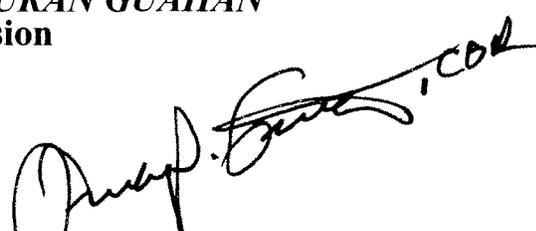


I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. *1(1-5)*

Introduced by:


Committee on Rules, Natural
Resources, Federal, Foreign,
and Micronesian Affairs
By request of *I Maga'lahaen*
Guåhan in accordance with the
Organic Act of Guam.

AN ACT TO AMEND AND RESTATE ARTICLE 8 TO
DIVISION 2 OF CHAPTER 51 OF TITLE 10, GUAM CODE
ANNOTATED, RELATIVE TO AUTHORIZING THE
GOVERNMENT OF GUAM TO ISSUE SOLID WASTE
MANAGEMENT SYSTEM REVENUE BONDS OR SECTION
30 LIMITED OBLIGATION BONDS FOR THE PURPOSE OF
FINANCING FACILITIES OF THE SOLID WASTE
MANAGEMENT SYSTEM OF GUAM, AND APPROVING
THE TERMS AND CONDITIONS OF THE ISSUANCE OF
ONE (1) OR MORE SERIES OF SUCH BONDS PURSUANT TO
SUCH ARTICLE TO PAY THE COSTS OF A NEW LANDFILL
AND THE CLOSURE OF THE ORDOT LANDFILL AND
OTHER SYSTEM COSTS; AND TO AMEND AND RESTATE
ARTICLE 9 TO DIVISION 2 OF CHAPTER 51 OF TITLE 10,
GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING
THE GOVERNMENT OF GUAM TO ENTER INTO A LEASE
AND A LEASE-BACK FOR THE PURPOSE OF FINANCING
FACILITIES OF THE SOLID WASTE MANAGEMENT
SYSTEM OF GUAM, AND APPROVING THE TERMS AND
CONDITIONS OF SUCH LEASES PURSUANT TO SUCH
ARTICLE TO PAY THE COSTS OF A NEW LANDFILL AND
THE CLOSURE OF THE ORDOT LANDFILL AND OTHER
SYSTEM COSTS.

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1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Amendment and Restatement of the Guam Solid Waste**
3 **Management System Revenue Bond Act.** Article 8 of Title 10, Chapter 51 of the
4 Guam Code Annotated, is hereby amended and restated to read as follows:

5 **Article 8**

6 **Solid Waste Management System Bonds**

7 **§51801. Short Title.** This Article may be cited as the Guam Solid Waste
8 Management System Bond Act.

9 **§51802. Definitions.** The following terms wherever used or referred to in
10 this Article or in any indenture entered into pursuant hereto (except to the extent
11 modified therein in accordance with this Article), shall have the following
12 meanings, respectively, unless a different meaning appears from the context:

13 (a) *Bonds* means an instrument of indebtedness, whether in
14 the form of bonds, notes or another such instrument, issued by the
15 government and providing for repayment of the principal amount of
16 the indebtedness, plus interest, over a specified timeframe.

17 (b) *Bondholder* or *holder of bonds* or any similar term means
18 any person who shall be:

19 (1) the bearer of any outstanding bond or bonds
20 registered to bearer or not registered; or

21 (2) the registered owner of any such outstanding bond
22 or bonds which shall at the time be registered other than to
23 bearer.

24 (c) *Department* means the *Department* of Public Works,
25 acting on behalf of the government of Guam.

26 (d) *Director* means the Director of the *Department* of Public
27 Works.

28

1 (e) *Guam Solid Waste Management and Litter Control Act*
2 means Chapter 51 of Title 10 of the Guam Code Annotated.

3 (f) *Indenture* means an agreement pursuant to which bonds
4 are issued, regardless of whether such agreement is expressed in the
5 form of a certificate of *I Maga 'lahen Guåhan* or by other instrument.

6 (g) *Organic Act* means the Organic Act of Guam as amended
7 and in effect on the effective date of this Article (Title 48, §1421 et
8 seq. of the United States Code.).

9 (h) *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 (i) *Pledged revenue* means any revenue of the system
15 pledged to the payment of bonds or any Section 30 revenue pledged to
16 the payment of bonds or both.

17 (j) *Rates, fees and charges* means all rates, fees and charges
18 (including tipping fees, residential pick-up fees, collection fees, self-
19 drop fees and all other solid waste management service charges),
20 received or receivable by or on behalf of the *Department* for providing
21 solid waste management services.

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

1 ownership or operation of, or arising from, the system, together with
2 all interest, profits or other income derived from the investment of
3 amounts in the Solid Waste Operations Fund, to be deposited to the
4 Solid Waste Operations Fund in accordance with Section 51833, Title
5 10, Guam Code Annotated.

6 (l) *Section 30 revenue* means revenues derived by the
7 government of Guam under Section 30 of the Organic Act.

8 (m) *Solid Waste Operations Fund* means the fund by that
9 name established pursuant to Section 51118(f), Title 10, Guam Code
10 Annotated.

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

20 (o) *System operation and maintenance costs* means such
21 reasonable and necessary current expenses of the *Department*, paid or
22 accrued, for operation, maintenance and repair of the system,
23 including, without limiting the generality of the foregoing:

24 (1) legal and overhead expenses of the *Department*
25 directly related and reasonably allocable to the administration
26 of the system;

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

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

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

9 (p) *United States* means the United States of America.

10 **§51803. Power to Incur Indebtedness.** *I Maga 'lahen Guåhan*, through the
11 agency of the Guam Economic Development Authority pursuant to Section
12 50103(k), Title 12, Guam Code Annotated, and with the approval of *I Liheslaturan*
13 *Guåhan* by statute, has the power and is hereby authorized, in addition to all other
14 powers conferred by the Guam Solid Waste Management and Litter Control Act or
15 any other provision of this Chapter or by any law of Guam or of the United States,
16 to incur limited obligation indebtedness on behalf of the government of Guam, by
17 the issuance of bonds pursuant to this Article to raise funds for the purpose of
18 acquiring, constructing, improving, equipping, maintaining, repairing, renewing,
19 replacing, reconstructing or insuring the system, or any part thereof, or to
20 reimburse the government for its payment, after February 27, 2009, of amounts
21 expended for such system purposes, or for the purpose of refunding any such
22 bonds, any other prior obligations of the government secured by any of the pledged
23 revenue or issued for any of such purposes, or for any combination of such
24 purposes for which bonds may be issued and secured as provided in this Article.

25 It is hereby declared that the system and each facility of the system is and
26 shall be a public improvement or undertaking as that term is used in Section 11 of
27 the Organic Act (§1423a, Title 48, U.S. Code). Indebtedness issued by the
28 government pursuant to this Article that is payable only from funds in the Solid

1 Waste Operations Fund available therefor and from revenue of the system will not
2 be and shall not be deemed to be public indebtedness of Guam as that term is used
3 in said Section 11. Indebtedness that is issued by the government pursuant to this
4 Article and that is payable from Section 30 revenue may not be issued in an
5 amount that would cause a violation of the debt limitation provisions of said
6 Section 11.

7 No obligation undertaken by the government pursuant to this Article shall be
8 or become a lien, charge or liability against the government of Guam or against the
9 *Department* or against any property or funds of the government of Guam or the
10 *Department*, except to the extent of the pledge of pledged revenue provided by the
11 indenture.

12 **§51804. Powers of Department.** Notwithstanding any provision of law or
13 regulation, the *Department* has power and is hereby authorized, in addition to all
14 other powers conferred upon the *Department* by the Guam Solid Waste
15 Management and Litter Control Act or any other provision of this Chapter or by
16 any law of Guam, to exercise any or all of the powers granted to the *Department*
17 by this Article. The *Department* has jurisdiction over and may collect and
18 transport to permitted solid waste facilities, or contract for the collection and
19 transportation to permitted solid waste facilities of, solid waste from all individual
20 dwelling units, single-family residences, duplexes, and government-managed
21 housing units or residences. The *Department* may operate the Ordot Dump, or it
22 may contract for the operation of the Ordot Dump, in accordance with Guam law
23 and its permit under this Chapter. The *Department* may contract for the operation
24 of the landfill.

25 The *Department* may also operate, or contract for the operation of, all other
26 permitted solid waste management facilities and operations not addressed above
27 and within the policy guidelines of the Integrated Solid Waste Management Plan.
28 Any such contract for the operation of the Ordot Dump or the landfill may be

1 entered into pursuant hereto or pursuant to Article 9 of this Chapter and may be
2 with any person or corporation duly qualified to provide such services, whether
3 public or private, domestic or foreign.

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

15 Except to the extent otherwise permitted or required by an indenture
16 pursuant to which bonds are issued, rates, fees and charges, together with other
17 moneys made available to the Department for such purposes, shall at all times be
18 fixed to yield annual revenue of the system at least equal to the sum of annual
19 principal payments and interest charges on all bonds then outstanding, all coverage
20 and reserve fund requirements relating to such bonds, any obligations undertaken
21 pursuant to Article 9 of this Chapter, and the annual system operation and
22 maintenance costs; provided, however, that Section 30 revenue may be used for the
23 purposes and treated as satisfying the requirements of this paragraph with respect
24 to the costs of the closure of the Ordot Dump and the bonds or other obligations
25 related thereto.

26 An indenture, lease or contract of indebtedness may provide for payment
27 from revenue of the system of refunds of rates and charges that are collected in
28 error and that are refundable by the *Department*.

1 **§51806. Validity of Authorization and Issuance of Bonds.** The validity
2 of the authorization and issuance of any bonds by the government pursuant to this
3 Article is not dependent on nor affected in any way by:

4 (a) Proceedings taken by the *Department* for the acquisition,
5 construction or improvement of the system or any part thereof;

6 (b) Any contracts made by the *Department* in connection with the
7 acquisition, construction or improvement of the system or any part thereof;
8 or

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

11 **§51807. *I Maga'laha*n to Determine Issuance of Bonds and Incurring of**
12 **Other Indebtedness; Government Only Liable as Provided by Indenture or**
13 **Contract.**

14 (a) *I Maga'laha*n *Guåhan* shall determine the time, form and
15 manner of issuance of bonds.

16 (b) No bond issued or sold pursuant to this Article and no other
17 obligation undertaken by the government under any indenture, lease or other
18 instrument shall be or become a lien, charge or liability against the
19 government of Guam or against the *Department* or against any property or
20 funds of the government of Guam or the *Department*, except to the extent of
21 the pledge of the pledged revenue provided by such indenture, lease or other
22 instrument. Every such bond shall contain a recital on its face stating that it
23 is a limited obligation of the government of Guam and shall not be deemed
24 to be secured by the faith and credit of the government of Guam.

25 **§51808. *I Maga'laha*n to Declare Purpose and Maximum Amount of**
26 **Bonds to be Issued.** Before issuing any bond or bonds, *I Maga'laha*n *Guåhan*
27 shall declare the purpose for which the proceeds of the bonds proposed to be issued
28 shall be expended and shall specify the maximum amount of bonds to be issued or

1 sold for such purpose. Bonds shall not be issued or sold for such purpose in an
2 amount exceeding such specified maximum.

3 **§51809. Indenture Providing Terms and Conditions of Bonds.** *I*

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

12 **§51810. Issues of Bonds.** An indenture may provide for one or several

13 series of bonds and that any series may be divided into one or more divisions with
14 different maturities or dates of issue, different rates of interest or methods for
15 determining such rates, or different terms and conditions for the bonds of the
16 several series or divisions. It is not necessary that all bonds of the same authorized
17 series be of the same kind or character, have the same security, or be of the same
18 interest rate, but the terms thereof shall in each case be as authorized by *I*
19 *Maga'lahaen Guåhan*.

20 **§51811. Covenants and Agreements That May be Contained in**

21 **Indenture.** An indenture pursuant to which bonds are issued may include any and
22 all covenants and agreements on the part of the government as *I Maga'lahaen*
23 *Guåhan* deems necessary or advisable, including without limiting the generality of
24 the foregoing, any one or more of the following:

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

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

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

5 (2) for reserve or sinking funds for the further security of
6 bonds.

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

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

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

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

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

28

1 (h) A provision requiring the government, with the prior approval
2 of the Guam Public Utilities Commission, to fix, prescribe and collect
3 annually rates or other charges in connection with the solid waste
4 management services furnished from the system which, together with other
5 available revenues, including, to the extent provided by an indenture, Section
6 30 revenue, and taking into account any provision for a rate stabilization
7 fund, will be:

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

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

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

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

18 (i) A provision for a rate stabilization fund.

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

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

1 (l) A provision defining the power of the government in applying
2 the proceeds of the sale of any issue of bonds for the acquiring, constructing
3 or completing of the system or any part thereof.

4 (m) A provision permitting the government to issue additional
5 bonds or to enter into one or more lease-back obligations pursuant to Article
6 9 of this Chapter, in each case equally secured with bonds theretofore issued
7 under the indenture and lease-back obligations previously entered into, for
8 the purpose of acquiring, constructing or completing, improving or
9 extending the system or any part thereof, or for the purpose of refunding any
10 prior bonds or any other prior obligations of the government relating to the
11 system; and a provision limiting the power of the government to issue any
12 additional bonds so secured or any other additional bonds for such purpose.

13 (n) A provision requiring, specifying or limiting the kind, amount
14 and character of insurance (or any reserve fund or funds in lieu of insurance)
15 to be maintained by the government on the system or any part thereof and
16 the use and disposition of the proceeds of any such insurance thereafter
17 collected or of the moneys in any such reserve fund.

18 (o) A provision specifying the events of default and the terms and
19 conditions upon which any or all of the bonds then or thereafter issued may
20 become or be declared due and payable prior to maturity, and the terms and
21 conditions upon which such declaration and its consequences may be
22 waived.

23 (p) A provision designating the rights, limitations, powers and
24 duties arising upon breach by the government of any of the covenants,
25 conditions or obligations contained in the indenture.

26 (q) A provision prescribing a procedure by which the terms and
27 conditions of the indenture may be subsequently amended or modified with
28 the consent of the government and the vote or written consent of the holders

1 of a specified principal amount or specified proportion of the bonds issued
2 and outstanding, including provisions for meetings of bondholders and for
3 the manner in which the consent of the bondholders may be given and
4 specifically stating the effect of such amendment or modification upon the
5 rights of the holders of all of the bonds.

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

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

16 (s) A provision permitting the government to purchase outstanding
17 bonds from any moneys or funds or accounts referred to in the indenture or
18 otherwise legally available for 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 mutilated
22 bonds.

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

26 **§51812. Trustee for Government and Holders of Bonds.**

27 (a) The government or any agent designated by the government
28 shall act as trustee for the government and the holders of bonds issued

1 hereunder and the government may authorize the trustee to act on behalf of
2 the holders of the bonds or any stated percentage thereof and to exercise and
3 prosecute on behalf of the holders of the bonds such rights and remedies as
4 may be available to the holders.

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

6 (1) for the deposit of all or any portion of the pledged
7 revenue with the government and for the holding thereof by the
8 government in one or more separate funds or accounts in the Solid
9 Waste Operations Fund; and

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

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

21 **§51814. Issuance and Interchange of Bearer and Registered Bonds.** An
22 indenture may provide that bonds may be issued as bearer bonds or as registered
23 bonds and for the interchange of bearer bonds for registered bonds and registered
24 bonds for bearer bonds, and may provide that bonds shall be registered as to
25 principal only or as to both principal and interest or otherwise as *I Maga'lahen*
26 *Guåhan* may determine.

27 **§51815. Redemption of Bonds Prior to Maturity.** An indenture may
28 provide that bonds may be redeemed prior to maturity upon such terms, conditions

1 and upon such notice as are stated in the indenture and upon the payment of such
2 premium as may be fixed by the indenture.

3 **§51816. Places of Payment.** An indenture may provide for the payment of
4 the principal and interest of bonds at any one or more places in Guam or in the
5 United States and in any specified coin or currency of the United States.

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

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

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

27 **§51820. Payment of Bonds from Sources Other Than**
28 **Pledged Revenue.** The government may use and expend all or any part of any

1 funds other than pledged revenue or proceeds of any property owned by it other
2 than the system, whether received by gift, appropriation or otherwise (if not
3 restricted as to the use of such funds or proceeds of property by the terms of gift or
4 trust or provision of law) for the payment of bonds issued pursuant to the
5 provisions of this Article and of interest due thereon.

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

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

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

18 (1) the acquisition, construction or improvement of the
19 system or any part thereof; or

20 (2) the authorization, issue or sale of bonds;

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

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

26 (e) For payment of interest on bonds during the projected period of
27 acquisition, construction or improvement of the system or any part thereof
28

1 for the acquisition, construction or improvement of which such bonds have
2 been issued and for a period of not to exceed three (3) years thereafter;

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

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

6 **§51822. Bonds May be Secured by Revenue of the System.** An indenture
7 may provide that payment of the bonds and the interest thereon shall be secured by
8 a pledge of and lien upon all or any portion of the revenue of the system, subject to
9 any parity lien created or to be created pursuant to Article 9 of this Chapter. Any
10 such pledge and lien shall be valid and binding against all parties in accordance
11 with its terms and have priority against all parties in accordance with its terms
12 from the time the pledge is made, and property so pledged shall immediately be
13 subject to the lien of the pledge without the need for physical delivery, recordation,
14 filing, or other further act. The pledge shall not be subject to Division 9 of Title 13
15 of the Guam Code Annotated or any successor statute. The indenture by which
16 such pledge is created need not be recorded. The revenue of the system pledged
17 and thereafter received by the government or by any trustee, depository or
18 custodian shall be deposited in a separate subaccount of the revenue account in the
19 Solid Waste Operations Fund. All such pledged revenue of the system is hereby
20 appropriated for the purposes of paying the principal and interest on the bonds
21 issued pursuant to this Article.

22 **§51823. Bonds May be Secured by Section 30 Revenue.** If and to the
23 extent determined by I Maga'láhen Guåhan, all or any part of the revenues derived
24 by the government of Guam under Section 30 of the Organic Act (Section 30
25 revenue) may be pledged to secure the payment of any bonds issued pursuant to
26 this Article, subject to any previously created lien on or pledge of such Section 30
27 revenue and to any parity lien created pursuant to Article 9 of this Chapter. Any
28 such pledge shall be valid and binding against all parties in accordance with its

1 terms and have priority against all parties in accordance with its terms from the
2 time the pledge is made, and property so pledged shall immediately be subject to
3 the lien of the pledge without the need for physical delivery, recordation, filing, or
4 other further act. The pledge shall not be subject to Division 9 of Title 13 of the
5 Guam Code Annotated or any successor statute. The Section 30 revenue pledged
6 and thereafter received by the government of Guam or by any trustee, depository
7 or custodian shall be deposited in accordance with the provisions of the applicable
8 indenture or, if not otherwise provided for in such indenture, in a separate
9 subaccount of the revenue account in the Solid Waste Operations Fund. The
10 indenture by which such pledge is created need not be recorded. All Section 30
11 revenue so pledged is hereby appropriated for the purpose for which they have
12 been pledged. Pledged Section 30 revenue released from the lien of the indenture
13 or certificate pursuant to which the bonds are issued shall be available for
14 appropriation for any other lawful purpose of the government. Indebtedness issued
15 by the government pursuant to this Article and that is payable from Section 30
16 revenue may not be issued in an amount that would cause a violation of the debt
17 limitation provisions of Section 11 of the Organic Act.

18 **§51824. Temporary Bonds.** An indenture may provide that pending the
19 actual issuance or delivery of definitive bonds, the government may issue
20 temporary or interim bonds, certificates or receipts or any denomination
21 whatsoever, to be exchanged for definitive bonds when ready for delivery.

22 **§51825. Replacement of Bonds.** The government may provide for the
23 replacement of lost, destroyed or mutilated bonds.

24 **§51826. Tax Exemption.** Bonds issued pursuant to the provisions of this
25 Article and the interest or income therefrom are exempt from taxation to the extent
26 permitted by the provisions of Section 11 of the Organic Act.

27 **§51827. Bonds as Legal Investments and as Security For Performance**
28 **of Any Act.** Notwithstanding any other provision of law, all bonds issued pursuant

1 to the provisions of this Article are legal investments for all trust funds and for the
2 funds of all banks, both commercial and savings and may be deposited as security
3 for the performance of any act whenever any evidence of indebtedness of Guam
4 may be so deposited and may also be used as security for the deposit of public
5 moneys in banks in Guam.

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

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

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

28

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

16 **§51832. Construction Account.** The proceeds from the sale of all bonds
17 authorized by this Article (except for any refunding bonds) shall be deposited to
18 the credit of a construction account, which account is hereby created within the
19 Solid Waste Operations Fund. The money in the account shall be expended in the
20 manner provided by law for any of the purposes authorized by this Article,
21 including any or all of the purposes specified by Section 51821, Title 10, Guam
22 Code Annotated, and for such other purposes, subject to the restrictions provided
23 by law or by such indenture, as may be authorized by such indenture.

24 **§51833. Revenue Account.** All revenue of the system and, to the extent
25 provided by an indenture or by Article 9 of this Chapter, the Section 30 revenue,
26 shall be deposited to the credit of the applicable subaccount of the Revenue
27 Account, which account is hereby created within the Solid Waste Operations Fund.
28 The money in such subaccounts may be used for any of the following purposes in

1 the order of priority set forth in any indenture as provided in Section 51811(j),
2 Title 10, Guam Code Annotated or any lease or lease-back as provided in Article 9
3 of this Chapter:

4 (a) to pay principal or interest on any bonds or any other
5 obligations of the *Department*;

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

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

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

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

12 all as provided in any indenture or indentures and subject to any restrictions
13 provided by law or any indenture.

14 **§51834. Investment of Money in Funds and Accounts.** Moneys in the
15 revenue account and construction account in the Solid Waste Operations Fund may
16 be invested by the government or the trustee under any indenture, as the case may
17 be, in any investment authorized by any indenture providing for the issuance of
18 bonds. All interest or other earnings received pursuant to such investments shall
19 be deposited to the credit of the fund or account from which such interest or other
20 earnings are derived, unless otherwise provided in an indenture.

21 **§51835. Use of Balances of Funds and Accounts and Surplus Money in**
22 **Funds and Accounts.** Any balance remaining in any of the funds or accounts
23 created by this Article or any indenture, including the Construction Account
24 established pursuant to Section 51832 of Title 10, Guam Code Annotated, after
25 payment of all costs, expenses and charges required or authorized to be expended
26 therefrom, may be allocated and used for such other purposes relating to the
27 acquisition, construction, improvement, operation and maintenance of the system,
28 subject to the limitations and restrictions in any indenture. After all bonds shall

1 have been fully paid and discharged or provision for their payment and discharge
2 irrevocably made, any surplus moneys in any fund or account created by this
3 Article or any indenture shall, subject to the limitations and restrictions in any
4 indenture, be transferred to the *Department* and shall be and remain available for
5 the acquisition, construction, improvement, maintenance or operation of the system
6 or for any other purposes of the *Department* herein or hereafter authorized by law.

7 **§51836. Appropriation of Money in Funds and Accounts.** All money in
8 the funds and accounts created by this Article or any indenture is hereby
9 continuously appropriated for expenditure to carry out the purposes herein and
10 therein provided.

11 **§51837. Credit Enhancement.** *I Maga'lahaen Guåhan* is hereby authorized
12 to enter into such contracts or agreements on behalf of the government with such
13 banks, insurance companies or other financial institutions as *I Maga'lahaen Guåhan*
14 determines are necessary or desirable to improve the security and marketability of
15 the bonds. Such contracts or agreements may contain an obligation to reimburse,
16 with interest, any such banks, insurance companies or other financial institutions
17 for advances used to pay principal of or interest on the bonds and to indemnify any
18 such banks, insurance companies or other financial institutions for costs and
19 expenses incurred in connection with any such advance; provided, that any
20 obligation of the government under any reimbursement agreement shall be payable
21 solely from pledged revenue.

22 Any reimbursement agreement may include a provision that the obligations
23 of the government under the agreement shall be secured by all or by part of
24 pledged revenue; provided that, at the time of execution and delivery of each such
25 agreement, any such provision shall be in compliance with and shall not violate or
26 breach any provision of any indenture, lease or other instrument then in effect to
27 which the government or the *Department* is a party.

28

1 **§51838. No Personal Liability.** Neither *I Maga'lahaen Guåhan*, the
2 Director, any employee of the *Department*, any employee of the government nor
3 any elected official of the government shall be individually or personally liable for
4 the payment of any amounts due on any bonds, or for any other liability arising in
5 connection with the bonds; provided, however, that nothing in this §51838 shall
6 relieve any employee or elected official from the performance of any ministerial
7 duty required by law.

8 **§51839. Waiver of Immunity.** Notwithstanding any substantive or
9 procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the
10 government shall not be entitled to immunity from any suit or action in contract on
11 the indebtedness authorized by this Article. For the purposes of this Act only,
12 immunity is waived as to the award of attorney fees in connection with any suit
13 brought to enforce any right or obligation given under this Act or in connection
14 with the enforcement of the terms of any agreement or indenture that arises directly
15 from the issuance of bonds.

16 **§51840. Construction of Article.** This Article shall be liberally construed
17 to carry out the objects and purposes and the declared policy of the government of
18 Guam as in this Article set forth. Nothing contained in this Article shall be
19 construed directly or by implication to be in any way in derogation or limitation of
20 powers conferred upon or existing in the *Department*, the Director or *I Maga'lahaen*
21 *Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.”

22 **§51841. Approval by Guam Economic Development Authority.**
23 §50103(k), Title 12, Guam Code Annotated, provides that agencies and
24 instrumentalities of the Government of Guam shall issue bonds and other
25 obligations only by means of and through the agency of the Guam Economic
26 Development Authority (GEDA). No issue of bonds authorized by this Article
27 shall be sold until the Board of Directors of GEDA has adopted a resolution
28 approving the sale of such issue.

1 **§51842. Approval of Voters Not Required.** The issuance of bonds
2 pursuant to this Article is not subject to the approval of the voters of Guam.

3
4 **Section 2. Local Sales of Bonds.** GEDA shall undertake its best efforts to
5 cause a portion of any bonds issued pursuant to Article 8, Chapter 51, Title 10,
6 Guam Code Annotated and approved pursuant to Section 3 of this Act, to be
7 offered for sale to residents of Guam, as well as to residents of other jurisdictions,
8 if and to the extent that such offer and any sales resulting from such offer do not
9 increase the costs to the government of issuing and repaying such bonds.
10 Notwithstanding any other provision of law to the contrary, these bonds may be
11 sold to employees of the *Department* of Public Works.

12 **Section 3. Approval of Government of Guam Solid Waste**
13 **Management System Revenue Bonds or Section 30 Limited Obligation Bonds.**
14 *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12, Guam Code
15 Annotated, and Section 51803 of Title 10, Guam Code Annotated, hereby approves
16 the issuance and sale by the government of bonds pursuant to Article 8, Chapter
17 51, Title 10, Guam Code Annotated (the Act), in one (1) or more series or issues
18 (together with any related reimbursement obligations); provided that the issuance,
19 terms and conditions of the bonds, the indenture or certificate pursuant to which
20 the bonds are to be issued, and any reimbursement agreements shall have been
21 approved by the Guam Public Utilities Commission, and further provided that such
22 bonds may be issued in the amount necessary to fund reserves with respect to such
23 bonds and to pay expenses incurred in connection with the issuance of such bonds
24 not already included in an existing appropriation for or in the regular budget of any
25 government agency or instrumentality or public corporation providing any service
26 in connection with the issuance of such bonds, to provide, together with any lease-
27 back obligations issued pursuant to Article 9, Chapter 51, Title 10, Guam Code
28 Annotated, an aggregate principal amount not to exceed Two Hundred Two

1 Million Four Hundred Twenty-five Thousand Dollars (\$202,425,000) for the
2 payment, or reimbursement to the government for its prior payment, of the costs of
3 the closure of the Ordot Dump and the construction of the new landfill, and, if such
4 bonds are secured by a pledge of Section 30 revenue, to fund an escrow for the
5 refinancing of all or a portion of the Government of Guam Limited Obligation
6 (Section 30) Bonds, Series 2001A, or any other currently outstanding obligations
7 of the government secured by the Section 30 revenue. Such bonds shall have a
8 final maturity not later than 2042, shall bear interest at such rate or rates and shall
9 be sold for such price or prices as shall result in a yield to the bondholders not
10 exceeding nine percent (9%) per annum, and shall be issued and sold in the
11 manner, for the purposes and subject to the requirements and limitations provided
12 in Article 8, Chapter 51, Title 10, Guam Code Annotated.

13 *I Liheslaturan Guåhan* further hereby rescinds its approval, contained in
14 Section 3 of Public Law 30-1, of the issuance and sale by the government of bonds
15 pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated as enacted by
16 said Public Law 30-1.

17 **Section 4. Amendment and Restatement of the Guam Solid Waste**
18 **Management System Lease Financing Act.** A new Article 9 of Chapter 51 of
19 Title 10, Guam Code Annotated, is hereby *amended and restated* to read as
20 follows:

21 Article 9 of Title 10, Chapter 51 of the Guam Code Annotated, is hereby
22 enacted to read as follows:

23 **Article 9**

24 **Solid Waste Management System Lease Financing**

25 **§51901. Short Title and Purpose.** This Article may be cited as the Guam
26 Solid Waste Management System Lease Financing Act. The purpose of this
27 Article is to authorize the use of lease financing in addition to, in lieu of, or in
28 conjunction with the use of bond financing pursuant to Article 8 of this Chapter, in

1 order to achieve the most efficient and lowest cost financing, construction,
2 operation and maintenance of the solid waste management system.

3 **§51902. Definitions.** The following terms wherever used or referred to in
4 this Article or in any indenture, lease or lease-back entered into pursuant hereto
5 (except to the extent modified therein in accordance with this Article) shall have
6 the following meanings, respectively, unless a different meaning appears from the
7 context:

8 (a) *Contractor* means the authorized entity which shall be the
9 signatory on the lease and the lease-back and shall be fully responsible for
10 carrying out the construction, financing, operation and maintenance of the
11 solid waste facility. The contractor may cooperate with another entity or
12 entities in any manner the contractor deems appropriate to provide for the
13 financing, construction, operation and maintenance of the solid waste
14 facility.

15 (b) *Department* means the *Department* of Public Works, acting on
16 behalf of the government of Guam.

17 (c) *Director* means the Director of the *Department* of Public
18 Works.

19 (d) *Lease* means a ground or site lease of property from the
20 *Department*, the Chamorro Land Trust Commission, or other government
21 entity, as applicable, to the Contractor.

22 (e) *Lease-back* means the facilities lease or other lease of the
23 property from the Contractor back to the *Department*, over the term of which
24 the costs of the construction, financing, operation and maintenance of a solid
25 waste facility are amortized according to the terms agreed to between the
26 *Department* and the Contractor.

27 (f) *Pledged revenue* means any revenue of the system and any
28 Section 30 revenue pledged to secure lease-back payments.

1 (g) *Property* means any property on which a solid waste facility is
2 located.

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

14 (i) *Section 30 revenue* means revenues derived by the government
15 of Guam under Section 30 of the Organic Act.

16 (j) *Solid waste facility* means all or any portion of any landfills
17 (whether closed or open and including Ordot Dump), transfer stations,
18 recycling facilities, appurtenant equipment, and other capital facilities of the
19 system.

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

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

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

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

7 (1) legal and overhead expenses of the *Department* directly
8 related and reasonably allocable to the administration of the system;

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

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

15 (4) the costs incurred in the collection of all or any part of
16 the revenues.

17 **§51903. Authorization to Enter Into Long-Term Leases.** *I Maga'lahen*
18 *Guáhan* may enter into a lease and lease-back on behalf of the *Department* for the
19 financing of the acquisition, construction, improvement, equipping, repair,
20 renewal, replacement, or reconstruction of any solid waste facility, together with
21 operation and maintenance of all or any portion of such solid waste facility over
22 the term of the lease-back, according to the needs of the *Department* and consistent
23 with this Article.

24 The costs of the construction and financing of a solid waste facility financed
25 pursuant to this Article shall be amortized in periodic installments over the term of
26 the lease-back period, which shall be mutually determined by *I Maga'lahen*
27 *Guáhan* and the contractor, but which will not exceed forty (40) years. The lease
28 and lease-back may provide that if sufficient funds are not appropriated or

1 otherwise available for the payment of such installments, the *Department* will have
2 the obligation to vacate the solid waste facility, and the contractor shall have the
3 right of use and occupancy of the solid waste facility for the remainder of the term
4 of the lease, unless new mutually satisfactory terms are entered into. For this
5 purpose, the lease may provide that its term shall be extended for a period not to
6 exceed the shorter of ten (10) years beyond the original term of the lease-back or
7 such period of time as is necessary to repay in full any financing arranged pursuant
8 to this Article. The *Department* shall pay the operation and maintenance costs of
9 the solid waste facility on a periodic basis as incurred by the contractor on terms to
10 be agreed to in the lease-back for each solid waste facility.

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

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

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

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

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

10 **§51906. Assignments.** To facilitate the purposes of this Article and to
11 provide security for the bondholders, the contractor may assign, with the consent
12 of the *Department*, the lease and the lease-back to any trustee, underwriter or other
13 appropriate party as may be necessary to facilitate the issuance of certificates of
14 participation in lease-back payments or other financial instruments to provide the
15 financing for the solid waste facility.

16 **§51907. Use of Tax-Exempt Financing.** To minimize the financing cost to
17 the *Department*, all financing utilized by the contractor to fund the construction,
18 operation and maintenance of a solid waste facility shall be through tax-exempt
19 obligations, if a mechanism to do so is available. The purpose for this requirement
20 is to assure that the *Department* pays the lowest possible interest rate so that the
21 cost of financing the construction, operation and maintenance of a solid waste
22 facility to the *Department*, amortized through the lease-back payments from the
23 *Department* to the contractor, will be lower than regular commercial rates.

24 **§51908. Lease-Back May be Secured by Revenue of the System.** A
25 lease-back may provide that payment of obligations thereunder shall be secured by
26 a pledge of and lien upon all or any portion of the revenue of the system, subject to
27 any parity lien created pursuant to Article 8 of this Chapter. Any such pledge and
28 lien shall be valid and binding against all parties in accordance with its terms and

1 have priority against all parties in accordance with its terms from the time the
2 pledge is made, and property so pledged shall immediately be subject to the lien of
3 the pledge without the need for physical delivery, recordation filing or other further
4 act. The pledge shall not be subject to Division 9 of Title 13 of the Guam Code
5 Annotated or any successor statute. The revenue of the system pledged and
6 thereafter received by the government or by any trustee, depository or custodian
7 shall be deposited in a separate subaccount of the revenue account in the Solid
8 Waste Operations Fund. The instrument by which such pledge is created need not
9 be recorded, except to the extent that such instrument conveys an interest in land or
10 improvements thereon.

11 **§51909. Lease-Back May be Secured by Section 30 Revenue.** If and to
12 the extent determined by *I Maga'lahaen Guåhan*, all or any part of the revenues
13 derived by the government of Guam under Section 30 of the Organic Act (Section
14 30 revenue) may also be pledged to secure the payment by the *Department* of
15 obligations under any lease-back entered into pursuant to this Article, subject to
16 any previously created lien on or pledge of such Section 30 revenue and to any
17 parity lien created or to be created pursuant to Article 8 of this Chapter. Any
18 pledge of Section 30 revenue shall be valid and binding against all parties in
19 accordance with its terms and have priority against all parties in accordance with
20 its terms from the time the pledge is made, and property so pledged shall
21 immediately be subject to the lien of the pledge without the need for physical
22 delivery, recordation filing or other further act. The pledge shall not be subject to
23 Division 9 of Title 13 of the Guam Code Annotated or any successor statute. The
24 Section 30 revenue pledged and thereafter received by the government of Guam or
25 by any trustee, depository or custodian shall be deposited in accordance with the
26 provisions of the lease-back or, if not specified in the lease-back, in a separate
27 subaccount of the revenue account in the Solid Waste Operations Fund and shall be
28 immediately subject to the lien of such pledge without physical delivery thereof or

1 further act, and the lien of such pledge shall be valid and binding against all parties
2 having claims of any kind in tort, contract or otherwise, against the government or
3 such trustee, depository or custodian, irrespective of whether the parties have
4 notice thereof. The instrument by which such pledge is created need not be
5 recorded. All Section 30 revenue so pledged is hereby appropriated for the
6 purpose for which they have been pledged. Lease-back obligations that are
7 payable by the *Department* pursuant to this Article and that are payable, whether in
8 whole or in part, from Section 30 revenue may not be in an amount that would
9 cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

10 **§51910. Payment of Lease-back Obligations from Sources Other Than**
11 **Revenue.** The government may use and expend all or any part of any funds other
12 than revenue or proceeds of any property owned by it other than the system,
13 whether received by gift, appropriation or otherwise (if not restricted as to the use
14 of such funds or proceeds of property by the terms of gift or trust or provision of
15 law) for the payment of obligations due under a lease-back entered into pursuant to
16 the provisions of this Article.

17 **§51911. Pledge by the Government of Guam.** The government of Guam
18 is fully committed to ensuring that the *Department* has the ability to implement the
19 capital improvements authorized to be leased by this legislation in order to meet
20 the needs of Guam ratepayers for reliable and affordable services. The government
21 also is fully committed to ensuring that the holders of certificates of participation
22 or other financial instruments are protected to ensure full and timely payment of
23 obligations due under the lease-back. In accordance with prior similar situations
24 and precedents, the government hereby pledges, while any obligations are owing
25 on any lease-back entered into pursuant to this Article, (a) to maintain the rights,
26 powers and duties of the Director, the *Department* and the Guam Public Utilities
27 Commission, or their respective successors in accordance with law, to fulfill the
28 terms of any agreements made with a contractor in accordance with this Article,

1 (b) to maintain the rights and remedies of a contractor provided in this Article and
2 any lease or lease-back, and (c) not to transfer any additional non-system operating
3 responsibilities or other unfunded mandates to the system without providing for the
4 payment of the costs of such additional responsibilities.

5 **§51912. Responsibility for Construction, Operation and Maintenance of**
6 **the Solid Waste Facility.** The lease-back may require that the contractor be
7 responsible for all costs, expenses and fees of any kind or nature, associated with
8 the improvements, on-site infrastructure, construction, permits and financing
9 associated with the completion of a solid waste facility, except as expressly
10 provided by the lease-back for costs, expenses and fees previously incurred by the
11 government. The lease-back may require that the contractor be responsible for the
12 ongoing operation and maintenance of the solid waste facility during the term of
13 the lease-back.

14 **§51913. Credit Enhancement.** *I Maga'lahaen Guåhan* is hereby authorized
15 to enter into such contracts or agreements on behalf of the *Department* with such
16 banks, insurance companies or other financial institutions as it determines are
17 necessary or desirable to improve the security and marketability of the lease-back
18 obligations. Such contracts or agreements may contain an obligation to reimburse,
19 with interest, any such banks, insurance companies or other financial institutions
20 for advances used to pay lease-back obligations and to indemnify any such banks,
21 insurance companies or other financial institutions for costs and expenses incurred
22 in connection with any such advance; provided, that any obligation of the
23 *Department* under any reimbursement agreement shall be payable solely from
24 pledged revenue. Any reimbursement agreement may include a provision that the
25 obligations of the *Department* under the agreement shall be secured by all or by
26 part of pledged revenue; provided that, at the time of execution and delivery of
27 each such agreement, any such provision shall be in compliance with and shall not
28

1 violate or breach any provision of any indenture, lease or other instrument to which
2 the government or the *Department* is a party.

3 **§51914. No Personal Liability.** Neither *I Maga'lahaen Guåhan*, the
4 Director, any employee of the *Department*, any employee of the government nor
5 any elected official of the government shall be individually or personally liable for
6 the payment of any amounts due under any lease or lease-back, or for any other
7 liability arising in connection with a lease or lease-back; provided, however, that
8 nothing in this 10 G.C.A. §51914 shall relieve any employee or elected official
9 from the performance of any ministerial duty required by law.

10 **§51915. Rules, Regulations and Restrictions.** The *Department* may
11 promulgate rules and regulations pursuant to Guam law necessary to implement the
12 provisions of this Article.

13 **§51916. Construction of Article.** This Article shall be liberally construed
14 to carry out the objects and purposes and the declared policy of the government of
15 Guam as in this Article set forth. Nothing contained in this Article shall be
16 construed directly or by implication to be in any way in derogation or limitation of
17 powers conferred upon or existing in the *Department*, the Director or *I Maga'lahaen*
18 *Guåhan* by virtue of any provisions of the Organic Act or laws of Guam.

19 **§51916. Severability.** If any provision of this Article or its application to
20 any person or circumstance is found to be invalid or contrary to law, such
21 invalidity shall not affect other provisions or applications of this Article which can
22 be given effect without the invalid provisions or application, and to this end the
23 provisions of this Article are severable.

24 **Section 5. Approval of Lease and Lease-Back.** The Legislature,
25 *I Liheslaturan Guåhan*, hereby approves the execution and delivery of the lease
26 and lease-back by the government pursuant to Article 9, Chapter 51, Title 10,
27 Guam Code Annotated; provided that the certificates of participation or other
28 financial instruments shall have, together with any bonds issued for the payment,

1 or reimbursement to the government for its prior payment, of the costs of the
2 closure of the Ordot Dump and the construction of the new landfill pursuant to
3 Article 8, Chapter 51, Title 10, Guam Code Annotated, an aggregate principal
4 amount not to exceed Two Hundred Two Million Four Hundred Twenty-five
5 Thousand Dollars (\$202,425,000), shall have a final maturity not later than 2042,
6 shall result in a yield to the holders of the certificates of participation or other
7 financial instruments not exceeding nine percent (9%) per annum, and shall be
8 entered into for the purposes and subject to the requirements and limitations
9 provided in Article 9, Chapter 51, Title 10, Guam Code Annotated.

10 *I Liheslaturan Guåhan* further hereby rescinds its approval, contained in
11 Section 3 of Public Law 30-1, of the execution and delivery of the lease and lease-
12 back by the government pursuant to Article 9, Chapter 51, Title 10, Guam Code
13 Annotated as enacted by said Public Law 30-1.

14 **Section 6. §58A109 of Chapter 58A, Division 5 of Title 5, Guam Code**
15 **Annotated, is hereby amended to read as follows:**

16 **§58A109. Pledge of Section 30 Revenues.** Rental payments under the
17 Lease and the Lease-Back may be secured by a pledge or other reservation of
18 revenues received by or on behalf of the government of Guam from the United
19 States of America pursuant to Section 30 of the Guam Organic Act (48 U.S.C.A.
20 Section 1421h). Any such pledge or reservation authorized hereunder shall be
21 valid and binding from the time the pledge or reservation is made and shall be
22 limited to Nine Million Eight Hundred Twenty-five Dollars (\$9,825,000) per year
23 during the Lease-Back Period. The Section 30 revenues pledged or reserved and
24 thereafter received by the government of Guam or by any trustee, depository or
25 custodian shall be deposited in a separate account and shall be immediately subject
26 to such reservation or the lien of such pledge without any physical delivery thereof
27 or further act, and such reservation or the lien of such pledge shall be valid and
28 binding against all parties having claims of any kind in tort, contract or otherwise

1 against the government of Guam or such trustee, depository or custodian,
2 irrespective of whether the parties have notice thereof. The instrument by which
3 such pledge or reservation is created need not be recorded.

4 **Section 7. §24102(f) of Article 1, Chapter 24, Division 2 of Title 11,**
5 **Guam Code Annotated, is hereby amended to read as follows:**

6 **§24102(f).** Value, full cash value, fair market value, and cash value mean
7 ninety percent (90%) of the appraised value; appraised value means the amount at
8 which property would be taken in payment of a just debt from a solvent debtor as
9 determined by the last completed valuation conducted pursuant to Title 11 GCA
10 §24306, as amended by the annual adjustments mandated in this Chapter.

11 **Section 8. Section 1512.1(c) of Title 5, Guam Code Annotated, is hereby**
12 **amended to read as follows:**

13 **§1512.1(c).** “Valid and Binding. The bonds authorized by this Section shall
14 constitute the valid and binding general obligations of the government of Guam.
15 The government of Guam pledges its full faith and credit ~~and its Section 30~~
16 ~~revenues~~ for the punctual payment of both principal of and interest on the bonds
17 and covenants that there shall be collected annually in the same manner and at the
18 same time as government revenue for other purposes is collected, such sum as is
19 required to pay the principal of and interest on the bonds. There are hereby
20 appropriated from the General Fund such sums as may be necessary in each year to
21 equal the amount of money necessary to pay the principal and interest on such
22 bonds. The certificate or indenture shall require interest only payments for Fiscal
23 Years 2009 and 2010 and shall not require bond principal payments until after such
24 Fiscal Years. All officers charged by law with any duty in the collection of the
25 revenues of the government from which debt service on the bonds will be payable
26 shall do every lawful thing necessary to collect such sum. The validity of any such
27 bonds shall not be affected by the validity or regularity of any proceedings for the
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1 payment of the General Fund expenses paid or to be paid with the proceeds of the
2 bonds.”

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