SECTION 5.02**      Allocation of Revenues. On or before the fifth day of each calendar month, after providing for any amounts due under the Consent Decree described in Section 5.01 for which revenues from the Navy/GPA Surcharge are not available to pay, the Depository for the Revenue Fund shall transfer from the Revenue Fund (to the Trustee as necessary) for deposit into one or more of the following respective separate funds, the following amounts in the following order of priority, the requirements of each such fund or account (including the making up of any deficiencies in any such fund or account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied, and the results of such satisfaction being taken into account, before any transfer is made to any fund subordinate in priority:

(A) into the Operation and Maintenance Fund, an amount equal to the amount of Operation and Maintenance Expenses budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, to be paid from Revenues during the next succeeding calendar month

(including any amount to be held as a reserve for transfer to the Rebate Fund) plus the amount of any Other Credit Agreement Payments then due and payable or to become due and payable during such month not otherwise included in such amount;

(B) into the Debt Service Fund held by the Co-Trustee, an amount equal to the amount necessary to increase the amount in the Debt Service Fund to the aggregate amount for all Outstanding Bonds of all unpaid interest, principal and Mandatory Sinking Account Payments and for all Outstanding Parity Payment Agreements of all Parity Payment Agreement Payments with respect thereto and for all Outstanding Credit Agreements of all Credit Agreement Reimbursement Payments due and payable to the extent not otherwise included in such amount which shall be required to have been transferred to the Debt Service Fund on the basis of the following transfer requirement rules (after taking into account amounts transferred and to be transferred from any Construction Account to pay Capitalized Interest):

- (1) an amount equal to the amount of interest payable on each Bond on a current uncompounded basis on any Interest Payment Date shall be transferred in equal monthly amounts over the Interest Accrual Period for such Bond ending on such Interest Payment Date (or in the case of Variable Rate Bonds 110% of the amount of interest accrued during the next preceding calendar month less any excess deposited for the next preceding calendar month); provided that to the extent that a Qualified Counterparty is obligated to make payments to the Authority on or prior to such Interest Payment Date pursuant to an Outstanding Payment Agreement Related to any Bonds, an amount equal to the amount of any such payment obligation shall be transferred from the Revenue Fund to the Debt Service Fund on the date such payment is due and the amount of each monthly transfer with respect to such Bonds required by this subparagraph (1) during the Interest Accrual Period (or portion thereof) over which such payment obligation accrues shall be reduced by an amount equal to the amount of such Qualified Counterparty's payment obligation accruing during the next preceding calendar month;
- (2) the amount of interest payable on each Bond on a deferred compounded basis on any Interest Payment Date shall be transferred in substantially equal monthly amounts over the period during which such interest accrues on such basis;
- (3) the amount of the principal of each Bond shall be transferred in equal monthly amounts over the Principal Payment Period for such Bond ending on the maturity date for such Bond;
- (4) the amount of each Mandatory Sinking Account Payment for Bonds shall be transferred in equal monthly amounts over the Principal Payment Period for such Bonds ending on the date such Mandatory Sinking Account Payment is due;
- (5) the amount of any Parity Payment Agreement Payment payable on any Payment Agreement Payment Date shall be transferred (a) in the case of such payments calculated based on a fixed rate, in equal monthly installments over the Payment Agreement Payment Accrual Period for such Payment Agreement Payment ending on such Payment Agreement Payment Date and (b) in the case of such payments calculated based on a variable rate, in monthly installments equal to 110% of the amount of such obligation accrued during the next preceding calendar month less any excess deposited for the next preceding calendar month; and
- (6) to the extent not otherwise included in amounts described in subparagraphs (1) through (5) above, the amount of any Credit Agreement Reimbursement Payment due and payable shall be transferred.

(C) into the Bond Reserve Fund held by the Co-Trustee, the amount, if any, needed to increase the amount in the Bond Reserve Fund to the Bond Reserve Fund Requirement as of the date of such transfer;

(D) into the Subordinate Securities Fund (and any accounts therein), the amount, if any, needed to increase the amount in such Fund and each such account to its requirement (including any requirements for reasonable debt service reserves and requirements related to Payment Agreements that constitute Subordinate Securities (including Termination Payments)) established by each resolution, indenture or other instrument pursuant to which Subordinate Securities are issued and outstanding;

(E) into the Operation, Maintenance, Renewal and Replacement Reserve Fund, the amount, if any, needed to increase the amount in the Operation, Maintenance, Renewal and Replacement Reserve Fund to an amount equal to one-fourth (1/4) of the sum of the amounts of Operation and Maintenance Expenses and Renewal and Replacement Costs budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, for the then current Fiscal Year;

(F) into the Rate Stabilization Fund, the amount specified for such month in a Certificate of the Authority which also certifies that such amount is consistent with the annual budget established by the Authority pursuant to Section 6.08; and

(G) into the Capital Improvement Fund, the balance remaining in the Revenue Fund after the foregoing deposits.

SECTION 5.03      Application of Operation and Maintenance Fund. All amounts in the Operation and Maintenance Fund shall be used and withdrawn by the Authority upon Requisition solely for the purpose of paying Operation and Maintenance Expenses; provided that any amounts deposited in the Operation and Maintenance Fund for the purpose of paying Other Credit Agreement Payments shall be used and withdrawn only for the purpose for which they were deposited. For purposes of this Section, any check, draft or warrant of the Authority executed by an officer or employee of the Authority duly authorized by resolution of the Board of Directors of the Authority to execute such instruments shall be treated as a Requisition.

SECTION 5.04      Rebate Fund.

(A) If and to the extent required by the Supplemental Indenture providing for the issuance of a Series of Bonds, the Trustee shall establish and maintain within the Rebate Fund a separate Rebate Account for such Series. There shall be deposited in such Rebate Account from amounts in the Operation and Maintenance Fund or other lawfully available moneys such amounts as are required to be deposited therein pursuant to the Tax Certificate with respect to such Series of Bonds. All money at any time deposited in a Rebate Account shall be held by the Trustee in trust, and shall be governed exclusively by this Section and by the Tax Certificate with respect to such Series of Bonds.

(B) Notwithstanding any provisions of this Section, if the Authority shall provide to the Trustee an opinion of Bond Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion, if any, from gross income for federal income tax purposes of interest on any Series of Bonds, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding Article IX of this Indenture, the covenants hereunder shall be deemed to be modified to that extent.



SECTION 5.05 Application of Debt Service Fund. (A) Subject to subsection (C) of this Section, all amounts in the Debt Service Fund shall be used and withdrawn by the Co-Trustee solely for the purpose of (1) paying interest on Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), (2) paying the principal of Serial Bonds when due and payable, (3) purchasing or redeeming or paying at maturity Term Bonds as provided in this Section, (4) paying Parity Payment Agreement Payments due and payable, and (5) paying Credit Agreement Reimbursement Payments due and payable.

(B) Subject to subsection (C) of this Section, on each Mandatory Sinking Account Payment date, the Co-Trustee shall apply the Mandatory Sinking Account Payment or Payments required on that date to the redemption (or payment at maturity, as the case may be) of the applicable Term Bonds upon the notice and in the manner provided in Article IV. At any time prior to giving such notice of such redemption, the Co-Trustee, upon the Request of the Authority, shall apply moneys in the Debt Service Fund, in an amount not in excess of such Mandatory Sinking Account Payment, to the purchase of the applicable Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges) as are specified in such Request, except that the purchase price (excluding accrued interest) shall not exceed the price that would be payable for such Bonds upon redemption by application of such Mandatory Sinking Account Payment.

(C) If (1) during the twelve-month period immediately preceding a Mandatory Sinking Account Payment date the Co-Trustee purchases the applicable Term Bonds with moneys in the Debt Service Fund, or (2) during said period and prior to giving notice of redemption the Authority otherwise deposits the applicable Term Bonds with the Co-Trustee (together with a Request of the Authority to apply such Bonds so deposited to the Mandatory Sinking Account Payment due on said date), the amount of Bonds so purchased or deposited shall be credited at the time of such purchase or deposit, to the extent of the full principal amount thereof, to reduce such Mandatory Sinking Account Payment. All Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Co-Trustee.

(D) With respect to each series of Bonds for which proceeds of the sale thereof are required to be set aside to pay interest on the Bonds, the Co-Trustee (if so instructed by the Supplemental Indenture providing for the issuance of such series) shall transfer from the Construction Fund and deposit in the Debt Service Fund the amounts at the times specified in the Supplemental Indenture providing for the issuance of such Series.

SECTION 5.06 Application of Bond Reserve Fund. All amounts in the Bond Reserve Fund shall be used and withdrawn by the Co-Trustee solely for the purpose of paying debt service on Bonds (including Payment Agreement Payments to the extent provided in any Supplemental Indenture) in the event of a deficiency in the Debt Service Fund, in the manner and to the extent set forth in Section 5.12. So long as the Authority is not in default hereunder, any amount in the Bond Reserve Fund in excess of the Bond Reserve Fund Requirement shall be transferred to the Revenue Fund. A Supplemental Indenture providing for the issuance of a Series of Bonds may provide that income derived from the investment of the proceeds of such Series in the Bond Reserve Fund prior to the completion of each Project for which such Bonds were issued shall be deposited in the Construction Account for such Project. Otherwise, such income shall be deposited in the Revenue Fund.

If and to the extent provided by Supplemental Indenture, the Bond Reserve Fund Requirement may be wholly or partially satisfied by a Credit Facility. Notwithstanding anything to the contrary contained hereinbefore in this Section or in Article IV, such Supplemental Indenture may also provide that a draw on such Credit Facility shall be made only after all cash in the Bond Reserve Fund has been withdrawn, and that if a drawing or other claim on such Credit Facility is honored, amounts available under Section 5.02(C) for deposit in the Bond Reserve Fund shall be applied by the Co-Trustee

to reimburse, as soon as practicable, the amount of each payment honoring such drawing or other claim, and the Trustee shall give any notice of such reimbursement required by the applicable Credit Agreement. No such Credit Facility shall be given any priority over any other such Credit Facility as to draws or repayments.

SECTION 5.07      Application of Subordinate Securities Fund. All amounts in the Subordinate Securities Fund may be used and withdrawn, as directed by a Request of the Authority, for the purpose of paying debt service due on Subordinate Securities, amounts due pursuant to Payment Agreements (including Termination Payments), funding or replenishing reasonable reserves and meeting other requirements of the instrument pursuant to which such Subordinate Securities are issued.

SECTION 5.08      Application of Operation, Maintenance, Renewal and Replacement Reserve Fund. All amounts in the Operation, Maintenance, Renewal and Replacement Reserve Fund shall be used and withdrawn upon Requisition of the Authority solely for the purposes of (A) paying Operation and Maintenance Expenses if and to the extent that amounts on deposit in the Operation and Maintenance Fund are insufficient for such purpose, (B) paying Renewal and Replacement Costs budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, for the then current Fiscal Year, and (C) paying the costs of repair or replacement of loss or damage caused by or resulting from fire or from action of the elements (including loss from typhoons, earthquakes, floods and tidal waves), whether or not such costs are Operation and Maintenance Expenses or Renewal and Replacement Costs. For purposes of this Section, any check, draft or warrant of the Authority executed by an officer or employee of the Authority duly authorized by resolution of the Board of Directors of the Authority to execute such instruments shall be treated as a Requisition.

SECTION 5.09      Application of Rate Stabilization Fund. All amounts in the Rate Stabilization Fund shall be transferred by the Authority from time to time to the Revenue Fund in the amounts specified by a Certificate of the Authority which also certifies that such amount is consistent with the annual budget established by the Authority pursuant to Section 6.08.

SECTION 5.10      Application of Capital Improvement Fund. Except as may be otherwise set forth in a Supplemental Indenture, all amounts in the Capital Improvement Fund may be used and withdrawn by the Authority for any lawful purpose of the Authority or may be transferred to the Revenue Fund, in each case upon Request of the Authority. The Authority may direct the appropriate Depository to establish accounts within the Capital Improvement Fund for appropriate purposes, and may restrict the purposes for which amounts in any such account may be used and withdrawn so long as such purposes are lawful purposes.

SECTION 5.11      Deficiencies in Funds or Accounts. In the event that the amount in any Fund or Account is insufficient for the purposes for which such Fund or Account was established, the Co-Trustee, or the Trustee or the Depository upon the direction of the Co-Trustee, shall transfer to such Fund or Account the amount of such deficiency by withdrawing said amount from subordinate Funds and Accounts in reverse order of the priority set forth in Section 5.02 and prior to any other claims upon such Funds and Accounts, subject only to the limitation that amounts in the Bond Reserve Fund shall only be used as provided in Section 5.06. If after making all such transfers, the amount in the Debt Service Fund is insufficient, the Co-Trustee shall promptly notify each Credit Provider of the amount of such insufficiency.

SECTION 5.12      Investment of Moneys in Funds. All Investment Securities and any other investments acquired with moneys held hereunder shall be acquired subject to the limitations of any covenant relating to the exclusion of interest on Bonds from gross income for federal income tax purposes, to the limitations as to maturities hereinafter in this Section set forth and to such additional

limitations or requirements consistent with the foregoing as may be established by Request of the Authority. No Investment Security which is subject to redemption at the option of the issuer may be purchased at a premium above the amount of the premium payable upon any such redemption.

Moneys in the Construction Accounts, the Rebate Fund, the Debt Service Fund and the Bond Reserve Fund shall be invested solely in Investment Securities to maximize investment income, with proper regard for the preservation of principal, pursuant to a Request of the Authority as to such investment. In the absence of any different instruction, such moneys shall be invested in Investment Securities described in clause (6) of the definition thereof.

Moneys in the Revenue Fund, the Operation and Maintenance Fund, the Subordinate Securities Fund, the Operation, Maintenance, Renewal and Replacement Reserve Fund and the Capital Improvement Fund may be invested in any investment designated by Request of the Authority.

Notwithstanding any other provision hereof, moneys in the Revenue Fund and the Bond Reserve Fund shall be invested only in Investment Securities having at least an investment grade rating from the Rating Agency.

Subject to the provisions of any Supplemental Indenture, Moneys in all Funds and Accounts established under this Indenture shall be invested in investments paying interest and maturing not later than the dates on which it is estimated that such moneys will be required by the Trustee, the Co-Trustee, the applicable Depositary or the Authority.

All interest and other profit derived from such investments shall be deposited in the Revenue Fund when received, except that interest and other profit derived from the investment of moneys in the Construction Accounts, the Capital Improvement Fund and the Rebate Fund shall be retained in such respective Fund or Account, and except that interest and other profit derived from the investment of moneys in the Bond Reserve Fund shall be deposited as provided in Section 5.06. Investments acquired as an investment of moneys in any Fund or Account established under this Indenture shall be credited to such Fund or Account.

Subject to the provisions of any Supplemental Indenture, for the purpose of determining the amount in any Fund or Account, except the Rebate Fund, the amount of any obligation allocable to such Fund or Account shall be equal to the purchase price of such obligation (not including accrued interest, if any, paid on the purchase of such obligation) plus the amount of any discount below par accounting for any such discount ratably each year over the term of such obligation (i.e., by dividing the amount of such discount by the number of interest payments remaining to maturity and by multiplying the amount so calculated by the number of interest payment dates having passed since the date of purchase) (in this Section called "amortized value"); provided, however, that the amount of any accrued interest on any obligation may be credited to the Revenue Fund or to any Fund or Account to which such amount or any portion thereof may have been transferred from the Revenue Fund.

The Trustee, the Co-Trustee or the applicable Depositary may sell at the best price obtainable, or present for redemption, any security purchased hereunder whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Fund or Account to which such security is credited, and the Trustee, the Co-Trustee and such Depositary shall not be liable or responsible for any loss resulting from such investment.

## ARTICLE VI

### CERTAIN COVENANTS

SECTION 6.01 Payment of Principal and Interest. The Authority will punctually pay or cause to be paid the principal and interest (and premium, if any) to become due in respect of every Bond issued hereunder at the times and places and in the manner provided herein and in the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, but solely from Revenues and other moneys held in trust hereunder, as provided herein.

SECTION 6.02 Against Encumbrances. Subject to any rights of the United States of America or as otherwise set forth herein, the Authority will not mortgage or otherwise encumber, pledge or place any charge upon the System or any part thereof, or upon any of the Revenues, prior to or on a parity with the Bonds, the Parity Payment Agreements and Credit Agreement Payments.

So long as any Bonds are Outstanding, the Authority will not issue any bonds or obligations payable from Revenues or secured by a pledge, lien or charge upon Revenues prior to or on a parity with the Bonds, the Parity Payment Agreements and the Credit Agreement Payments, other than the Bonds, the Parity Payment Agreements and the Credit Agreement Payments.

Except as may be otherwise set forth in a Supplemental Indenture, nothing in this Indenture, and particularly nothing in the preceding two paragraphs, shall prevent the Authority from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness which as to principal or interest, or both, (1) are payable from Revenues after and subordinate to the payment from Revenues of the principal of and interest on the Bonds, the Parity Payment Agreement Payments and Credit Agreement Payments, or (2) are payable from moneys which are not Revenues as such term is defined in this Indenture.

SECTION 6.03 Sale or Other Disposition of Property. (A) The Authority [and the Government] will not sell or otherwise dispose of the System or any part thereof, or permit others to sell or otherwise dispose of the System or any part thereof, essential to the proper operation of the System or to the collection of Revenues sufficient to pay debt service on the Bonds, Parity Payment Agreement Payments and Credit Agreement Payments and otherwise comply with Section 6.12. The Authority will not enter into any agreement which impairs the operation of the System or impedes the collection of Revenues sufficient to pay debt service on the Bonds, Parity Payment Agreement Payments and Credit Agreement Payments and otherwise comply with Section 6.12.

(B) Any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the System, or any material or equipment which has worn out, may be sold at a price not less than the fair market value thereof if such sale will not reduce Net Revenues and if the net proceeds of such sale are deposited in the Revenue Fund.

SECTION 6.04 Operation and Maintenance of the System. The Authority will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with prudent management and standards customarily followed in the industry for systems of like size and character. The Authority will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost. The Authority will operate the System in an efficient and economical manner, consistent with the protection of the Owners of the Bonds and so as to assure that the System shall be financially self-sufficient and self-sustaining. The Authority

shall not commit or allow any waste with respect to the System. Nothing herein shall prohibit the Authority from subcontracting any part of the maintenance and operation of the System.

SECTION 6.05 Liens and Claims. Subject to any rights of the United States of America, the Authority shall keep the System and all parts thereof free from judgments, from mechanics' and materialmen's liens and from all liens and claims of whatsoever nature or character, to the end that the security provided pursuant to this Indenture may at all times be maintained and preserved, and the Authority shall keep the System and the Revenues free from any liability which might hamper the Authority in conducting its business or operating the System. The Trustee or and Co-Trustee at its option (after first giving the Authority ten days' written notice to comply therewith and failure of the Authority to so comply within said ten-day period) may defend against any and all actions or proceedings in which the validity of this Indenture is or might be questioned, or may pay or compromise any claim or demand asserted in any such actions or proceedings; provided, however, that, in defending against such actions or proceedings or in paying or compromising such claims or demands, the Trustee or the Co-Trustee shall not in any event be deemed to have waived or released the Authority from liability for or on account of any of its covenants and warranties contained herein, or from its liability hereunder to defend the validity of this Indenture and the pledge herein made and to perform such covenants and warranties.

SECTION 6.06 Insurance.

(A) The Authority will maintain or cause to be maintained insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable cost. In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of the System; and the Authority shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the Authority shall deposit such excess in the Capital Improvement Fund. Notwithstanding the foregoing, if the proceeds of such insurance, together with other moneys available for such purpose, are sufficient to enable the Authority to retire all Outstanding Bonds, whether at maturity or on redemption prior to maturity or any combination thereof, and to pay the Parity Payment Agreement Payments and any Termination Amount payable by the Authority pursuant to Parity Payment Agreements in connection with a termination thereof, and to pay any Credit Agreement Payments then due and payable the Authority may elect not to repair, reconstruct or replace the damaged or destroyed portion of the System, and thereupon, the proceeds of such insurance shall be applied by the Authority and the Trustee to the payment when due of the interest to become due on all Outstanding Bonds on and prior to the maturity date or redemption date thereof, as the case may be, to the payment of the principal of and redemption premiums, if any, on all Outstanding Bonds at maturity or on redemption prior to maturity, as the case may be, and to the payment of such Parity Payment Agreement Payments and any such Termination Amounts, as the case may be, when due and to pay any Credit Agreement Payments then due and payable.

(B) The Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of systems similar to the System.

(C) Any insurance required under this Section may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner customarily maintained by prudent operators of systems similar to the System. The Authority shall, every third year, engage an insurance consultant to review the Authority's self-insurance program and to make recommendations for any necessary modifications, including, but not limited to, any modifications necessary to comply with this Section. Each such report shall be filed with the Trustee.

**SECTION 6.07**      Books and Accounts; Financial Statements. (A) The Authority will keep proper books of record and accounts, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Trustee, the Co-Trustee or any Owner of Bonds then Outstanding or their representatives authorized in writing, at reasonable hours and under reasonable conditions.

(B) The Authority will prepare and file with the Trustee and the Co-Trustee annually within nine months after the close of each Fiscal Year so long as any of the Bonds are Outstanding --

(1) financial statements for the preceding Fiscal Year, prepared in accordance with (i) the accounting requirements of this Indenture and (ii) generally accepted accounting principles applied on a consistent basis from year to year, including a balance sheet, statement of income, statement of retained earnings, and statement of changes in financial position (including a statement of revenue, expenditures and fund balances for each of the Funds and Accounts established pursuant to this Indenture), and including a reconciliation between the bases of accounting required under clauses (i) and (ii) above, which financial statements shall be examined by and include the certificate or opinion of an Independent Certified Public Accountant, such certificate or opinion to include a statement as to the manner and extent to which the Authority has complied with the provisions of this Indenture as it relates to said financial statements; and

(2) a statement as to all insurance carried by the Authority as of the end of such Fiscal Year, including a brief description of the amount and coverage of each insurance policy and the name of the insuring company.

The Authority will furnish a copy of the aforesaid statements to any Credit Provider and to any Bondowner upon request, and will furnish to the Trustee such reasonable number of copies thereof (not exceeding 100 copies) as may be required by the Trustee for distribution to investment bankers, securities dealers and others interested in the Bonds and to the Owners of Bonds requesting copies thereof. The Trustee shall not be required to incur any nonreimbursable expenses in making such distribution.

**SECTION 6.08**      Authority Budgets. Prior to the commencement of each Fiscal Year, the Authority shall prepare and adopt an annual budget for such Fiscal Year. Such budget shall set forth in reasonable detail the Revenues anticipated to be derived in such Fiscal Year and the expenditures anticipated to be paid or provided for therefrom in such Fiscal Year including, without limitation, the amounts required to provide for the payment of the principal of, interest and redemption premium, if any, on the Bonds during such Fiscal Year, to pay or provide for Operation and Maintenance Expenses for such Fiscal Year, to pay or provide for Renewal and Replacement Costs for such Fiscal Year, to make up any deficiencies in any Fund or Account anticipated for the then current Fiscal Year, to transfer to or from the Rate Stabilization Fund each month, and to pay or provide for the payment of all other claims or obligations required to be paid from Revenues in such Fiscal Year, and shall show that Net Revenues shall be at least adequate to satisfy the requirements of Section 6.12. The Authority shall supply to the Trustee, the Co-Trustee, the Revenue Fund Depository, any Credit Provider and any Bondowners who

shall so request in writing a copy of the annual budget for the then current Fiscal Year. Such budget shall also be open for inspection by any Owner during normal business hours. The Authority may at any time adopt a revised annual budget and shall supply copies as aforesaid.

SECTION 6.09 Payment of Taxes, Etc. The Authority will pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Authority on account of the System or any portion thereof or upon any Revenues and which, if unpaid, might impair the security of the Bonds, when the same shall become due, but nothing herein contained shall require the Authority to pay any such tax, assessment or charge so long as it shall in good faith contest the validity thereof. The Authority will duly observe and conform with all valid requirements of any governmental authority having jurisdiction over the Authority or the System or any part thereof.

SECTION 6.10 Acquisition and Construction of Improvements. The Authority will commence and will continue to completion the acquisition and construction of the improvements to the System proposed to be financed from any Series of Bonds, and said improvements will be acquired, constructed and completed in a sound and economical manner and in conformity with law.

SECTION 6.11 Eminent Domain Proceeds. If all or any part of the System shall be taken by or under threat of eminent domain proceedings, the net proceeds realized by the Authority therefrom (excluding any portion thereof payable to the United States of America or required by the United States of America to be deposited in a restricted fund) shall be deposited by the Treasurer in a special fund in trust and applied and disbursed by the Treasurer subject to the following conditions:

(A) If such proceeds are sufficient to provide for the payment of the entire amount of principal due or to become due upon all of the Bonds, together with all of the interest due or to become due thereon and any redemption premiums, and all amounts payable under Parity Payment Agreements (including Termination Amounts) and all Credit Agreement Payments then due and payable so as to enable the Authority to retire all of the Bonds, either by redemption at the then current redemption prices or by payment at maturity or partly by redemption prior to maturity and partly by payment at maturity, and terminate such Parity Payment Agreements and discharge such obligations with respect to such Credit Agreement Payments, the Treasurer shall transfer such moneys to the Trustee who shall apply such moneys to such retirement and to the payment of such amounts. The balance of such moneys, if any, shall be transferred back to the Authority and shall be deposited in the Capital Improvement Fund.

(B) If such proceeds are insufficient to provide the moneys required for the purposes set forth in the foregoing subsection (A), the Authority shall by resolution determine to apply such proceeds for one of the following purposes, subject to the conditions hereinafter in this subsection (B) set forth:

(1) The Authority may determine to apply such proceeds to the purchase or redemption of Bonds then Outstanding and to the payment of Credit Agreement Payments then due and payable. In that event, the Treasurer shall transfer such proceeds to the Trustee, who shall apply such proceeds pro rata to the redemption or purchase of Bonds of each Series then Outstanding in the proportion which the principal amount of outstanding Bonds of each Series bears to the aggregate principal amount of all Bonds then Outstanding.

(2) The Authority may determine to apply such proceeds to the cost of additions or improvements to or extensions of the System if the Authority first secures and files with the Trustee a report of an Independent Consulting Engineer (a) showing (i) the loss in annual Revenues, if any, suffered or to be suffered, by the Authority by reason of such eminent domain proceedings, (ii) a general description of the additions, improvements or extensions then proposed to be acquired by the Authority

from such proceeds, and (iii) an estimate of the additional Revenues to be derived from such additions, improvements or extensions; and (b) determining that such eminent domain proceedings will not substantially impair the ability of the Authority to meet its obligations under Section 6.12. The Authority shall then promptly proceed with the construction of the additions, improvements or extensions substantially in accordance with such report. Payments for such construction shall be made by the Authority from such proceeds. Any balance of such proceeds not required by the Authority for the purposes aforesaid shall be deposited in the Capital Improvement Fund.

SECTION 6.12      Rate Covenant.

(A) The Authority shall at all times fix, prescribe and collect rates, fees and charges in connection with the services furnished by the System which will be sufficient to yield the sum of Net Revenues during each Fiscal Year equal to at least 1.25 times the Aggregate Annual Debt Service for such Fiscal Year and to yield Revenues during each Fiscal Year equal to at least the aggregate amount of all transfers required by Section 5.02(A) through (E) for such Fiscal Year.

The debt service coverage ratio specified in this Section shall be the debt service coverage ratio used by the PUC, together with other appropriate factors, in setting rates.

If the financial statements prepared pursuant to Section 6.07(B)(1) reflect that (or if the Authority's other books and records at the time such statements are due hereunder reflect that) at the end of a Fiscal Year the sum of Net Revenues shall have been less than 1.25 times Aggregate Annual Debt Service for such Fiscal Year, or if Revenues shall have been less than the aggregate amount of all transfers required by Sections 5.02(A) through (E) for such Fiscal Year, the Authority shall promptly employ a Consulting Engineer to make recommendations as to a revision of such rates, fees and charges or the methods of operation of the System. The Authority shall, promptly upon its receipt of such recommendations, subject to applicable requirements or restrictions imposed by law and subject to a good faith determination of the Board that such recommendations, in whole or in part, are in the best interests of the Authority, the Owners and each Credit Provider, revise such rates, fees and charges or methods of operation and will take such other actions as shall be in conformity with such recommendations.

If the Authority complies in all material respects with the reasonable recommendations of the Consulting Engineer with respect to said rates, fees, charges and methods of operation or collection, or makes a good faith determination that such recommendations are not in the best interests of the Authority, the Authority will be deemed to have complied with this Section for such Fiscal Year; provided, that Net Revenues shall in no event have been less than Aggregate Annual Debt Service for such Fiscal Year.

(B) The Authority may make adjustments from time to time in its rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such rates, fees and charges below those then in effect unless the Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

SECTION 6.13      Compliance with Indenture. The Authority (and the Government as to Section 6.17) will faithfully observe and perform all the covenants, conditions and requirements of this Indenture, and will not suffer or permit any default to occur hereunder, or do or permit to be done, in, upon or about the System, or any part thereof, anything that might in any way weaken, diminish or impair the security intended to be given pursuant to this Indenture.

SECTION 6.14      Observance of Laws and Regulations. The Authority shall comply promptly, fully and faithfully with and abide by any contract relating to or affecting the



availability of any grant or other similar assistance and any statute, law, ordinance, order, rule, regulation, judgment, decree, direction or requirement now in force or hereafter enacted, adopted or entered by any competent governmental authority or agency applicable or with respect to or affecting the acquisition, construction or reconstruction of the System or any part thereof or applicable or with respect to or affecting the operation, manner, use or condition of the System or any part or parcel thereof or adjoining public ways or relating to the imposition of charges or collection of Revenues; provided that the Authority need not comply with any such contract, statute, law, ordinance, rule, regulation, judgment, decree, direction or requirement if and so long as the Authority in good faith shall be contesting or permitting or causing to be contested the applicability or validity thereof by appropriate proceedings diligently prosecuted, even though such contest may result in the imposition of a lien or charge against the System or the Revenues, if (1) the Authority shall effectively prevent foreclosure or enforcement of any such lien or charge and (2) the foreclosure or enforcement of any such lien or charge shall be stayed, and if said stay thereafter expires, the Authority shall forthwith discharge such lien or charge or cause the same to be discharged, so that pending such proceedings the System and the Revenues thereof shall not be affected thereby, and the security of the Bonds shall not be impaired.

**SECTION 6.15**      Prosecution and Defense of Suits. The Authority shall promptly from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the System hereafter developing, and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purposes and, to the extent permitted by law, shall indemnify and save the Trustee and every Bondowner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

The Authority shall defend against every suit, action or proceeding at any time brought against the Trustee or any Bondowner upon any claim arising out of the receipt, application or disbursement of any of the Revenues or involving the rights of the Trustee or any Bondowner under this Indenture; provided, that the Trustee or any Bondowner at its or his election may appear in and defend any such suit, action or proceeding. The Authority shall, to the extent permitted by law, indemnify and hold harmless the Trustee and the Bondowners against any and all liability claimed or asserted by any person arising out of such receipt, application or disbursement, and shall indemnify and hold harmless the Bondowners against any attorneys' fees or other expenses which any of them may incur in connection with any litigation to which any of them may become a defendant by reason of its ownership of Bonds. The Authority, to the extent permitted by law, shall promptly reimburse any Bondowner in the full amount of any attorneys' fees or other expenses which such Bondowner may incur in litigation or otherwise in order to enforce its rights under this Indenture or the Bonds, if such litigation is concluded favorably to such Bondowner's contentions therein. Notwithstanding any contrary provision hereof, this Section shall remain in full force and effect, even though all indebtedness and obligations issued hereunder may have been fully paid and satisfied, until the Authority shall have been dissolved.

**SECTION 6.16**      Further Assurances. Whenever and so often as requested so to do by the Trustee or any Bondowner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bondowners all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture.

**SECTION 6.17**      Pledge of the Government. The Government hereby pledges to the holders of all Bonds the following: while any Bonds remain outstanding and not fully performed or discharged (A) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of Bonds and this

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Indenture, (B) to maintain the rights and remedies of Bondholders provided in the Act and this Indenture, (C) to protect the exclusive right of the Authority to operate or maintain within Guam any water or wastewater system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive water and/or wastewater system, and (D) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired employees of the Authority (or its lawful predecessors) as may be required by other laws of Guam. The Authority includes this pledge and agreement of the Government in this Indenture as authorized by Section 14229 of the Act.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF BONDOWNERS

SECTION 7.01 Events of Default; Remedies. (A) Any one or more of the following events shall be an "Event of Default" hereunder:

(1) if default shall be made in the due and punctual payment of the principal of, or the premium (if any) on, any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, or otherwise, or if default shall be made in the redemption or payment at maturity from any Sinking Account of any Term Bonds in the amounts and at the times provided therefor;

(2) if default shall be made in the due and punctual payment of any installment of interest on any Bond or any Parity Payment Agreement Payment when and as such interest installment or Parity Payment Agreement Payment shall become due and payable;

(3) if default shall be made by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained or by the Government in the observance of its covenant in Section 6.17, and such default shall have continued for a period of thirty (30) days after notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee, the Co-Trustee or a Credit Provider, or to the Authority, the Trustee and the Co-Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds at the time Outstanding; or

(4) if the Authority shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

(B) In each and every case during the continuance of an Event of Default, the Trustee in its own name and as Trustee of an express trust, on behalf and for the benefit and protection of the Bondowners, after notice to the Authority, and upon the request of the Owners of a majority in Accreted Value of the Bonds then Outstanding, shall proceed to protect and enforce any rights of the Trustee and, to the full extent that the Bondowners themselves might do, the rights of such Bondowners under this

Indenture and under the laws of the Government by such of the following remedies as such majority shall deem most effectual to protect and enforce such rights:

- (1) by mandamus or other suit, action or proceeding at law or in equity, to enforce all rights of the Bondowners, including the right to require the Authority to charge, prescribe and collect Revenues adequate to comply with the covenants and agreements made herein, and to require the Authority to carry out any other covenant or agreement with the Bondowners and to perform its duties under the Act;
- (2) by bringing suit upon the Bonds;
- (3) by action or suit in equity, to require the Authority to account as if it were the trustee of an expressed trust for the Bondowners;
- (4) by realizing or causing to be realized through sale or otherwise upon the moneys, securities and other assets pledged hereunder;
- (5) by action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the Bondowners;
- (6) by requiring the Authority to endorse all checks and other negotiable instruments representing Revenues to the order of the Trustee immediately upon the receipt thereof and to deliver such endorsed instruments daily to the Trustee;
- (7) by notifying any or all account debtors of the Authority to pay any amounts representing Revenues, when due, directly to the Trustee as Trustee; and
- (8) by commencing proceedings for the appointment of a receiver or receivers of the System and of the Revenues, with such powers as the court making such appointment confers.

SECTION 7.02 Application of Funds Upon Default. All of the Revenues, all amounts in all of the Funds and Accounts provided for in Sections 3.02 (except any escrow fund established for the payment of any refunded obligations), 3.03, 5.01 and 5.02 upon the date of the declaration of an Event of Default as provided in Section 7.01 and all Revenues thereafter received by the Authority, the Trustee, the Co-Trustee or any Depository hereunder, shall be transmitted to the Trustee and be applied by the Trustee as and in the order of priority provided in Sections 5.01, 5.02 and 5.06; provided, however, that (A) if amounts in the Debt Service Fund are insufficient to pay, when due, all interest on, principal of, and Mandatory Sinking Account Payments on all Bonds then Outstanding, all Parity Payment Agreement Payments pursuant to Parity Payment Agreements then Outstanding and all Credit Agreement Reimbursement Payments due and payable pursuant to Credit Agreements then Outstanding, then such amounts in the Debt Service Fund shall be used first to pay all installments of interest then due and owing without preference or priority of any such installment of interest over any other installment of interest, then to pay installments of principal and Mandatory Sinking Account Payments then due and owing, without preference or priority of any installment of principal or Mandatory Sinking Account Payments over any other such installment, then to pay all Credit Agreement Reimbursement Payments then due and payable, and then to pay Parity Payment Agreement Payments then due and owing, without preference or priority of any Parity Payment Agreement Payment over any other such Parity Payment Agreement Payment; and (B) amounts in Construction Accounts may be used for the purposes for which such Construction Accounts were created and funded if the Trustee determines, in accordance with Section 8.03(A), that such use is in the best interests of the Bondholders and the Credit Providers.

If any installment of interest, principal or Redemption Price is only partially paid, such payment shall occur only upon presentation of the several Bonds and the recording thereon of a record of such partial payment.

SECTION 7.03 Representation of Bondowners by Trustee. In case one or more of the Events of Default shall happen, then and in every such case the Owner of any Bond at the time Outstanding shall be entitled to proceed to protect and enforce the rights vested in such Owner by this Indenture by such appropriate judicial proceeding as such Owner shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Owners of Bonds by this Indenture or by law; provided, however, that no such Bondowner shall have the right to institute any such judicial proceeding pursuant to this Section unless (A) such Owner shall have previously given to the Trustee notice of the occurrence of an Event of Default hereunder; (B) the Owners of at least a majority in Accreted Value of the Bonds then Outstanding shall have made request to the Trustee to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; (C) such Owner or said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (D) the Trustee shall have refused or omitted to comply with such request for a period of sixty days after such request shall have been received by, and said tender of indemnity shall have been made to, the Trustee. The provisions of this Indenture shall constitute a contract with the Owners of the Bonds, and such contract and duties of the Authority and of the Authority members, officers and employees thereof shall be enforceable by any Bondowner by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Nothing in this Section shall affect or impair the right of any Owner to enforce the payment of principal of and interest on such Owner's Bonds or the obligation of the Authority to pay the principal of and interest on each such Bond at the time and place specified in such Bond.

SECTION 7.04 Nonwaiver. Nothing in this Article or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and the interest (and premium, if any) on the Bonds to the respective Owners of the Bonds at the respective dates of maturity, or upon call for redemption, as herein provided, but only out of the Revenues herein pledged for such payments, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default or breach of duty or contract by any Bondowner shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on the subsequent default or breach. No delay or omission of the Trustee or of any Owner of any of the Bonds to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by the Act or this Article to the Trustee or to the Owners of Bonds or any Credit Provider may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owners of Bonds or any such Credit Provider.

If a suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Bondowners, the Authority, the Trustee and the Bondowners and each Credit Provider shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 7.05 Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated (notwithstanding any conditions upon the bringing of any such action, suit or proceeding set forth in Section 7.03) and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action, or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

Except as may be set forth in a Supplemental Indenture in accordance with Section 11.15, anything in this Indenture to the contrary notwithstanding, the Owners of a majority in Accreted Value of the Bonds at any time Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder, provided that such direction shall be in accordance with law and the provisions of this Indenture.

SECTION 7.06 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners of Bonds or to any Credit Provider is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Act or any other law.

## ARTICLE VIII

### THE FIDUCIARIES

SECTION 8.01 Appointment of Trustee. Bank of Guam is hereby appointed as Trustee under this Indenture.

Appointment of Co-Trustee. U.S. Bank National Association is hereby appointed as Co-Trustee under this Indenture.

SECTION 8.02 Duties, Immunities and Liabilities of Fiduciaries. (A) The Trustee and the Co-Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture for each to perform. The Trustee and the Co-Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in them by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Authority, the Trustee, the Co-Trustee and each Depository shall establish such accounting, notice and other relationships as are necessary to provide for the operation of the accounts created under or pursuant to Article V, and the handling of the Revenues credited thereto in accordance herewith.

(B) Each Depository, Registrar and Paying Agent shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture, and shall, during the existence of any Event of Default (which has not been cured), follow the directions of the Trustee with respect to any of the Funds and Accounts held under this Indenture.

(C) The Authority may remove any Fiduciary at any time unless an Event of Default shall have occurred and then be continuing, and shall remove a Fiduciary if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in Accreted Value of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time such Fiduciary shall cease to be eligible in accordance with subsection (F) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of such Fiduciary or its property shall be appointed, or any public officer shall take control or charge of such Fiduciary or its property or affairs for the purpose of rehabilitation, conservation or liquidation; in each case by giving notice of such removal to such Fiduciary and thereupon shall appoint a successor Trustee, Co-Trustee, Depository, Registrar or Paying Agent, as the case may be, by an instrument in writing. Any Supplemental Indenture or Credit Agreement entered into in connection with Bonds may provide that the Credit Provider with respect thereto has the right to direct the Authority to remove any Fiduciary and appoint a successor under the circumstances specified therein.

(D) Any Fiduciary may at any time resign by giving notice of such resignation to the Authority, the other Fiduciaries and each Credit Provider. Subject to the provisions of any Supplemental Indenture or Credit Agreement, upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee, Co-Trustee, Depository, Registrar or Paying Agent, as the case may be, by an instrument in writing.

(E) Any such removal or resignation and appointment of a successor Fiduciary shall become effective upon acceptance of appointment by the successor. Promptly upon such acceptance, the Authority shall give notice thereof to each Fiduciary, to each affected Credit Provider and to the affected Bondowners by mail in the manner provided by Section 4.03. If no successor shall have been appointed and have accepted appointment within forty-five (45) days after giving notice of removal or notice of resignation as aforesaid, the resigning Fiduciary or any Bondowner (on behalf of such Bondowner and all other Bondowners) or any Credit Provider may petition any court of competent jurisdiction for the appointment of a successor, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor. Any such successor appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor a written acceptance thereof (which may be a Supplemental Indenture), and thereupon such successor, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor, with like effect as if originally named herein; but, nevertheless, at the Request of the Authority or the request of the successor, such predecessor shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor all the right, title and interest of such predecessor in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor all such moneys, estates, properties, rights, powers, trusts, duties and obligations.

(F) (1) The Trustee and the Co-Trustee appointed under the provisions of this Section shall meet the requirements of any Supplemental Indenture and any Credit Agreement and shall each be a trust company or bank having the powers of a trust company doing business and having a corporate trust office in any State or territory and having a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal, state or territorial authority. The Co-Trustee shall have a corporate trust office in one of the contiguous 48 States and have a combined capital and surplus of at least One Hundred Million Dollars (\$100,000,000). Either the Trustee or the Co-Trustee shall have a corporate trust office in Guam. Any bank or trust company that meets the requirements of

both of the preceding two sentences may serve as both Trustee and Co-Trustee. If a bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee or the Co-Trustee shall cease to be eligible in accordance with the provisions of this subsection (F)(1), it shall resign immediately in the manner and with the effect specified in this Section. The Trustee and Co-Trustee may be appointed and act as a Depositary, Registrar or Paying Agent hereunder.

(2) Each Registrar and Paying Agent appointed under the provisions of this Section shall meet the requirements of any Supplemental Indenture and any Credit Agreement and shall be a trust company or bank having trust powers doing business and having a corporate trust office in any State of the United States and subject to supervision or examination by federal or state authority. In case at any time any Registrar or any Paying Agent shall cease to be eligible in accordance with the provisions of this subsection (F)(2), it shall resign immediately in the manner and with the effect specified in this Section.

(3) Each Depositary appointed under the provisions of this Section shall be a trust company or commercial bank having the powers of a trust company doing business and having a trust office in Hagatña, Guam, having a combined capital and surplus of at least Ten Million Dollars (\$10,000,000), and subject to supervision or examination by federal or territorial authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Depositary shall cease to be eligible in accordance with the provisions of this subsection (F)(3), the Depositary shall resign immediately in the manner and with the effect specified in this Section.

(G) Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which such Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (F) of this Section, shall be the successor to such Fiduciary without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. Any such successor shall give notice of such merger, conversion or consolidation to each other Fiduciary and to the Authority.

**SECTION 8.03**      Compensation. Subject to the terms of separate contracts with Fiduciaries, the Authority shall pay to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, fees of counsel, accountants and consultants and other disbursements, including those of their attorneys, agents and employees, incurred in good faith in and about the performance of their powers and duties under this Indenture. The Authority further agrees, to the extent permitted by law, to indemnify and save each Fiduciary harmless against any losses, costs, expenses, claims and liabilities (including without limitation those of its attorneys, agents and receivers) which they may incur in the exercise and performance of their respective powers, functions and duties under this Indenture, which are not due to their own respective gross negligence or willful misconduct. Such indemnity shall survive the resignation or removal of each Fiduciary.

**SECTION 8.04**      Liability of Fiduciaries. The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and no Fiduciary assumes any responsibility or liability for the correctness of the same, or makes any representations as to the validity or

sufficiency of this Indenture, of the Bonds, of any Credit Facility or of the pledge and assignment of Revenues herein or any information or statements in any offering memorandum or other disclosure material prepared or distributed in connection with the issuance of Bonds or shall incur any responsibility or liability in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon them, respectively. Each Registrar shall, however, be responsible for its representations contained in its certificate of authentication and registration on the Bonds. No Fiduciary shall be liable in connection with the performance of its respective duties hereunder, except for its own respective gross negligence or willful misconduct. Any Fiduciary may become the owner of the Bonds with the same rights it would have if it were not a Fiduciary, and, to the extent permitted by law, may act as depositary for and permit any of their officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondowners, whether or not such committee shall represent the Owners of a majority in Accreted Value of the Bonds then Outstanding. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid to any other Fiduciary or the acts or omissions of any other Fiduciary. No Fiduciary shall be under any obligation or duty to perform any act which would require it to expend or risk its own moneys or otherwise incur any liability or to institute or defend any action or suit in respect of this Indenture or the Bonds, unless it is in its judgment adequately indemnified. No Fiduciary shall be deemed to have knowledge of an Event of Default hereunder unless it has received actual knowledge thereof at its Principal Office, except, in the case of the Trustee, default in the payment of any amounts due on the Bonds on the due date therefor.

SECTION 8.05 Right of Fiduciaries to Rely on Documents. Any Fiduciary shall be protected in acting upon any notice, resolution, request, consent, order, certificate, requisition, statement, report, opinion, bond or other paper or document believed to be genuine and to have been signed or presented by the proper party or parties. Any Fiduciary may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Indenture a Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Authority, and such Certificate shall be full warrant to such Fiduciary for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion such Fiduciary may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

SECTION 8.06 Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and any Bondowner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

## ARTICLE IX

### MODIFICATION OR AMENDMENT OF THE INDENTURE

SECTION 9.01 Amendments Permitted. (A)(1) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee and Co-Trustee may be modified or amended at any time by a Supplemental Indenture which shall become binding when the



consents of the Owners of at least sixty percent (60%) in Accreted Value of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 9.03 hereof; provided that if such modification or amendment will, by its terms, not take effect so long as any bonds of any particular maturity or Series remain Outstanding, the consent of the Owners of Bonds of such maturity or Series shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section; and provided further that the consent of a Credit Provider for any Bond shall be deemed to be the consent of the Owner of such Bond if specified in the Supplemental Indenture pursuant to which such Credit Provider is designated as providing a Credit Facility for such Bond.

(2) No such modification or amendment shall (a) extend the fixed maturities of the Bonds, or extend the time for making any Mandatory Sinking Account Payments, or reduce the rate of interest thereon, or extend the time of payment of interest, or reduce the amount of principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Owner of each Bond so affected, (b) reduce the aforesaid percentage of Owners of Bonds whose consent is required for the execution of any amendment or modification of this Indenture or permit the creation of any lien on the Revenues prior to or on a parity with the lien created by this Indenture or deprive the Owners of the Bonds of the lien created by this Indenture upon such Revenues, without in each case the consent of the Owners of all of the Bonds then Outstanding.

(3) No such modification or amendment shall modify any of the rights or obligations of any Fiduciary without its consent thereto.

(B) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without the consent of any Bondowners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Authority in this Indenture contained other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Authority;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Indenture or in regard to questions arising under this Indenture, as the Authority may deem necessary or desirable and not inconsistent with this Indenture, and which shall not materially adversely affect the interests of the Owners of the Bonds or any Credit Provider;

(3) to provide for the issuance of Additional Bonds, and to provide the terms and conditions under which such Additional Bonds may be issued, subject to and in accordance with the provisions of Article III;

(4) to provide for any other matters for which a Supplemental Indenture is expressly permitted or required hereunder; and

(5) to make any other amendment or modification which shall not materially adversely affect the interests of the Owners of the Bonds or any Credit Provider.

(C) Any Supplemental Indenture providing for the issuance of a Series of Bonds may require, in addition to or in lieu of any consents required by the foregoing provisions of this Section 9.01, the consent of any Credit Provider for such Bonds in order for any amendment hereto affecting such Bonds to be effective, and may set forth appropriate procedures for obtaining and evidencing such consent.

SECTION 9.02 Procedure for Amendment with Consent of Bondowners. The Authority may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture or any Supplemental Indenture, to the extent that such amendment is permitted by Section 9.01(A)(1), to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Bondowners for their consent thereto, shall be mailed by the Authority to each Owner of Bonds, but failure to receive any such copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the consents of the Owners of sixty percent (60%) in Accreted Value of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 9.03) and a notice shall have been published as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 11.08. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been published.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Authority shall mail a notice to the Bondowners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture and publication of the notice of adoption thereof, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to receive copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved.

In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bondowners upon such notice and in accordance with such rules and regulations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 9.03 Disqualified Bonds. Bonds owned or held by or for the account of the Authority (but excluding Bonds held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided for in this Article or Indenture, and shall not be entitled to consent to or take any other action provided for in this Article or Indenture.

The Authority may adopt appropriate regulations to require each Bondowner, before his consent provided for in this Article shall be deemed effective, to reveal if the Bonds as to which such consent is given are disqualified as provided in this Section.

SECTION 9.04 Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee, the Co-Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.05 Endorsement or Replacement of Bonds Issued Before Amendments. The Authority may determine that Bonds issued and delivered before the effective date of any action taken as provided in this Article shall bear a notation, by endorsement or otherwise, in form approved by the Authority, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the office of the Authority or at such other office as the Authority may select and designate for that purpose, a suitable notation shall be made on such Bond. The Authority may determine that new Bonds, so modified as in the opinion of the Authority is necessary to conform to such action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the applicable Registrar, without cost to such Owner, for Bonds of the same character then Outstanding, upon surrender of such Bonds.

SECTION 9.06 Amendatory Endorsement of Bonds. The provisions of this Article shall not prevent any Bondowner from accepting any amendment as to the particular Bonds held by such Bondholder, provided that due notification thereof is made on such Bonds.

SECTION 9.07 Credit Provider Consent. Nothing in this Article or in this Indenture shall affect any provision of any Credit Agreement or Supplemental Indenture requiring the Authority to obtain the consent of the Credit Provider or to satisfy any other conditions before amending or supplementing this Indenture or any Bond.

## ARTICLE X

### DEFEASANCE

SECTION 10.01 Discharge of Indenture. If the Authority shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways—

(A) by well and truly paying or causing to be paid the principal of (including redemption premiums, if any) and interest on all Bonds Outstanding, as and when the same become due and payable (but this clause shall not include Bonds the principal of or interest on which has been paid by a Credit Provider until said principal and interest shall have been paid by the Authority); or

(B) by depositing with the Co-Trustee, in trust, at or before maturity, money which, together with the amounts then on deposit in the Debt Service Fund and the Bond Reserve Fund, is fully sufficient to pay or redeem all Bonds Outstanding, including all principal, interest and redemption premiums, if any; or

(C) by delivering to the Co-Trustee, for cancellation by it, all Bonds Outstanding; or

(D) by depositing with the Co-Trustee, in trust, non-callable Federal Securities in such amount which, in the determination of an Independent Certified Public Accountant, who shall certify such determination to the Co-Trustee and, if so provided in a Supplemental Indenture, any Credit Provider, shall, together with the income or increment to accrue thereon and any other moneys of the Authority made available for such purpose, be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums, if any) at or before their respective maturity dates;

and if the Authority shall also pay or cause to be paid all other sums payable hereunder by the Authority (including all Parity Payment Agreement Payments and any Termination Payments payable in connection with a termination of a Parity Payment Agreement and any Credit Agreement Payments then due and

payable) and deliver or have delivered to the Trustee, the Co-Trustee and each Credit Provider an Opinion of Counsel to the effect that upon satisfaction of the other requirements of this Section 10.01 and any Supplemental Indenture all obligations of the Authority under this Indenture have ceased, terminated and been completely discharged, then and in that case, at the election of the Authority (evidenced by a Certificate of the Authority signifying its intention to pay and discharge all such indebtedness and that this Indenture and all other obligations of the Authority under this Indenture shall cease and terminate, which shall be filed with the Trustee and the Co-Trustee), and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture and all other obligations of the Authority under this Indenture shall cease, terminate and be completely discharged, and the Owners of the Bonds not so surrendered and paid shall thereafter be entitled to payment only out of the money or Federal Securities deposited with the Co-Trustee as aforesaid for their payment; subject, however, to the provisions of Section 10.03. The discharge of the obligations of the Authority under this Indenture shall be without prejudice to the rights of the Co-Trustee to charge for and be reimbursed by the Authority for any expenditures which it may thereafter incur in connection herewith.

The Authority may at any time surrender to the Co-Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**SECTION 10.02**     Discharge of Liability on Bonds. Upon the deposit with the Co-Trustee, in trust, at or before maturity, of money or Federal Securities in the necessary amount to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds), provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Co-Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, determine and be completely discharged and the Owners thereof shall thereafter be entitled only to payment out of the money or Federal Securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.03.

**SECTION 10.03**     Payment of Bonds after Discharge of Indenture. Notwithstanding any provisions of this Indenture, any moneys deposited with the Co-Trustee in trust for the payment of the principal of, or interest or premium on, any Bonds and remaining unclaimed for two years after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Indenture) shall then be repaid to the Authority upon its Request, and the Owners of such Bonds shall thereafter be entitled to look only to the Authority for payment thereof, and all liability of the Co-Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Co-Trustee may (at the cost of the Authority) first publish at least once in a Financial Newspaper or Journal and in a newspaper of general circulation in Guam a notice, in such form as may be deemed appropriate by the Co-Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof. In the event of the repayment of any such moneys to the Authority as aforesaid, the Owners of the Bonds in respect of which such moneys were deposited shall thereafter be deemed to be general creditors of the Authority for amounts equivalent to the respective amounts deposited for the payment of such Bonds and so repaid to the Authority (without interest thereon).

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.01 Liability of Authority Limited to Revenues. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues, for the payment of the principal of or interest on the Bonds, Payment Agreement Payments, Termination Payments and Credit Agreement Payments, for the operation and maintenance of the System, for the performance of any covenants herein contained or for the payment of any obligations hereunder, including indemnification. The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be limited obligations of the Authority, payable solely from and secured by a pledge of the Revenues as in this Indenture provided. The Bonds shall not be a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues pledged to the payment thereof as in this Indenture provided.

Neither the Government of Guam (the "Government") nor any political subdivision thereof is obligated to pay the principal of, Redemption Price, if applicable, or interest on the Bonds, except from Revenues, and neither the Authority, the Government nor any political subdivision thereof has pledged its faith or credit to the payment of the principal of, redemption price, if applicable, or interest on the Bonds.

SECTION 11.02 Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Authority or any Fiduciary is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or any Fiduciary shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.03 Limitation of Rights to Parties and Bondowners. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person, other than the Authority, the Fiduciaries and the Owners of the Bonds issued hereunder and to the extent set forth herein or in a Supplemental Indenture any Credit Provider, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Fiduciaries and the Owners of the Bonds issued hereunder and any such Credit Provider.

SECTION 11.04 Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.05 Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Co-Trustee and the delivery to the Authority of any Bonds, the Co-Trustee may destroy such Bonds (in the presence of an officer of the Authority, if the Authority shall so require), and deliver a certificate of such destruction to the Authority, unless the Authority shall, by Request of the Authority, request the Co-Trustee to instead cancel and deliver said Bonds to the Authority.

SECTION 11.06 Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee or the Co-Trustee or any successor Trustee or Co-Trustee is rendered unable to perform its duties hereunder, and if no successor Trustee or Co-Trustee be then appointed, all such duties and all of the rights and powers of the Trustee or the Co-Trustee hereunder, as applicable, shall be assumed by and vest in the chief financial officer of the Authority in trust for the benefit of the Bondowners.

SECTION 11.07 Notice to Authority, Trustee and Co-Trustee. Any notice to or demand upon the Authority, the Trustee, the Co-Trustee, any Depository or any Registrar shall be deemed to have been sufficiently given or served for all purposes by being deposited, postage prepaid, in a post office letter box, addressed to the applicable address set forth below, or at such other address as may have been specified by the Supplemental Indenture appointing such party or filed in writing by such party with each other party.

Any notice to or demand upon the Authority may be served or presented, and such demand may be made, at the office of the principal administrative office of the Authority, which at the date of adoption of this Indenture is: Guam Waterworks Authority, 578 N. Marine Corps Drive, Tamuning, Guam 96913, Attention: Chief Financial Officer.

Any notice to or demand upon the Trustee or the Depository may be served or presented, and such demand may be made, at the Principal Office of the Trustee, which at the date of adoption of this Indenture is: Bank of Guam, 111 Chalan Santo Papa, 2nd Floor, Agana, Guam 96910, Attention: Corporate Trust Department.

Any notice to or demand upon the Co-Trustee may be served or presented, and such demand may be made, at the Principal Office of the Co-Trustee, which at the date of adoption of this Indenture is: U.S. Bank National Association, 550 South Hope Street, Suite 500, Los Angeles, California 90071, Attention: Corporate Trust Department; provided, however, that for purposes of payment, transfer, registration and exchange of Bonds, presentation shall be made at the Principal Office of the Co-Trustee located at 180 East 5th Street, 3rd Floor, St. Paul, Minnesota 55101, Attention: Bond Drop Window.

SECTION 11.08 Evidence of Rights of Bondowners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bondowners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bondowners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee, the Co-Trustee and of the Authority if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved in any manner reasonably acceptable to the Trustee or the Co-Trustee, as applicable.

The ownership of Bonds shall be proved by the Bond registration books maintained pursuant to Section 2.06.

Any request, consent, vote or declaration of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee, the Co-Trustee or the Authority in pursuance of such request, consent, vote or declaration.

SECTION 11.09 Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 11.10 Funds and Accounts. Any fund required by this Indenture to be established and maintained by the Authority, the Trustee, the Co-Trustee or any Depository may be established and maintained in the accounting records of the Authority, the Trustee, the Co-Trustee or the Depository, as applicable, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with generally accepted accounting practices (and as to the Trustee, the Co-Trustee and any Depository, sound industry practice) and with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

SECTION 11.11 Saturdays, Sundays and Legal Holidays. If any party hereto is required to perform, pursuant to a provision of this Indenture, any act on a date which falls on a Saturday, Sunday or legal holiday, the party required to perform such act shall be deemed to have performed it in a timely manner, and in conformance with such provision, if it shall perform such act on the next succeeding Business Day. Any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day.

SECTION 11.12 Waiver of Personal Liability. No Board member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest on the Bonds; but nothing herein contained shall relieve any such Board member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 11.13 Governing Law. This Indenture and any Supplemental Indentures shall be construed and governed in accordance with the laws of the Government of Guam, provided, however, that the administration of the trusts imposed upon the Trustee and the Co-Trustee by the Indenture and the rights and duties of the Trustee and Co-Trustee hereunder shall be governed by, and construed in accordance with, the laws of the jurisdiction in which the Trustee or the Co-Trustee, as applicable, has its corporate trust office.

SECTION 11.14 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority, the Trustee and the Co-Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.15 Credit Agreements and Credit Providers. Anything herein to the contrary notwithstanding, a Supplemental Indenture providing for the issuance of a Series of Bonds for which a Credit Facility provides supplemental credit support may, so long as such Credit Facility shall be Outstanding or any Credit Agreement Payments are due and payable with respect thereto, provide additional terms, provisions and limitations not inconsistent with the provisions hereof for the protection and benefit of the related Credit Provider.



IN WITNESS WHEREOF, the GUAM WATERWORKS AUTHORITY has caused this Indenture to be signed in its name by its duly authorized officers under its seal; and BANK OF GUAM and U.S. BANK NATIONAL ASSOCIATION, in token of their acceptance of the respective trusts created hereunder, has caused this Indenture to be signed in their respective corporate names by one of their authorized officers, and the Trustee and the Co-Trustee have each caused their respective corporate seals to be hereunto affixed, all as of the day and year first above written.

GUAM WATERWORKS AUTHORITY

[SEAL]

By \_\_\_\_\_  
Chairperson of the Board

By \_\_\_\_\_  
General Manager

BANK OF GUAM, as Trustee

[SEAL]

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Title:

U.S. BANK NATIONAL ASSOCIATION, as Co-Trustee

[SEAL]

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Title:

The undersigned BANK OF GUAM, hereby accepts and agrees to perform the duties and obligations of Depositary for the Revenue Fund under this Indenture.

BANK OF GUAM, as Depositary for the Revenue Fund



By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Title:

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN  
2005 (FIRST) Regular Session

Bill No. 220 (EC)

Introduced by:

J. M.S. Brown   
E. J.B. Calvo 

AN ACT TO REPEAL AND REENACT ARTICLE 2  
OF CHAPTER 14 OF TITLE 12 OF THE GUAM  
CODE ANNOTATED, RELATIVE TO  
AUTHORIZING GUAM WATERWORKS  
AUTHORITY TO ISSUE REVENUE BONDS AND  
OTHER INDEBTEDNESS FOR THE PURPOSE OF  
FINANCING THE WATER AND WASTEWATER  
SYSTEM OF GUAM; AND APPROVING THE  
TERMS AND CONDITIONS OF THE ISSUANCE  
OF ONE OR MORE SERIES OF SUCH BONDS  
PURSUANT TO SUCH ARTICLE FOR SUCH  
PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*, finds that the  
3 condition of Guam's water and wastewater infrastructure has seriously deteriorated  
4 over the past decades. The severe limitations of the infrastructure to reliably deliver  
5 clean and safe drinking water has negatively impacted the quality of life of the People  
6 of Guam. Additionally, it is reasonable to assert that Guam's economic development  
7 is also being negatively impacted by the inability of a failed system to deliver the  
8 most basic of all utility services.

1 This finding is further supported by the conclusions of a recent study  
2 completed by Brown and Caldwell, an engineering firm hired to assess the condition  
3 of Guam's water and wastewater infrastructure and to formulate a Master Plan for  
4 the development of an infrastructure that will have the capacity to support current  
5 and future demands for reliable and quality water and wastewater utility services.

6 This same conclusion was also reached by the U.S. Environmental Protection  
7 Agency (U.S. EPA). After many years of warning from the U.S. EPA about the  
8 inability of Guam Waterworks Authority's (GWA) infrastructure to provide clean  
9 and safe drinking water and properly dispose of the wastewater, the U.S. EPA filed  
10 a lawsuit in the Federal District Court against the GWA to place the agency in  
11 receivership. A receivership status will essentially mean that the U.S. EPA will have  
12 the authority to select a third party of its choice to take over the GWA operation in  
13 order to get the long standing deficiencies corrected. All costs incurred will  
14 ultimately have to be paid for by the rate payers of Guam.

15 **Section 2.** Recognizing that placing GWA into receivership is not a desirable  
16 position to be in, the Consolidated Commission on Utilities (CCU), a newly created  
17 governing entity, successfully persuaded the U.S. District Court of Guam to allow  
18 the CCU to undertake the responsibility of rectifying the long standing problems.  
19 Hence, the promulgation of the Stipulated Order which outlines the corrective  
20 actions that GWA shall undertake. The GWA, under the auspices and direction of  
21 the CCU has taken many steps to improve the system, including hiring a  
22 professional management team, cutting costs, and enacting policies that ensure  
23 improvements are made.

24 However, notwithstanding the CCU's efforts, the new construction and  
25 upgrades that will be needed are estimated to cost approximately Two Hundred  
26 Twenty Million Dollars (\$220,000,000.00). Indeed, despite the fact that the Stipulated  
27 Order places a stringent time line for the corrective actions to be accomplished, an

1 even more compelling reason to ensure the timely upgrade and improvement of  
2 Guam's water and wastewater infrastructure is simply because the People of Guam  
3 deserve no less.

4 In addition to the estimated cost of Two Hundred Twenty Million Dollars  
5 (\$220,000,000.00) to meet the terms of the Stipulated Order, there are the additional  
6 costs of rebuilding, rehabilitating and modernizing the system which are expected to  
7 cost an additional Two Hundred Thirty Million Dollars (\$230,000,000.00) thereby  
8 bringing the total that GWA needs to Four Hundred Fifty Million Dollars  
9 (450,000,000.00).

10 The CCU and GWA, in coordination with the Guam Economic Development  
11 & Commerce Authority (GEDCA), have been diligently working on completing the  
12 administrative prerequisites to borrow from the bond market the capital required to  
13 accomplish the upgrades. *I Liheslaturan Guåhan* fully recognizes the magnitude of  
14 the tasks that lie ahead and the need for timely action to be taken. It is in this spirit  
15 that *I Liheslaturan Guåhan* sets forth the policies herein that will enable the efficient  
16 and timely achievement of goals and objectives aimed at improving the quality of  
17 life of the People of Guam.

18 **Section 3.** Article 2 of Title 12, Chapter 14 of the Guam Code Annotated, is hereby  
19 repealed and reenacted to read as follows:

20 **Article 2**

21 **Guam Waterworks Authority Revenue Bonds and Other**  
22 **Indebtedness**

23 **§14201. Short Title.** This Article may be cited as the Guam  
24 Waterworks Authority Revenue Bond Act.

25 **§14202. Definitions.** The following terms wherever used or  
26 referred to in this Article or in any indenture entered into pursuant  
27 hereto (except to the extent modified therein in accordance with this

1 Article), shall have the following meanings, respectively, unless a  
2 different meaning appears from the context:

3 a. "Authority" has the meaning given in 12 G.C.A. §14102.

4 b. "Board" has the meaning given in 12 G.C.A. §14102.

5 c. "Bonds" means bonds, notes or other evidences of  
6 indebtedness.

7 d. "Bondholder" or "holder of bonds" or any similar term  
8 means any person who shall be:

9 i. the bearer of any outstanding bond or bond  
10 registered to bearer or not registered; or

11 ii. the registered owner of any such outstanding bond  
12 or bond which shall at the time be registered other than to  
13 bearer.

14 e. "Credit provider" means any municipal bond insurance  
15 company, bank or other financial institution or organization which is  
16 performing in all material respects its obligations under any credit  
17 support arrangements for some or all of the bonds.

18 f. "Credit provider reimbursement agreement" means any  
19 agreement providing for the Authority to repay, from revenues,  
20 amounts advanced by a credit provider as credit support for bonds.

21 g. "Credit support" means a policy of insurance, a letter of  
22 credit, a stand-by purchase agreement, revolving credit agreement or  
23 other credit arrangement pursuant to which a credit provider provides  
24 credit or liquidity support with respect to the payment of interest,  
25 principal or the purchase price of any bonds.

26 h. "Guam Waterworks Authority Act" means Chapter 14 of  
27 Title 12 of the Guam Code Annotated.

1           i.       “Indenture” means an agreement pursuant to which bonds  
2 are issued, regardless of whether such agreement is expressed in the  
3 form of a resolution of the Board or by other instrument.

4           j.       “Organic Act” means the Organic Act of Guam as  
5 amended and in effect on the effective date of this Article (Title 48,  
6 §1421 et seq. of the United States Code-).

7           k.       “Payment agreement” has the meaning given such term in  
8 12 G.C.A. §14236.

9           l.       “Person” includes any individual, firm, corporation,  
10 association, partnership, trust, business trust or receiver or trustee or  
11 conservator for any thereof, and also includes the United States, Guam  
12 or any public corporation, political subdivision, city, county or district  
13 or any agency or instrumentality of the United States or of Guam.

14           m.       “Revenue” means all gross income and other amounts  
15 received or receivable by the Authority as revenues of any kind from  
16 the ownership or operation of any part of the system, including all  
17 rates, fees and charges (including ground water, surface water and  
18 treated water charges and all wastewater service charges), received by  
19 the Authority for providing water and sewer services, all amounts  
20 received by the Authority pursuant to any payment agreement, and all  
21 proceeds of insurance or grants covering business interruption loss (and  
22 related losses and expenses) relating to the system, and all other income  
23 and revenue howsoever derived by the Authority from the ownership  
24 or operation of, or arising from, the system, together with all interest,  
25 profits or other income derived from the investment of amounts in the  
26 Guam Waterworks Authority Revenue Fund.

1 n. "System" means the water and wastewater systems, now  
2 or hereafter existing, owned and/or operated by the Authority or its  
3 contractors, agents or subcontractors.

4 o. "System operation and maintenance costs" means such  
5 reasonable and necessary current expenses of the Authority, paid or  
6 accrued, for operation, maintenance and repair of the System as may be  
7 determined by the Board, and the term may include at the Board's  
8 option, except as limited by contract or otherwise limited by law,  
9 without limiting the generality of the foregoing:

10 i. legal and overhead expenses of the Authority  
11 directly related and reasonably allocable to the administration of  
12 the system;

13 ii. fidelity bond and insurance premiums appertaining  
14 to the system or a reasonably allocable share of a premium of any  
15 blanket bond or policy pertaining to the system;

16 iii. contractual services, professional services, salaries,  
17 administrative expenses, and costs of labor appertaining to  
18 system;

19 iv. the costs incurred in the collection of all or any part  
20 of the Revenues; and

21 v. any costs of utility services furnished to the system  
22 by the Authority or otherwise.

23 p. "United States" means the United States of America.

24 **§14203. Powers of Board; Incurring Indebtedness.** Pursuant to  
25 Paragraph Section 50103(k), Chapter 50, Title 12 G.C.A., the Board,  
26 through the agency of GEDCA by statutory legislation, has power and  
27 is hereby authorized, in addition to and in amplification of all other



1 powers conferred upon the Board by the Guam Waterworks Authority  
2 Act or any other provision of this Chapter or by any law of Guam or of  
3 the United States, to exercise any or all of the powers granted to the  
4 Board by this Article. The Board, through the agency of GEDCA, may  
5 at any time or from time to time, by statutory legislation, may incur  
6 indebtedness:

7 (a) pursuant to 12 G.C.A. §14235; or

8 (b) by the issuance of bonds to raise funds for the purpose of  
9 acquiring, constructing, improving, equipping, maintaining, repairing,  
10 renewing, replacing, reconstructing or insuring the system, or any part  
11 thereof, or for the purpose of refunding any such bonds or any other  
12 prior obligations of the Authority, or for any combination of such  
13 purposes for which bonds may be issued and secured as provided in  
14 this Article.

15 It is hereby declared that the system is and shall be a public improvement or  
16 undertaking as that term is used in Section 11 of the Organic Act (§1423a, Title 48,  
17 U.S. Code). All indebtedness issued by the Authority pursuant to this 12 G.C.A.  
18 §14203 shall be repayable only from funds of the Authority available therefore or  
19 solely from revenues of the system and, therefore, will not be and shall not be  
20 deemed to be public indebtedness of Guam as that term is used in said Section 11.

21 **§14204. Amounts of Rates and Charges; Refunds.** Except to the  
22 extent otherwise permitted or required by an indenture or any contract  
23 relating to indebtedness issued by the Authority, all rates and charges  
24 shall at all times be fixed to yield annual revenues at least equal to the  
25 annual principal payments and interest charges and reserve fund  
26 requirements on all bonds at any time issued and outstanding

1 hereunder, the annual system operation and maintenance costs and the  
2 annual principal payments and interest charges on all other outstanding  
3 indebtedness issued by the Authority. An indenture or contract of  
4 indebtedness may provide for payment from revenues of refunds of  
5 rates and charges that are collected in error and that are refundable by  
6 the Authority.

7 **§14205. Validity of Authorization and Issuance of Bonds and**  
8 **Incurring of Other Indebtedness.** The validity of the authorization and  
9 issuance of any bonds by the Authority is not dependent on nor  
10 affected in any way by:

11 (a) Proceedings taken by the Authority for the acquisition,  
12 construction or improvement of the system or any part thereof;

13 (b) Any contracts made by the Authority in connection with  
14 the acquisition, construction or improvement of the system or any part  
15 thereof; or

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

18 **§14206. Board to Determine Issuance of Bonds and Incurring of**  
19 **Other Indebtedness; Guam Not Liable for Indebtedness; Authority**  
20 **Only Liable as Provided by Indenture or Contract.**

21 (a) The Board shall determine the time, form and manner of  
22 issuance of bonds.

23 (b) No bond issued or sold pursuant to this Article shall be or  
24 become a lien, charge or liability against the government of Guam or  
25 against the Authority or against any property or funds of the  
26 government of Guam or the Authority, except to the extent of the  
27 pledge or revenues or part of revenues, as may be provided by the

1 indenture pursuant to which such bonds are issued and every such  
2 bond shall contain a recital on its face stating that neither the payment  
3 of the principal or any part thereof, nor of any interest thereon, is a  
4 debt, liability or obligation of Guam.

5 **§14207. Board to Declare Purpose and Maximum Amount of**  
6 **Bonds to be Issued.** Before issuing any bond or bonds, the Board shall  
7 declare the purpose for which the proceeds of the bonds proposed to be  
8 issued shall be expended and shall specify the maximum amount of  
9 bonds to be issued or sold for such purpose. Bonds shall not be issued  
10 or sold for such purpose in an amount exceeding such specified  
11 maximum.

12 **§14208. Indenture Providing Terms and Conditions of Bonds.**  
13 The Authority may enter into indentures providing for the aggregate  
14 principal amount, date or dates, maturities, interest rates or methods for  
15 determination thereof, denominations, form, registration, transfer and  
16 interchange of any bonds and coupons issued pursuant to this Article  
17 and the terms and conditions on which the same shall be executed,  
18 issued, secured, sold, paid, redeemed, funded and refunded. Each  
19 taker and subsequent holder of the bonds or coupons, whether the  
20 coupons are attached to or detached from the bonds, has recourse to all  
21 the provisions of the indenture and of this Article and is bound thereby.

22 **§14209. Issues of Bonds.** An indenture may provide for one or  
23 several issues of bonds and that bonds may be issued in series or that  
24 any issue may be divided into one or more divisions with different  
25 maturities or dates of issue, different rates of interest or methods for  
26 determining such rates, or different terms and conditions for the bonds  
27 of the several series or divisions. It is not necessary that all bonds of the

1 same authorized issue be of the same kind or character, have the same  
2 security, or be of the same interest rate, but the terms thereof shall in  
3 each case be as authorized by the Board.

4 **§14210. Covenants and Agreements That May Be Contained in**  
5 **Indenture.** An indenture pursuant to which bonds are issued may  
6 include any and all covenants and agreements on the part of the  
7 Authority as the Board deems necessary or advisable, including  
8 without limiting the generality of the foregoing, any one or more of the  
9 following:

10 (a) A provision that payments of principal and interest of  
11 bonds shall be secured by all or by part of revenues and provisions  
12 creating one or more funds or accounts to be held by the Authority into  
13 which all or any part of revenues shall be deposited:

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

16 (ii) for reserve or sinking funds for the further security  
17 of bonds.

18 (iii) All moneys in any such fund or account shall be paid  
19 out by the Authority or its agent to pay the principal of and  
20 interest on the bonds when due or when redeemed or purchased  
21 prior to maturity, as provided in any indenture.

22 (b) A provision requiring the Authority or its agent, as trustee  
23 as hereinafter provided, to pay or cause to be paid punctually the  
24 principal of all such bonds and the interest thereon on the date or dates,  
25 or at the place or places and in the manner mentioned in such bonds  
26 and in the coupons appertaining thereto in accordance with such  
27 indenture.

1 (c) A provision requiring the Authority to operate the system  
2 continuously, to the extent reasonably practicable under conditions as  
3 they may from time to time exist, in an efficient and economical  
4 manner.

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

9 (e) A provision requiring the Authority to preserve and  
10 protect the security of the bonds and the rights of the holders thereof  
11 and to warrant and defend such rights.

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

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

24 (h) A provision requiring the Authority to fix, prescribe and  
25 collect annually rates or other charges in connection with the water and  
26 sewer services furnished from the system which, together with other  
27 available revenues, will be:

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

6 (ii) sufficient to pay the annual system operation and  
7 maintenance costs; and

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

10 (i) A provision that no water or sewer service shall be  
11 furnished free of charge to any person, except to the extent permitted  
12 by the indenture.

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

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

25 (l) A provision permitting the Authority to issue additional  
26 bonds or one or more additional series of bonds, equally secured with  
27 bonds theretofore issued under the indenture, for the purpose of

1 acquiring, constructing or completing, improving or extending the  
2 system or any part thereof or for the purpose of refunding any prior  
3 bonds or any other prior obligations of the Authority; and a provision  
4 limiting the power of the Authority to issue any additional bonds so  
5 secured or any other additional bonds for such purpose.

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

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

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

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

1 bonds and interest coupons appertaining thereto, whether attached  
2 thereto or detached therefrom.

3 (q) With respect to any provision relating to the modification  
4 or amendment of an indenture, the Authority may agree that bonds  
5 held by the Authority, Guam, the United States or any instrumentality  
6 of either thereof (including every public corporation, political  
7 subdivision, city, county, district, board, agency or instrumentality of  
8 any kind of class) shall not be counted as outstanding bonds, or be  
9 entitled to vote or assent, but shall, nevertheless, be subject to any such  
10 modification or amendment.

11 (r) A provision limiting the right of action by individual  
12 bondholders in the event of a default by the Authority or proscribing  
13 the procedure for the conduct of any such action by an individual  
14 bondholder.

15 (s) A provision permitting the Authority to purchase  
16 outstanding bonds of the Authority from any moneys or funds or  
17 accounts referred to in the indenture or otherwise legally available for  
18 such purpose.

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

21 (u) A provision for the replacement of lost, destroyed or  
22 mutilated bonds or coupons.

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

26 **§14211. Trustee for Authority and Holders of Bonds.**



1 (a) The Authority or any agent designated by the Authority  
2 shall act as trustee for the Authority and the holders of bonds issued  
3 hereunder and the Authority may authorize the trustee to act on behalf  
4 of the holders of the bonds or any stated percentage thereof and to  
5 exercise and prosecute on behalf of the holders of the bonds such rights  
6 and remedies as may be available to the holders.

7 (b) The Authority may provide in an indenture:

8 (i) for the deposit of all or any portion of the revenues  
9 with the Authority and for the holding thereof by the Authority  
10 in one or more separate funds or accounts in the Guam  
11 Waterworks Authority Revenue Fund; and

12 (ii) for the transfer to the trustee of all or any portion of  
13 the revenues as are provided as security for the bonds and for the  
14 holding thereof by the trustee in one or more separate funds or  
15 accounts. All money in each such fund or account shall be  
16 disbursed only as provided herein and in the indenture.

17 **§14212. Duties and Powers of Trustee.** The Authority shall  
18 prescribe in any indenture the duties and powers of the trustee with  
19 respect to the issuance, authentication, sale and delivery of the bonds  
20 provided for in such indenture and with respect to the payment of  
21 principal of and interest on such bonds, the redemption thereof, the  
22 registration and discharge from registration thereof and the  
23 management of any and all funds provided as security therefore.

24 **§14213. Issuance and Interchange of Coupon and Registered**  
25 **Bonds.** An indenture may provide that bonds may be issued as coupon  
26 bonds or as registered bonds and for the interchange of coupon bonds  
27 for registered bonds and registered bonds for coupon bonds, and may

1 provide that bonds shall be registered as to principal only or as to both  
2 principal and interest or otherwise as the Authority may determine.

3 **§14214. Redemption of Bonds Prior to Maturity.** An indenture  
4 may provide that bonds may be redeemed prior to maturity upon such  
5 terms, conditions and upon such notice as are stated in the indenture  
6 and upon the payment of such premium as may be fixed by the  
7 indenture.

8 **§14215. Places of Payment.** An indenture may provide for the  
9 payment of the principal and interest of bonds at any one or more  
10 places in Guam or in the United States and in any specified coin or  
11 currency of the United States.

12 **§14216. Execution and Authentication of Bonds.** An indenture  
13 may provide for the execution and authentication of bonds by the  
14 manual or facsimile signature of any one or more officers of the  
15 Authority and by additional authentication by endorsement by the  
16 manual signature or a signature stamp of any one or more officers of  
17 the Authority or of any agent designated by the Authority as trustee. If  
18 any officer or agent whose signature, countersignature or endorsement  
19 appears upon the bonds or coupons ceases to be an officer or agent  
20 before the delivery of the bonds or coupons, his signature,  
21 countersignature or endorsement is nevertheless valid and of the same  
22 force and effect as if he had remained such officer or agent until the  
23 delivery of the bonds and coupons.

24 **§14217. Dates and Maturities of Bonds.** Bonds shall bear dates  
25 prescribed by the Authority in the indenture providing for their  
26 issuance. Bonds may be serial bonds, term bonds or sinking fund  
27 bonds with such maturities as the indenture shall specify. No bond by

1 its terms shall mature more than fifty (50) years after its date of  
2 issuance.

3 **§14218. Sale of Bonds.** Bonds authorized to be issued under this  
4 Article shall be sold by the Authority for cash, in accordance with the  
5 provisions of a resolution providing for such sale adopted by the Board.  
6 The bonds may be sold at either public or private sale, and upon such  
7 terms and conditions as shall be authorized by the Board, which may  
8 provide that the bonds may be sold at less than their par or face value.

9 **§14219. Payment of Bonds from Sources Other Than Revenues.**  
10 The Authority may use and expend all or any part of any funds other  
11 than revenues or proceeds of any property owned by it other than the  
12 system, whether received by gift, appropriation or otherwise (if not  
13 restricted as to the use of such funds or proceeds of property by the  
14 terms of gift or trust or provision of law) for the payment of bonds  
15 issued pursuant to the provisions of this Article and of interest due  
16 thereon.

17 **§14220. Payments Which May be Made Out of Proceeds of Sale**  
18 **of Bonds.** The proceeds of sale of any bonds may be expended for any  
19 one or more of the following purposes, all as provided in the indenture  
20 relating to such bonds:

21 (a) For payment of any costs or expenses of the acquisition,  
22 construction or improvement of the system or any part thereof or any  
23 costs or expenses incidental thereto, including payment to the United  
24 States or any other public body for the portion to be borne by the  
25 Authority of the cost of any work done by the United States or such  
26 public body for or jointly or in conjunction with the Board;

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

3 i. the acquisition, construction or improvement of the  
4 system or any part thereof; or

5 ii. the authorization, issue or sale of bonds;

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

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

11 (e) For payment of interest on bonds during the projected  
12 period of acquisition, construction or improvement of the system or any  
13 part thereof for the acquisition, construction or improvement of which  
14 such bonds have been issued and for a period of not to exceed three (3)  
15 years thereafter;

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

17 (g) For the payment of the principal of and interest on any  
18 indebtedness incurred pursuant to 12 G.C.A. §14235 that is by its  
19 terms repayable from the proceeds of sale of bonds; or

20 (h) For the payment of any prior bonds or other obligations of  
21 the Authority.

22 **§14221. Bonds May be Secured by Revenues of System.** An  
23 indenture may provide that payment of the bonds and the interest  
24 thereon shall be secured by a pledge of and lien upon all or any portion  
25 of the revenues of the system. Any such pledge and lien shall be valid  
26 and binding from the time the pledge is made. The revenues pledged  
27 and thereafter received by the Authority or by any trustee, depository

1 or custodian shall be deposited in the Guam Waterworks Authority  
2 Revenue Account and shall be immediately subject to the lien of such  
3 pledge without any physical delivery thereof or further act, and the lien  
4 of such pledge shall be valid and binding against all parties having  
5 claims of any kind in tort, contract or otherwise against the Authority or  
6 such trustee, depository or custodian, irrespective of whether the  
7 parties have notice thereof. The indenture by which such pledge is  
8 created need not be recorded.

9           **§14222. Temporary Bonds.** An indenture may provide that  
10 pending the actual issuance or delivery of definitive bonds, the  
11 Authority may issue temporary or interim bonds, certificates or receipts  
12 or any denomination whatsoever and with or without coupons, to be  
13 exchanged for definitive bonds when ready for delivery.

14           **§14223. Replacement of Bonds or Coupons.** The Authority may  
15 provide for the replacement of lost, destroyed or mutilated bonds or  
16 coupons.

17           **§14224. Tax Exemptions.** Bonds issued pursuant to the  
18 provisions of this Article and the interest or income therefrom are  
19 exempt from taxation to the extent permitted by the provisions of  
20 Section 11 of the Organic Act.

21           **§14225. Bonds as Legal Investments and as Security For**  
22 **Performance of Any Act.** Notwithstanding any other provision of law,  
23 all bonds issued pursuant to the provisions of this Article are legal  
24 investments for all trust funds and for the funds of all banks, both  
25 commercial and savings and may be deposited as security for the  
26 performance of any act whenever any evidence of indebtedness of

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

3 **§14226. Refunding Bonds.** The Authority may provide for the  
4 issuance, sale or exchange of refunding bonds for the purpose of  
5 redeeming or retiring any bonds issued under the provisions of this  
6 Article or any other prior obligations of the Authority. All provisions of  
7 this Article applicable to the issuance of bonds are applicable to  
8 refunding bonds and to the issuance, sale or exchange thereof.

9 **§14227. Use of Other Funds for System.** In addition to the  
10 proceeds of any bonds issued and sold pursuant to this Article, the  
11 Authority may use for the payment of the costs of acquisition,  
12 construction or improvement of the system or any part thereof any  
13 available money or funds of the Authority and any money or funds  
14 made available to the Authority by any person or provided from any  
15 source which may be expended for the accomplishing of the purposes  
16 set forth in this Article or in the Guam Waterworks Authority Act.

17 **§14228. Insurance.** The Authority may insure against loss of  
18 revenues from any cause whatsoever. The Authority may insure  
19 against public liability or property damage from any cause. An  
20 indenture may provide for the carrying of such insurance or any other  
21 insurance in such amount and of such character as shall be specified in  
22 such indenture, for the payment of the premiums thereon and for the  
23 disposition of all proceeds received from any such insurance. At the  
24 option of the Board, or as provided in any indenture, any insurance  
25 may be provided by funded reserves or any other means.

26 **§14229. Pledge by the Government of Guam.** The government  
27 of Guam is fully committed to ensuring that the Authority has the

1 ability to implement the capital improvements authorized to be paid by  
2 this legislation in order to meet the needs of Guam ratepayers for  
3 reliable and affordable services. The government also is fully committed  
4 to ensuring that bondholders are protected to ensure full and timely  
5 repayments of their loans. In order to mirror the previous pledge that  
6 allowed Guam Power Authority to successfully re-enter the financial  
7 markets as found in 12 G.C.A. § 8113.3, and to model similar language  
8 found in laws authorizing debt for the Guam International Airport  
9 Authority, the government of Guam hereby pledges that while any  
10 bonds of the Authority issued under this Article remain outstanding  
11 and not fully performed or discharged (a) to maintain the rights,  
12 powers and duties of the Board and the Guam Public Utilities  
13 Commission, or their respective successors in accordance with law, to  
14 fulfill the terms of any agreements made with bondholders in  
15 accordance with this Article, (b) to maintain the rights and remedies of  
16 bondholders provided in this Article and any indenture, (c) to protect  
17 the exclusive right of the Authority to operate or maintain within Guam  
18 any water or wastewater system operated by the government or its  
19 designees by preventing the acquisition, operation, maintenance or  
20 permitting of any instrumentality of the Government or any other  
21 public or private agency, entity or person to operate a separate and  
22 competitive water and/or wastewater system , and (d) not to transfer  
23 any additional non-system operating responsibilities or other unfunded  
24 mandates to the Authority without providing for the payment of the  
25 costs of such additional responsibilities, with the exception of annual  
26 supplemental annuity and COLA contributions paid by the Authority

1 on behalf of retired employees of the Authority (or its lawful  
2 predecessors) as may be required by the laws of Guam.

3 **§14230. Guam Waterworks Authority Construction Fund.** The  
4 proceeds from the sale of all bonds authorized by this Article shall be  
5 deposited to the credit of a fund to be designated as the Guam  
6 Waterworks Authority Construction Fund, which fund is hereby  
7 created. The money in said Construction Fund shall be expended in the  
8 manner provided by law for any of the purposes authorized by this  
9 Article, including any or all of the purposes specified by 12 G.C.A.  
10 §14222, and for such other purposes, subject to the restrictions provided  
11 by law or by such indenture, as may be authorized by such indenture.

12 **§14231. Guam Waterworks Authority Revenue Fund.** All  
13 revenues received from the operation of the system shall be deposited  
14 to the credit of the Guam Waterworks Authority Revenue Fund, which  
15 fund is hereby created. Moneys in the Guam Waterworks Authority  
16 Revenue Fund may be used for any of the following purposes in the  
17 order of priority set forth in any indenture as provided in §14210(j):

- 18 (a) to pay principal or interest on any bonds;  
19 (b) to pay any amounts due and owing under any payment  
20 agreement or any credit provider reimbursement agreement;  
21 (c) to pay the annual system operation and maintenance costs;  
22 and  
23 (d) for any other purposes of the Authority; all as provided in  
24 any indenture or indentures and subject to any restrictions provided by  
25 law or any indenture.

26 **§14232. Investment of Money in Funds.** Moneys in the Guam  
27 Waterworks Authority Construction Fund and Revenue Fund may be



1 invested by the Authority and any revenues in any other fund or  
2 account held by or on behalf of the Authority or its agent may be  
3 invested by the Authority or its agent, as the case may be, in any  
4 investment authorized by any indenture providing for the issuance of  
5 bonds. All interest or other earnings received pursuant to such  
6 investments shall be collected by the Authority or its agent, as the case  
7 may be, and shall be deposited to the credit of the fund or account from  
8 which such interest or other earnings are derived, unless otherwise  
9 provided in an indenture.

10 **§14233. Use of Balances of Funds and of Surplus Money in**  
11 **Funds.** Any balance remaining in any of the funds or accounts created  
12 by this Article or any indenture after payment of all costs, expenses and  
13 charges required or authorized to be expended therefrom, may be  
14 allocated and used for such other purposes relating to the acquisition,  
15 construction, improvement, operation and maintenance of the system  
16 or to the Authority, as the Board may determine, subject to the  
17 limitations and restrictions in any indenture. After all bonds shall have  
18 been fully paid and discharged or provision for their payment and  
19 discharge irrevocably made, any surplus moneys in any fund or  
20 account created by this Article or any indenture shall, subject to the  
21 limitations and restrictions in any indenture, be transferred to the  
22 Authority and shall be and remain available for the acquisition,  
23 construction, improvement, maintenance or operation of the system or  
24 for any other purposes of the Authority herein or hereafter authorized  
25 by law.

26 **§14234. Appropriation of Money in Funds.** All money in the  
27 funds and accounts created by this Article or any indenture is hereby

1 appropriated for expenditure in carrying out the purposes herein and  
2 therein provided.

3 **§14235. Short Term Borrowing.** Pursuant to the agency of  
4 GEDCA, the Board may at any time or from time to time, by resolution  
5 adopted by a majority of the members of the Board, authorize the  
6 Authority to incur indebtedness, with the approval of the governor, for  
7 any lawful purpose for any period not exceeding five (5) years  
8 evidenced by contract with any person. Any such indebtedness shall be  
9 incurred subject and subordinate to any contractual obligation of the  
10 Authority to the holders of any bonds and the principal thereof and  
11 interest thereon may be repaid:

12 (a) from revenues; or

13 (b) if incurred for a purpose for which bonds may be issued,  
14 from revenues or from the proceeds of sale of bonds.

15 The total cumulative amount borrowed pursuant to this section  
16 shall not exceed Five Million Dollars (\$5,000,000.00).

17 **§14236. Payment Agreements.** In addition to and in  
18 amplification of the powers conferred upon the Board by the Guam  
19 Waterworks Authority Act, this Article or any other law of Guam or of  
20 the United States, the Board has power and is hereby authorized to  
21 cause the Authority to enter into any contracts in connection with, or  
22 incidental to, the issuance of bonds or other indebtedness, or the  
23 carrying of any investment or program of investment or entering into or  
24 maintaining any agreement which secures bonds or other indebtedness  
25 (each, a "payment agreement"), which the Board determines to be  
26 necessary or appropriate to place the obligation or investment of the  
27 Authority, as represented by the bonds or such indebtedness,

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

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

24 **§14237. Credit Enhancement.** The Board has the power and is  
25 hereby authorized to cause the Authority to enter into such contracts or  
26 agreements with such banks, insurance companies or other financial  
27 institutions as it determines are necessary or desirable to improve the

1 security and marketability of the bonds or the security of the  
2 government's obligations under any contract or agreement entered into  
3 under 12 G.C.A. §14236. Such contracts or agreements may contain an  
4 obligation to reimburse, with interest, any such banks, insurance  
5 companies or other financial institutions for advances used to pay  
6 principal of or interest on the bonds and to indemnify any such banks,  
7 insurance companies or other financial institutions for costs and  
8 expenses incurred in connection with any such advance; provided, that  
9 any obligation of the Authority under any reimbursement agreement  
10 shall be payable solely from revenues.

11 Any reimbursement agreement may include a provision that the  
12 obligations of the Authority under the agreement shall be secured by all  
13 or by part of revenues; provided that, at the time of execution and  
14 delivery of each such agreement, any such provision shall be in  
15 compliance with and shall not violate or breach any provision of any  
16 indenture then in effect with respect to bonds.

17 **§14238. No Personal Liability.** No member of the Board,  
18 employee of the Authority or elected official of the government of  
19 Guam shall be individually or personally liable for the payment of any  
20 amounts due on any bonds, or for any other liability arising in  
21 connection with the bonds; provided, however, that nothing in this 12  
22 G.C.A. §14238 shall relieve any employee or elected official from the  
23 performance of any ministerial duty required by law.

24 **§14239. Waiver of Immunity.** Notwithstanding any substantive  
25 or procedural provision of Chapter 6 of Title 5, Guam Code Annotated,  
26 the Authority shall not be entitled to immunity from any suit or action  
27 in contract on the indebtedness authorized by this Article. For the

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

6 **§14240. Construction of Article.** This Article shall be liberally  
7 construed to carry out the objects and purposes and the declared policy  
8 of Guam as in this Article set forth. Nothing contained in this Article  
9 shall be construed directly or by implication to be in any way in  
10 derogation or limitation of powers conferred upon or existing in the  
11 Authority or the Board by virtue of any provisions of the Organic Act or  
12 laws of Guam."

13 **Section 4. Local Sales of Bonds.** The Authority shall undertake its best efforts to  
14 cause a portion of any bonds issued pursuant to Article 2, Chapter 14, Title 12,  
15 Guam Code Annotated and approved pursuant to Section 4 of this Act, to be offered  
16 for sale to residents of Guam, as well as to residents of other jurisdictions, if and to  
17 the extent that such offer and any sales resulting from such offer do not increase the  
18 costs to the Authority of issuing and repaying such bonds. Notwithstanding any  
19 other provision of law to the contrary, these bonds may be sold to employees of the  
20 Guam Waterworks Authority.

21 **Section 5. Approval of Guam Waterworks Authority Revenue Bonds.** The  
22 Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12 of the Guam  
23 Code Annotated, hereby approves the issuance and sale by the Authority of revenue  
24 bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated (the "Act")  
25 in one or more series or issues; provided that the issuance, terms and conditions of  
26 the bonds shall have been approved by the Guam Public Utilities Commission, and  
27 further provided that such bonds shall have a principal amount not to exceed Two

1 Hundred Million (\$220,000,000) shall have a final maturity not later than 2050, shall  
2 bear interest at such rate or rates and shall be sold for such price or prices as shall  
3 result in a yield to the bondholders not exceeding 6 percent per annum (treating  
4 payments and receipts under any interest rate hedging contracts as if they were  
5 payments to and receipts from the bondholders), and shall be issued and sold in the  
6 manner, for the purposes and subject to the requirements and limitations provided  
7 in Article 2, Chapter 14, Title 12, Guam Code Annotated.