

d. Guam Election Commission

e. Ancestral Lands Commission

Section 92. Transfer Authority of Twenty Percent (20%) for Miscellaneous Appropriations. *I Maga'lāhen Guåhan* is authorized to transfer up to twenty percent (20%) of the Miscellaneous Appropriations made in Chapter III of this Act. However, *no* transfers shall be made from the appropriations for Retirement supplemental annuities and benefits. This transfer authority shall not apply to those funds and appropriations which have been designated, in this Act, as exempt from any transfer authority of *I Maga'lāhen Guåhan*, except that *I Maga'lāhen Guåhan* can transfer funds into the department and agencies, appropriations without restriction.

Section 93. Transfer Authority of One Hundred Percent (100%). *I Maga'lāhen Guåhan* is authorized to transfer up to one hundred percent (100%) of appropriations made to all other departments and agencies of the government of Guam listed below. *I Maga'lāhen Guåhan* may transfer into these agencies or departments without restriction.

a. Medical Referral Office

b. Commission on Decolonization

c. Civil Service Commission

d. Bureau of Budget & Management Research

e. Military Affairs

f. Bureau of Statistics and Plans

g. Department of Agriculture

h. Department of Land Management

i. Department of Parks and Recreation

j. Department of Labor

k. Guam Council on the Arts and Humanities Agency

l. Department of Chamorro Affairs

1 **Section 94. Private School and Post Secondary Institution Endorsements.**

2 **(a)** Subsection (a) of Section 76213 of Title 11, Guam Code Annotated is
3 *amended* to read:

4 “(a) For elementary and secondary institutions: certification by the Guam
5 Public School System that each person teaching, instructing or aiding in the teaching
6 and instructing of such private school has the necessary training, experience and
7 knowledge to qualify him to teach the particular subjects or courses which he desires to
8 teach, as may be prescribed by the rules and regulations pertaining thereto.”

9 **(b)** Subsections (c), (d) and (e) are *added* to Section 76213 of Title 11, Guam
10 Code Annotated to read:

11 “(c) For post secondary private institutions and their agents corresponding
12 with Guam State Education policies, endorsement from the GPSS Superintendent
13 must be obtained in the verification of each person teaching or instructing having
14 possessed a terminal degree from an accredited institution recognized by the
15 United States Department of Education (USDOE) directly or through an
16 affiliated institution, or is properly credentialed with the necessary experience
17 and knowledge to teach a particular subject or course.

18 (d) For post secondary institutions which seek to offer or confer any
19 degree or diploma, that the degrees or diplomas offered are accredited by an
20 accrediting institution of the United States, directly or through an affiliated
21 institution, recognized by the United States Department of Education (USDOE).
22 Post secondary institutions which seek to offer or confer any degree or diploma
23 and are in the process of obtaining accreditation through a recognized USDOE
24 accrediting body or is in the process of, or has received accreditation from a non-
25 sanctioned USDOE accrediting body shall disclose its accreditation status to each
26 student upon the start of classes.

27 (e) Excluded from obtaining endorsements under this section are:

1 (1) Education solely avocational or recreational in nature;

2 (2) A nonprofit institution owned, controlled and operated and
3 maintained by a bona fide church or religious denomination or religious
4 organization if such education is limited to instruction in the principles of
5 that church or denomination or organization or to courses offered for the
6 purposes of training the adherents of such church or denomination in the
7 care of the sick in accordance with its religious tenets and the diploma or
8 degree is limited to evidence of completion of that education, and the
9 meritorious recognition upon which any honorary degree is conferred is
10 limited to the principles of that church or denomination;

11 (3) Postsecondary educational institutions established, operated and
12 governed by the government of Guam;

13 (4) Education sponsored by a bona fide trade, business, professional
14 or fraternal organization which is recognized by the regulatory body of that
15 trade, business or profession and is solely for that organization's
16 membership; and

17 (5) Institutions exclusively offering instruction at any or all levels
18 from preschool through twelfth (12th) grade."

19 **Section 95. Section 4 of Public Law 28-63 is hereby *amended* to read:**

20 "Section 4. There is hereby established, within *I Liheslaturan Guåhan*,
21 the Child Support Guidelines Review Commission. The Commission shall
22 consist of the Deputy Attorney General who manages the Child Support
23 Enforcement Division, the Public Defender, the Director and Managing Attorney
24 of Guam Legal Services Corporation, an attorney in private practice with
25 extensive experience in Family Law litigation to be appointed by the President of
26 the Guam Bar Association, a person appointed by the Presiding Judge of the
27 Superior Court, the Director of Public Health and Social Services, a social

1 worker to be appointed by the President of the Guam Chapter of the National
2 Association of Social Workers, and the Director of the Bureau of Plans and
3 Statistics. The Commission shall review the proposed guidelines, Exhibit 1
4 attached to Substitute Bill No. 128 (EC), and the written testimony submitted at
5 the public hearing of Bill No. 128 (EC) by the Chief Deputy Attorney General
6 who manages the Child Support Enforcement Division and shall make
7 recommendations to *I Liheslaturan Guåhan* regarding the enactment of the
8 proposed guidelines.”

9 **Section 96. Recoupment of Retirement Fund Benefit Payments Caused by**
10 **Administrative Error.**

11 (a) **Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the
12 Defined Benefit Plan statute lacks provisions for the adjustment and recovery of
13 benefit payments arising from (1) errors made in records maintained by the
14 Retirement Fund or the government, (2) errors made in the amount of
15 contributions made on behalf of a member or beneficiary, or (3) errors made in
16 the computation of benefit amounts.

17 *I Liheslaturan Guåhan* further finds that such provisions are necessary to
18 ensure that the Defined Benefit Plan continues to be administered solely in the
19 interest of the members and beneficiaries of the Fund and for the exclusive
20 purpose of providing benefits to members and beneficiaries. *I Liheslaturan*
21 *Guahan* further finds that when an error results in an incorrect benefit payment to
22 a member or beneficiary, then subsequent adjustments should be made in a
23 reasonable, fair and equitable manner, as guided by principles underlying the
24 common law of trusts, as expressed in Section 254 of the Restatement (Second)
25 of Trusts.

1 **(b) Adjustments.** §8122.1, Article 1, Chapter 8, Title 4 of the Guam Code
2 Annotated as *repealed* by Public Law No. 25-72: IV:5, is hereby *re-enacted* to
3 read:

4 **“§8122.1. Adjustments.**

5 **(a)** When an error is made in the records maintained by the Fund or by
6 the government, or in the contributions made on behalf of a member,
7 or in computing a benefit, and, as a result, a member or beneficiary
8 is entitled to receive from the Fund more or less than the member or
9 beneficiary would have been entitled to receive had the records or
10 contributions been correct or had the error not been made, then (1)
11 the records, contributions, or error shall be corrected, and (2) as far
12 as practicable, future payments or benefit entitlement shall be
13 adjusted so that the actuarial equivalent of the annuity or benefit to
14 which the member or beneficiary was correctly entitled shall be
15 paid. If no future payment is due, a person who was paid any
16 amount to which the person was not entitled is liable for repayment
17 of that amount, and a person who was not paid the full amount to
18 which the person was entitle shall be paid the balance of that
19 amount.

20 **(b)** An adjustment that requires the recovery of benefits may not be
21 made under this section if:

- 22 (1) the error was not the result of erroneous information supplied by the
23 member or beneficiary;
24 (2) the member or beneficiary did not have reasonable grounds to believe
25 that the amount of the benefit was in error; and
26 (3) the incorrect benefit was first paid four years or more before the
27 member or beneficiary was notified of the error.

- 1 (c) At every regularly scheduled meeting of the Board of Trustees of
2 the Fund, the Director shall report to the Board on all situation since
3 the Director's last report in which an adjustment has been prohibited
4 under (b) of this section. If the Board finds that there is reason to
5 believe that one or more of the conditions set out in (b) of that
6 section have not been met, the Director shall notify the member or
7 beneficiary that an adjustment will be made to recover the
8 overpayment.
- 9 (d) Notice of the adjustment under this Subsection shall include a
10 statement that the affected member or beneficiary may appeal the
11 adjustment to the record by notifying the Director, in writing, within
12 thirty (30) days after receipt of notice that the records will be
13 adjusted. A member or beneficiary who receives notice of
14 adjustment under this subsection may appeal to the Board for a
15 waiver of the adjustment in accordance with Section 8122.2(b). An
16 adjustment shall not be required while the appeal is pending.
- 17 (e) The Fund shall pay regular interest on amounts owed to a member
18 or beneficiary.
- 19 (f) Interest shall be charged on amounts owed to the Fund by a member
20 or beneficiary if the amount owed is the result of erroneous
21 information supplied by the member or beneficiary, or if the
22 member or beneficiary had reasonable grounds to believe the
23 amount of the benefit was in error. The interest paid under this
24 subsection shall be equal to the rate established in §8137(c) for
25 which the correct payment was due and shall continue until an
26 actuarial adjustment to the benefit is effective or the amount owed is
27 paid."

1 **(b) Waiver of Adjustments.** A new §8122.2 is hereby *added* to Article 1, Chapter
2 8, Title 4 of the Guam Code Annotated, to read:

3 **“Section 8122.2. Waiver of Adjustments.**

4 (a) Upon appeal to the Board by an affected member or beneficiary
5 under (b) of this section, the Board may waive an adjustment or any
6 portion of an adjustment made under §8122.1 if , in the opinion of the
7 Board:

8 (1) the adjustment or portion of the adjustment will cause undue
9 hardship to the member or beneficiary;

10 (2) the adjustment was not the result of erroneous information
11 supplied by the member or beneficiary; and

12 (3) the member or beneficiary had no reasonable grounds to believe
13 the records were incorrect or a mistake had been made before
14 the adjustment was made.

15 (b) In order to obtain consideration of a waiver under this section,
16 the affected member or beneficiary must appeal to the Board in
17 writing within thirty (30) days after receipt of notice that an
18 adjustment is to be made.

19 (c) The Board may conduct a hearing on an appeal under this
20 Section.

21 (d) The Board may impose conditions on the granting of a waiver
22 which it considers equitable. These conditions may include
23 requiring the member or beneficiary to make additional
24 contributions, with interest, to the Fund.

25 (e) The Board may reconsider a ruling under this section,
26 pursuant to the procedures set fort in the Administrative
27 Adjudication Act.”

1 **Section 97. Title 11 G.C.A. Section 51102 (a) is hereby *amended* to read:**

2 **(a)** The Director of the Department of Administration ('DOA') shall directly
3 deposit within ten (10) days at the end of each month to the Trust Fund a sum
4 equivalent to a percentage of the total income collections for the month equal to its
5 percentage of the budgeted forecasted amount set aside for Income tax refunds, earned
6 income tax credits and child tax credits adopted in that fiscal year's budget, so that at
7 the end of the calendar year, the total amount set aside for income tax refunds, earned
8 income tax credits and child tax credits shall have been deposited into the Trust Fund.
9 The funds deposited in the Trust Fund by the Director of DOA shall automatically be
10 transferred to the Income Tax Reserve Fund once the Tax Commissioner is ready to
11 make the necessary payments pursuant to §50105 of Chapter 50, Division 2 of Title 11
12 of the Guam Code Annotated. The interest and investment earnings shall remain within
13 the Trust Fund."

14 **Section 98.** The Director of Public Works is authorized to delete and add
15 secondary and tertiary road repair projects to the list detailed in Part IV of Chapter II
16 in this Act, should such amendment be necessary due to changes in cost estimate,
17 availability of funds or critical need, provided that the repair of potholes on primary
18 and secondary roads must remain a top priority, and must commence as soon as is
19 practicable. Any fees or charges required as a consequence of the issuance of
20 revenue bonds as authorized in Part IV of Chapter II of this Act shall be paid from
21 the proceeds of such bonds. The Director of Public Works may use proceeds of the
22 bond, as well as other funds transferred to the Road and pothole Repair Fund
23 established in Part IV of Chapter II of this Act, for the bulk purchase of asphalt or
24 pavement oil, pursuant the Procurement Law, in the interest of reducing costs of
25 repair.

1 **Section 99. Contracts.**

2 **(a)** *Except* for positions filled in accordance with the merit system at the
3 University of Guam, the Guam Community College, the Guam Public School System,
4 the Judiciary of Guam, the Department of Law, the Guam Police Department, *I*
5 *Liheslaturan Guåhan*, and licensed health professionals at the Guam Memorial
6 Hospital, the Department of Public Health and Social Services and the Department of
7 Mental Health and Substance Abuse, positions in the classified and unclassified service
8 shall *not* be filled pursuant to a contractual arrangement.

9 **(b)** Pursuant to the procurement law, government of Guam departments and
10 agencies may enter into agreements with independent contractors provided that *no*
11 agency may contract for services customarily provided by employees defined in the
12 classified service, unless permitted by the enabling legislation of the agency.

13 **(c)** This Section does not prohibit the use of independent contracts to obtain
14 commonly recognized professional services, such as licensed health professionals,
15 licensed architects, licensed engineers, legal services, actuarial services and auditing
16 services (to include the Government of Guam Annual Financial Audit) by those
17 agencies that do not customarily obtain such services through an employee.

18 **(d)** The Attorney General may contract with attorneys as independent
19 contractors who can provide assistance in areas in which it is impracticable for the
20 Department of Law to proceed with its existing civil service attorneys, such as anti-
21 trust, maritime and admiralty law, patent and copyright law, prosecution of white collar
22 crime, utilities regulation, the issuance of bonds, special tax issues, and complete civil
23 litigation. The Attorney General shall file a copy of every such contract with the Chief
24 Procurement Officer and the Division of Accounts at the Department of Administration
25 together with a written certification stating why it was impracticable to handle the
26 matter with the Department's civil service attorneys and justifying the hiring of an
27 independent contractor.

1 **Section 100. Recruitment Above-Step for the Guam Public School System.**

2 A new Section 6205.1 is hereby *added* to Title 4 of the Guam Code Annotated to read
3 as follows:

4 **“§6205.1 Recruitment Above-Step for the Guam Public School System.**

5 Notwithstanding the provisions of Title 4 GCA §6205, Step 1 of the Pay Grade
6 assigned to a classified position shall be the regular rate for initial employment in Guam
7 Public School System. The Superintendent of Education may petition the Guam
8 Educational Policy Board for recruitment at a higher step not to exceed Step 10,
9 because of recruitment difficulty or exceptional qualifications for *professional*
10 *education positions*. This petition shall be made before an applicant is hired. Every
11 petition shall be scrutinized and amply justified before being approved. The Guam
12 Educational Policy Board may establish policies to administer this Section. Increment
13 schedule consisting of Steps 11 through 20 shall not be used for recruitment above-step.
14 Such *professional education positions* may include, but not be limited to the following:

- 15 1. Teacher II – VI, in any Special Education Program, Mathematics, Science and
16 Language Arts
- 17 1. Program Coordinator II – IV, Autism Program
- 18 1. Program Coordinator II – IV, Assistive Technology Program
- 19 1. Program Coordinator II – IV, Transition Program
- 20 1. Program Coordinator II – IV, State Compliance Monitoring Program
- 21 1. Psychologist, Emotional Disabilities Program
- 22 1. Psychologist, Psychological Services Program
- 23 1. Speech Language Pathologist
- 24 1. Speech Language Clinician
- 25 1. Speech Language Pathology Supervisor
- 26 1. Audiologist
- 27 1. Occupational Therapist I – II

1. Physical Therapist I – II
1. Nutritionist
1. Assistant Superintendent, Special Education
1. Associate Superintendent, Special Education.”

Section 101. Continuing Appropriation for Judiciary. The appropriations made to the Unified Judiciary for its operations pursuant to Appendix B, Chapter II of Public Law 27-106 and from the Fiscal Year 2004 Budget Act shall continue until all sums are expended.

Section 102. Public Auditor Election. §1903 of Chapter 19 of Title 1 of the Guam Code Annotated is hereby *repealed and reenacted* to read as follows:

“§1903. Public Auditor Election. The Public Auditor shall be elected by the voters of Guam in a general election occurring at the same time as the general election for Mayors. The Public Auditor shall serve a term of four (4) years. The Public Auditor is a non-partisan office. No candidate for the position of Public Auditor shall declare a political party affiliation. No candidate for the office of Public Auditor shall seek the endorsement or receive directly or indirectly financial or material support from a political party. Any violation of the aforementioned shall constitute the Guam Election Commission to invalidate the candidacy of the individual for Public Auditor. Candidates for Public Auditor shall be subject to the same campaign and personal financial reporting requirements as applied to candidates for *I Maga’lahen Guåhan*, as well as all laws pertaining to campaign contributions. No nominating petition shall be required of a candidate for Public Auditor. A candidate for the position of Public Auditor shall file candidacy with the Guam Election Commission in the manner similar to a candidate for *I Maga’lahen Guåhan*, *except* as is not consistent with this Chapter. There shall be no primary election for the position of Public Auditor. All qualified candidates complying with the provisions of this Chapter shall be placed on the general election ballot. In the general election, the candidate receiving the most votes, subject

1 to the qualifications established by this Chapter, shall be certified by the Guam Election
2 Commission as having won election to the position of Public Auditor.”

3 Section 103. Guam Visitors Bureau Employment Contracts. Subsection
4 9109(c) of Chapter 9, Article 1, 12 Guam Code Annotated is *repealed* in its
5 entirety.

6 Section 104. Land Exchange for Mr. George Toves to provide public
7 access to Ukudu High School site:

8 Land Exchange. *I Maga'lahaen Guåhan* and the Chamorro Land Trust
9 Commission shall cause and execute a consolidation and land exchange involving Basic
10 Lot 5311-REM Dededo privately owned by George Toves and a portion of Basic Lot
11 10120-R20 known as Tract 11406 owned by the Government of Guam to provide for
12 access for the Ukudu High School Site and usable lots. The land exchange shall be on an
13 area for area basis. The provisions of this section shall be applicable to the Municipal
14 Lease program for the Ukudu school as provided for in Part I of Chapter II of this Act.

15 Section 105. §4109.2 of Title 4 of the Guam Code Annotated is hereby *amended*
16 as follows:

17 “§4109.2. Leave Sharing Program.

18 (a) Legislative Statement. From time to time, classified employees in the civil
19 service of the government of Guam have occasion to need leave for personal reasons,
20 but may have already exhausted the leave that they have earned and accrued. At times
21 like these, particularly when the employee needs time off to take care of sick family
22 members or in the case of the military reserves and National Guard members, being
23 called to active duty in excess of fifteen (15) working days, the employee might be
24 forced to take leave without pay. Through the generosity of the other employees, the
25 affected employees could be relieved of the stress of this situation.

26 (b) Voluntary Transfer of Sick Leave or Annual Leave. Whenever a
27 government of Guam employee desires to transfer a number of hours of earned sick

1 leave or annual leave to another employee in any department or agency of the
2 government, a formal written request shall be made by the donor employee to that
3 person's payroll supervisor, stating the name of the recipient, the number of hours of
4 leave to be transferred and the type of leave. No transfer may be made by any employee
5 to that person's supervisor, or to any person above that employee in the supervisory
6 chain, or to a member of the supervisor's or such supervisory person's immediate
7 family. If the donor has sufficient hours of leave accrued to cover the donation, the
8 payroll supervisor shall notify the Payroll Division to transfer the approved number of
9 hours to the recipient. Upon receipt of the notice of transfer, the receiving employee
10 may then submit a leave request for the number of hours of leave, sick or annual, that
11 the employee needs and the department head shall then approve the leave request.
12 Leave may not be transferred to another employee if as a recipient that employee
13 intends to use it for credit towards retirement or accumulated leave. This transfer of
14 leave shall be strictly on a voluntary basis. Leave transferred shall be used as leave by
15 the person to whom it is transferred, and if it is not used in its entirety, it may be re-
16 transferred to the person who originally earned it. In no event shall transferred leave be
17 converted to cash or retirement credit by the person to whom it is transferred.
18 Participation in the leave sharing program shall not exceeding ninety (90) working
19 days, shall require a certification from the attending medical doctor that the recipient of
20 the leave needs additional time for medical treatment or recovery from a medical illness
21 and is physically unable to return to work due to the medical illness. An additional
22 ninety (90) working days may be granted upon similar certification from the attending
23 medical doctor made within two (2) weeks of the first ninety (90) day period. A final
24 period of thirty (30) working days may be granted upon an additional certification from
25 the attending medical doctor that additional time is needed for recovery."

26 **Section 106. A new §2301 is added to Title 3 GCA to read:**

27 **§2301. Recall of Elected Officials.**

1 (a) The people of Guam shall have the right of initiative, referendum, and recall
2 to be exercised under conditions and procedures specified in the laws of Guam

3 (b) Notwithstanding the provisions of Article 3, Chapter 17, Title 3 GCA,
4 Mayors, Vice Mayors, Consolidated Commission on Utilities members, Guam
5 Education Policy Board Members, and the Public Auditor may be removed from office
6 by a recall election in which at least two-thirds of the number of persons voting for
7 such official in the last preceding general election at which such official was elected
8 vote in favor of a recall and in which those so voting constitute a majority of all those
9 participating in the recall election.

10 (c) The Recall election shall be initiated by *I Liheslaturan Guahan* by the
11 following:

12 (1) a two-thirds vote of the members of *I Liheslaturan Guahan* in favor of a
13 recall; or

14 (2) a petition for such a recall to *I Liheslaturan Guahan* by registered voters equal
15 in number to at least 50 per centum of the entire number of votes cast at the general
16 election at which such official was elected preceding the filing of the petition.

17 **Section 107. Chapter 44 of Title 17 GCA is hereby repealed.**

18 **Section 108. Corrections Revolving Fund.** §90.49 of Article 1 of Chapter 90
19 of Title 9 of the Guam Code Annotated is *amended* to read:

20 **“§90.49. Corrections Revolving Fund.** There is hereby created, within the
21 Department of Corrections, a revolving fund called the ‘Corrections Revolving
22 Fund’, which shall be established by the Department of Administration in
23 accordance with the following provisions:

24 (a) All funds collected from the U.S. Marshall Service, the U.S.
25 Immigration Service and the U.S. Bureau of Prisons for housing
26 U.S. prisoners and detainees, confinement of military personnel as
27 agreed to in a Memorandum of Agreement between the United

1 States Air Force and the Department of Corrections dated March 5,
2 2003, employees of the Department of Corrections for meals they
3 purchase at the Department's dining facility, and the sale of hot
4 garbage (pig slop) to private persons, shall be deposited into said
5 Fund.

6 (1) Funds in the Corrections Revolving Fund may be used
7 to purchase clothing for prisoners and detainees, foodstuffs for the
8 dining facility, galley catering services and, equipment,
9 medical/dental supplies, prescription and over-the-counter
10 medicines, sanitary/ hygiene supplies, and other pharmaceutical
11 supplies for prisoners and detainees, including payment for
12 prisoner-detainee maintenance costs in any off-island prison or
13 medical institutions, payment for overtime and related personnel
14 costs and for DepCor Department of Correction Reservists.

15 (2) Expenditures from the Fund shall be approved by the
16 Director of Corrections and posted on the Department's website.

17 (3) A complete and accurate accounting of all money
18 deposited into and withdrawn from such Fund shall be maintained
19 by the Director of Administration.

20 (4) Such accounting shall include and clearly identify the
21 sources and amounts of all funds paid into or withdrawn from said
22 Fund.

23 (b) The Corrections Revolving Fund shall be maintained separate
24 and apart from all other funds of the government of Guam.

25 (c) No expenditures and encumbrances from the Corrections
26 Revolving Fund shall be made without legislative approval through
27 appropriation."

1 **Section 109.** *I Maga'lahaen Guåhan* is authorized to give a "Cost of Living
2 Allowance" (COLA) of up to One Thousand One Hundred Dollars (\$1,100) per
3 annuitant of the government of Guam Retirement Fund and may further adjust
4 supplemental annuity capitations, subject to the availability of funds and the
5 sufficiency of prior years lapsed appropriations, as determined by *I Maga'lahaen*
6 *Guåhan*.

7 **Section 110. Amendment to the Paseo de Susana Planned Development**
8 **District Act.** Section 8 of Public Law 27-24 is amended to read: The land leased to
9 the Guam Fishermen's Cooperative Association shall be for a total period of sixty-five
10 (65) years. Upon expiration of the said sixty-five (65) years, the lease shall be subject to
11 legislative approval. The Guam Fishermen's Cooperative Association shall be
12 authorized to borrow against the leasehold interest of the property subject to the terms
13 of the lease agreement, provided that as a condition of any mortgage securing such loan,
14 the mortgage shall contain a clause restricting any purchaser of the leasehold upon
15 default of the mortgage to use the leasehold only for the purposes authorized in the
16 *Paseo de Susana* Planned Development District Master Plan. *I Maga'lahaen Guåhan* and
17 the Speaker of *I Liheslaturan Guåhan* shall be given notice by the Guam Fishermen's
18 Cooperative Association prior to any default, and as a condition of the borrowing
19 authorized herein it shall be an express provision of the borrowing agreement that the
20 government of Guam be given a copy of all notices by either party pursuant to the
21 borrowing agreement. In addition, any borrowing against the leasehold interest shall
22 allow for a curing of the default by the government of Guam prior to the sale of the
23 property by mortgagor pursuant to a power of sale. The Guam Fishermen's
24 Cooperative Association shall not sublease the property or assign the leasehold;
25 provided, however, that the Guam Fishermen's Cooperative Association may enter into
26 tenant leases for no greater than twenty-five (25) years for spaces or rooms within the
27 existing or proposed buildings or extensions including satellite structures within the

1 property, located on the leasehold property where the tenants may operate retail, service
2 or restaurant business consistent with the purposes of the *Paseo de Susana* Planned
3 Development District Master Plan.

4 **Section 111. Temporary Employment of Retired Corrections Officers.**

5 Notwithstanding the provisions of Section 8121(a) of Chapter 8 of Title 4 of the Guam
6 Code Annotated, the Department of Corrections may hire retired Guam Correction
7 Officers when a critical need arises. Retired corrections officers hired under this
8 Section may receive their retirement annuity while employed on this temporary basis.
9 Officers may *only* be hired under this Section to fill positions left vacant because of
10 military activation of corrections officers filling those positions and shall be terminated
11 when the incumbent returns from military service. Retired officers may be hired only
12 in the ranks of Corrections Officers Supervisor I and below at Step I only and shall *not*
13 be entitled to sick and annual leave. Officers hired under this Section shall first pass
14 requirements for the position for which they are being considered *except* for written
15 examinations, and the Director of the Department of Corrections shall certify that every
16 retiree hired is fit for duty.

17 **Section 112.** Subsection (a) of 4109 of Title 4 GCA is hereby *amended* by
18 *amending* Item (2) and *adding* a new Item (3), to read:

19 (2) Three-fourths day (6 hours) for each bi-weekly pay period in the
20 case of employees with five (5) years of service but less than
21 fifteen (15) years of service.

22 (3) One (1) day (8 hours) for each full biweekly pay period in the case
23 of employees with fifteen (15) years or more service.”

24 **Section 113.** Title 5 G.C.A. §23105 is *amended* to read:

25 “§23105. **Mileage Allowance.** Persons authorized to travel at
26 government expense shall, in accordance with regulations and whenever such mode of
27 transportation is authorized or approved as more advantageous to the government, be

1 paid in lieu of transportation a maximum personal vehicle mileage allowance rate equal
2 to the mileage reimbursement rate provided by the Federal government, contained in
3 the Federal Travel Regulations, to its employees for the use of personal vehicles when
4 engaged on official business.

5 **Section 114.** §(a) of Title 5 G.C.A. Section 23104 is *amended* to read:

6 **“§23104. Per Diem Allowance.** (a) Prior to departure, the employee
7 shall receive an advance per diem allowance equal to the number of days of authorized
8 office travel multiplied by the current per diem allowance rate provided by the Federal
9 government, contained in the Joint Travel Regulations, to its employees for the
10 respective travel destinations when engaged in official business.

11 a. If the employee is the Governor, Lieutenant Governor, a member
12 of the Legislature or a Judge, the rates are One Hundred Thirty Percent (130%)
13 of the basic per diem rates;

14 b. If the employee is an Executive Assistant or Special assistant to the
15 Governor, director or deputy director of any department, or member of the
16 board of directors or commission of any autonomous agency, authority, line
17 agency (including the Council of the Arts and Humanities), authority, or public
18 corporation, the rates are One Hundred and Twenty-five Percent (125%) of the
19 basic per diem rates.”

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CHAPTER V.

ADMINISTRATIVE PROVISIONS.

Section 1. Exemption from BBMR Allotment Release Control. The provisions of 5 GCA §1303 shall *not* be applicable to the Mayors Council of Guam, *I Liheslaturan Guåhan*, the Office of the Public Auditor, the Office of Finance and Budget, the Office of the Attorney General, and the Judicial Branch. Said entities may draw against their respective appropriations in order to meet their respective obligations, as the need arises, in accordance with a drawdown schedule such entities shall submit to the Department of Administration.

Section 2. Reporting Requirements. Thirty (30) days after the close of each quarter of Fiscal Year 2006, each department/agency head in the Executive Branch of the government of Guam, all autonomous, semi-autonomous agencies and Public Corporations inclusive of the Public Auditor of Guam, the Attorney General of Guam, the Administrator of the Courts, the Public Defender of Guam, the President of the Mayors Council of Guam, the Superintendent of the Guam Public School System, the President of the University of Guam, the President of the Guam Community College, the Administrator of the Guam Memorial Hospital Authority, the General Manager of the Guam Visitors Bureau, the Administrator of the Guam Economic Development and Commerce Authority, and the Director of the Guam Election Commission, shall submit in written and electronic format (including, but *not limited to*, diskettes, CD, and/or email) to the Speaker of *I Liheslaturan Guåhan* a report containing full disclosure of ALL funds under its purview and administration for the preceding quarter. Such disclosure shall be in the format of Financial Statements and/or revenue and expenditure reports for each of the funds he or she administers (appropriated, non-appropriated and other sources) or in the format as may be required by *I Liheslaturan Guåhan* and shall post the same on the department/agencies website. This, and all other reporting requirements as mandated in this Act are subject to the following:

1 (a) Fifteen (15) days after the report's due date, *I Maga'lahi*, through the
2 Bureau of Budget and Management Research, shall notify the responsible
3 Department/Agency Head of the Executive Branch, of non-compliance and the
4 imminent deappropriation of funds.

5 (b) Fifteen (15) days after the report's due date, the Chairpersons of all
6 applicable Boards and Commissions shall notify the responsible reporting Official,
7 listed in this Section, of non-compliance with reporting requirements and the imminent
8 deappropriation of funds.

9 **Section 3. Deappropriation of Funds.** Failure to comply with reporting
10 requirements as mandated in this Act, after the forty-fifth (45th) day from the original
11 report due date, shall result in the automatic deappropriation of funds of five percent
12 (5%) of the appropriations made to the non-compliant entity for EACH requirement not
13 met. This Section shall *not* apply when the island is declared to be in the Condition of
14 Readiness One or when *I Maga'lahi* has declared a state of emergency. The Public
15 Auditor shall certify the deappropriation and report it to *I Maga'lahen Guåhan* and the
16 Speaker of *I Liheslaturan Guåhan*. The Bureau of Budget and Management Research
17 shall adjust the appropriation/allotment to effectuate any deappropriation and submit a
18 report of such deappropriation(s) along with copies of the appropriation/allotment
19 modification to the Speaker of *I Liheslaturan Guåhan*.

20 **Section 4. Authorization for Payment of Prior Years' Obligations.**

21 Appropriations made in this Act may be expended for the payment of prior years'
22 obligations. *I Maga'lahen Guåhan* shall deliver notice to the Speaker of *I Liheslaturan*
23 *Guåhan* of each proposed expenditure. *I Liheslaturan Guåhan* shall have twenty (20)
24 days to act on such notice. Such expenditure will be effective if no action is taken by *I*
25 *Liheslaturan Guåhan*. For these purposes only, 2 GCA §2103, requiring a public
26 hearing for all bills, and 5 GCA §8107, requiring notice of regular meetings, including
27 legislative sessions, shall *not* apply.

1 **Section 5. Night Differential Pay.** §6217 of Title 4 of the Guam Code

2 Annotated is *amended* to read:

3 “§6217. Night Differential Pay. All employees of the government of Guam,
4 except the department or agency heads and the Deputy Directors, shall be entitled
5 to night differential pay, calculated at the rate of their regular wage plus ten
6 percent (10%), for all periods worked between the hours of 6 p.m. and 6 a.m.,
7 provided they work a minimum of more than four (4) consecutive hours within
8 that time period.”

9 **Section 6. Corrections Officers—Hazardous Pay Amendment.** Title 4

10 GCA Section 6222 is *amended* to read:

11 “(a) A corrections officer or any employee of the government who
12 performs the duty of guarding prisoners shall be entitled to hazardous pay
13 calculated at the rate of his or her regular wage plus ten percent (10%) for all
14 periods he or she is on such duty. The differential shall be applicable only during
15 time of exposure.

16 (b) Any marshal, probation officer, or alternative sentencing officer of
17 the Judiciary is eligible to receive hazardous pay for any duty considered to be
18 under hazardous conditions as specified by the Superior Court of Guam’s
19 Personnel Rules and Regulations, provided that “hazardous condition” shall not
20 include the customary, ordinary, or routine duties of marshals, probation officers
21 and alternative sentencing officers.”

22 **Section 7. Authorization for Matching Requirements for Federal Grants-**

23 **In-Aid.** Notwithstanding any other provision of law, departments are authorized to
24 expend funds appropriated in this Act for matching requirements of Federal grants.

25 **Section 8.** The appropriation to the Guam Public School System based upon a
26 sum equal to a percentage of the collections for withholding taxes, interest and
27 penalties, as detailed in Part I of Chapter II of this Act, is capped at One Hundred Sixty

1 Million Fourteen Thousand Three Hundred Sixty-two Dollars (\$160,014,362) for FY
2 2006 only. The appropriation to the Guam Memorial Hospital Authority based upon a
3 sum equal to a percentage of the collections for gross receipts tax, as detailed in Part III
4 of Chapter II of this Act, is capped at Nine Million Four Hundred Thirty-one Thousand
5 Two Hundred Twelve Dollars (\$9,431,212) for FY 2006 only.

6 **Section 9. Severability.** *If* any provision of this Act or its application to
7 any person or circumstances is held invalid, the invalidity shall *not* affect other
8 provisions or applications of this Act which can be given effect without the invalid
9 provision or application, and to this end the provisions of this Act are severable.
10

CONTRACT # WZ-020-GUAM

QUITCLAIM DEED

DUPLICATE
ORIGINAL

PREAMBLE

This DEED is made this 23rd day of October, 1992, between the UNITED STATES OF AMERICA, acting through the Secretary of Education, by David B. Hakola, Director, Federal Real Property Assistance Program, Office of the Administrator for Management Services, 400 Maryland Avenue, SW, Washington, DC ("GRANTOR") pursuant to §203(k) of the Federal Property and Administrative Services Act of 1949, as amended ("Act"), P.L. No. 81-152, 63 Stat. 377, 40 U.S.C. §471 et seq., Reorganization Plan No. 1 of 1953, the Department of Education Organization Act of 1979, P.L. No. 96-88, 93 Stat. 668, 20 U.S.C. §3401 et seq., and the Territory of Guam on behalf of its Department of Education, Agana, Guam ("GRANTEE").

I. RECITALS

1. By letter dated September 14, 1992, from the General Services Administration, certain Federal surplus real property located in Yigo, Guam, known as Lot "B" -4, former Marbo Base Command, Andersen Air Force Base Administration Annex and ~~consisting of approximately 80.0 acres ("Property")~~, was assigned to GRANTOR for disposal upon the recommendation of GRANTOR that the Property is needed for educational purposes in accordance with the provisions of the Act.

2. GRANTEE has made a firm offer to purchase the Property under the provisions of the Act, has applied for a public benefit

479882 (recorded 11/19/92)

5111017 A

allowance, and proposes to use the Property for educational purposes as detailed in its application to GRANTOR dated February 7, 1992 ("Application").

3. The General Services Administration has notified GRANTOR that no objection will be interposed to the transfer of the Property to GRANTEE, and GRANTOR has accepted the offer of GRANTEE.

II. AGREEMENT

4. GRANTOR, in consideration of the foregoing, one dollar, the performance by the GRANTEE of the covenants, conditions, and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and quitclaim to the GRANTEE, its successors and assigns, all right, title, interest, claim and demand, reserving such rights as may arise from the operation of the conditions subsequent, restrictions and covenants of this Deed, which the UNITED STATES OF AMERICA has in and to the Property, which is more particularly described in EXHIBIT "A", attached hereto, and by reference incorporated herein.

5. GRANTEE, by acceptance of this Quitclaim Deed, agrees that it shall make no use of the Property which damages the water lens under the Property and the water lens and other water wells on adjacent properties; and that this covenant shall run with the land and be enforceable on all future owners of the land until

this use restriction is canceled by an authorized representative of the UNITED STATES OF AMERICA.

6. GRANTEE by acceptance of this Quitclaim Deed agrees that the Property is transferred on an "as is, where is" basis without warranties of any kind either expressed or implied. GRANTEE further agrees that this conveyance is subject to any and all existing easements, rights of way, reservations, and servitudes, whether of record or not.

7. GRANTEE, by acceptance of this Quitclaim Deed, expressly acknowledges that the Island of Guam was part of the World War II conflict and, as such, that portions of the island were subject to contamination by the introduction of unexploded and dangerous bombs, shells, rockets, mines and other charges, either below or upon the surface thereof, some of which may remain on the island in an unexploded condition or state.

8. GRANTEE, by acceptance of this Quitclaim Deed and as further consideration for this conveyance, covenants and agrees for itself, its successors and assigns, to assume all risks of personal injuries and property damages of any kind whatsoever, including all risks caused by possible contamination of the Property by unexploded ordinance arising out of ownership, maintenance, occupation or use of the Property by any person whatsoever; and further covenants and agrees to indemnify and save harmless GRANTOR, its officers, agents and employees,

against all liability, claims and cause of action suits arising out or resulting from the contaminated condition of the Property.

III. CONDITIONS SUBSEQUENT

9. GRANTEE shall HAVE AND HOLD the Property, subject, however, to each of the following conditions subsequent, which are for the sole benefit of the UNITED STATES OF AMERICA and which shall be binding upon and enforceable against GRANTEE, its successors and assigns as follows:

- (1) For a period of thirty (30) years from the date of this Deed, the Property will be used continuously for educational purposes in accordance with the proposed program and plan of GRANTEE as set forth in its Application and for no other purposes. GRANTOR reserves the right to enter and inspect the Property during said period.
- (2) During the above period of thirty (30) years, GRANTEE will not sell, resell, lease, rent, mortgage, encumber, or otherwise transfer any interest in any part of the Property except as GRANTOR may authorize in advance in writing.
- (3) One year from the date of this Deed and annually thereafter for the period of thirty (30) years, unless GRANTOR directs otherwise, GRANTEE will file with GRANTOR a report on the operation and maintenance of the Property and will furnish, as requested by GRANTOR,

such other pertinent information evidencing its continuous use of the Property as required by condition subsequent 1.

- (4) During the above period of thirty (30) years, GRANTEE will at all times be and remain a tax supported institution or a nonprofit institution, organization, or association exempt from taxation under §501(c)(3) of the Internal Revenue Code of 1954, as amended.

- (5) For the period during which the Property is used for the purpose for which Federal assistance is hereby extended by GRANTOR or for another purpose involving the provision of similar services or benefits, GRANTEE hereby agrees that it will comply with the requirements of (a) Title VI of the Civil Rights Act of 1964 (P.L. No. 88-352), 42 U.S.C. §2000d et seq.; (b) Title IX of the Education Amendments of 1972 (P.L. No. 92-318), 20 U.S.C. § 1681 et seq.; (c) §504 of the Rehabilitation Act of 1973 (P.L. No. 93-112), 29 U.S.C. §794 et seq.; and all requirements imposed by or pursuant to the Regulations (34 C.F.R. Parts 12, 100, 104 and 106)

issued pursuant to the Act and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the United States shall, on the ground of race, color, national origin, sex, or handicap, be excluded from participation in, be denied the benefits

of, or otherwise be subjected to discrimination under the program and plan referred to in condition subsequent 1 above or under any other program or activity of the GRANTEE, its successors and assigns, to which such Acts and Regulations apply by reason of this conveyance.

10. The failure of GRANTOR to insist in any one or more instances upon complete performance of the conditions subsequent, terms, or covenants of this Deed shall not be construed as a waiver of, or a relinquishment of GRANTOR's right to the future performance of any of those conditions subsequent, terms and covenants and the GRANTEE's obligations with respect to such future performance shall continue in full force and effect.

11. In the event of a breach of any of the conditions subsequent or in the event of a breach of any other terms and covenants of this Deed, whether caused by the legal or other inability of GRANTEE, its successors and assigns, to perform any of the terms and conditions of this Deed, at the option of the UNITED STATES OF AMERICA, all right, title, and interest in and to the Property shall, upon the recording by the UNITED STATES OF AMERICA of a Notice of Entry, pass to and become the property of the UNITED STATES OF AMERICA, which shall have an immediate right to entry thereon, and the GRANTEE, its successors and assigns, shall forfeit all right, title, and interest in and to the

Property and in and to any and all of the tenements, hereditaments, and appurtenances thereto.

12. In the event the GRANTOR fails to exercise its options to reenter the Property or to revert title thereto for any breach of conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed within thirty one (31) years from the date of this conveyance, conditions subsequent 1, 2, 3, and 4 of said Paragraph 9, together with all rights to reenter and revert title for breach of those conditions, will, as of that date, terminate and be extinguished.

13. The expiration of conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed and the right to reenter and revert title for breach thereof, will not affect the obligation of GRANTEE, its successors and assigns, with respect to condition subsequent 5 of Paragraph 9 of this Deed or the right reserved to GRANTOR to reenter and revert title for breach of condition subsequent 5. ✓

IV. COVENANTS

14. GRANTEE, by the acceptance of this Deed, covenants and agrees for itself, its successors and assigns, that in the event GRANTOR exercises its option to revert all right, title, and interest in and to the Property to GRANTOR, or GRANTEE voluntarily returns title to the Property in lieu of a reverter, the GRANTEE shall provide protection to and maintenance of the Property at all times until such time as the title to the

Property, or possession of the Property, whichever occurs later in time, is actually reverted or returned to and accepted by GRANTOR. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in FPMR 101-47.4913 (41 C.F.R. Part 101-47.4913) now in effect, a copy of which is referenced in the GRANTEE's Application.

15. GRANTEE, by the acceptance of this Deed, covenants that, at all times during the period that title to the Property is vested in GRANTEE, its transferees or assigns, subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed, it will comply with all provisions of the following: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §4321 et seq., including the preparation of environmental impact statements, as required (see 42 U.S.C. §4332); the National Historic Preservation Act of 1966, as amended (P.L. No. 89-665); Executive Order No. 11988, 44 Fed. Reg. 43239 (1979), reprinted in 42 U.S.C.A. §4321 app. at 188-189 (1987), governing floodplain management; Executive Order No. 11990, 42 Fed. Reg. 26961 (1977), reprinted in 42 U.S.C.A. §4321 app. at 197-198 (1987), governing protection of wetlands; Federal Property Management Regulations, 41 C.F.R. 101-47.304-13; 41 C.F.R. 101-47.200 et seq., 53 Fed. Reg. 29892 (1988), provisions relating to asbestos; and other appropriate guidelines, laws, regulations or executive

orders, federal, state or local, pertaining to floodplains, wetlands or the future use of this Property.

16. GRANTEE, by acceptance of this Deed, covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property herein conveyed or any part thereof that it will comply with the requirements of (a) Title VI of the Civil Rights Act of 1964 (P.L. No. 88-352), 42 U.S.C. §2000d et seq.; (b) Title IX of the Education Amendments of 1972 (P.L. No. 92-318), 20 U.S.C. §1681 et seq.; (c) Section 504 of the Rehabilitation Act of 1973 (P.L. No. 93-112), 29 U.S.C. §794 et seq.; and all requirements imposed by or pursuant to the Regulations (34 C.F.R. Parts 12, 100, 104 and 106) issued pursuant to the Act and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the United States shall, on the ground of race, color, national origin, sex, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition subsequent 1 above or under any other program or activity of the GRANTEE, its successors and assigns, to which such Acts and Regulations apply by reason of this conveyance. This covenant shall attach to and run with the land for so long as the Property is used for a purpose for which Federal assistance is extended by GRANTOR or for another purpose involving the provision of similar services or benefits, and

shall in any event, and without regard to technical classifications or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit of, in favor of and enforceable by GRANTOR against GRANTEE, its successors and assigns, for the Property, or any part thereof. In the event of a breach of this covenant by GRANTEE or by its successors or assigns, GRANTOR, may, in addition to any right or remedy set forth in this agreement, avail itself of any remedy authorized by the violated statute or regulation.

17. In the event title to the Property or any part thereof is reverted to the UNITED STATES OF AMERICA for noncompliance or is voluntarily reconveyed in lieu of reverter, GRANTEE, its successors or assigns, shall at the option of GRANTOR, be responsible for and be required to reimburse the UNITED STATES OF AMERICA for the decreased value thereof that is not the result of reasonable wear and tear, an act of God, or alterations and conversions made by the GRANTEE and approved by the GRANTOR, to adapt the Property to the educational use for which the Property was transferred. GRANTEE shall, in addition thereto, reimburse GRANTOR for damage it may sustain as a result of such noncompliance, including but not limited to costs incurred to recover title to or possession of the Property.

18. GRANTEE may seek abrogation of the conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed by:

- a. Obtaining the advance written consent of the GRANTOR;
and
- b. Payment to the UNITED STATES OF AMERICA a sum of money equal to the fair market value of the property to be released from the conditions as of the effective date of the abrogation:
- (1) multiplied by the percentage public benefit allowance granted at the time of conveyance,
 - (2) divided by 360, and
 - (3) multiplied by the number of months, or any portion thereof, of the remaining period of restrictions to be abrogated.

19. GRANTEE, by acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that in the event the Property or any part or interest thereof is at any time within the period of thirty (30) years from the date of this conveyance sold, leased, mortgaged, encumbered or otherwise disposed of or used for purposes other than those designated in condition subsequent 1 above without the written consent of GRANTOR, all revenues therefrom and the reasonable value, as determined by GRANTOR, of any other benefits to GRANTEE deriving directly or indirectly from such sale, lease, mortgage, encumbrance, disposal or use, shall be considered to have been received and held in trust by GRANTEE for the UNITED STATES OF AMERICA and shall be subject to the direction and control of

GRANTOR; but the provisions of this paragraph shall not impair or affect the rights reserved to GRANTOR under any other provision of this Deed.

20. GRANTEE, by the acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that at all times during the period that title to the Property is vested in GRANTEE subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed, GRANTEE shall at its sole cost and expense keep and maintain the Property and the improvements thereon, including all buildings, structures and equipment at any time situate upon the Property, in good order, condition and repair, and free from any waste whatsoever.

21. GRANTEE, by the acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that at all times during that period that it holds title to the Property subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed, it shall not engage in, authorize, permit or suffer the extraction or production of any minerals from the Property without the written consent of GRANTOR.

GRANTEE, by the acceptance of this Deed, further covenants and agrees for itself, its successors and assigns, that should an extraction or production of minerals including, but not limited to oil, gas, coal, and sulphur on or under the described Property occur during that period that it holds title to the Property subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of

this Deed (i) it will hold all payments, bonuses, delayed rentals, or royalties in trust for GRANTOR and (ii) that all net revenues and proceeds resulting from the extraction or production of any minerals including, but not limited to, oil, gas, coal or sulphur, by GRANTEE, its successors and assigns, will be held in trust for and promptly paid to GRANTOR. The listing of certain minerals shall not cause the doctrine of ejusdem generis to apply. Nothing herein shall be construed as authorizing the GRANTEE to engage in the extraction or production of minerals in, on, or under the Property.

22. GRANTEE, by acceptance of this Deed, covenants that, upon the recording by the UNITED STATES OF AMERICA of a Notice of Entry, all right, title, and interest in and to the Property shall pass to and become the property of the UNITED STATES OF AMERICA, which shall have an immediate right to enter thereon, and the GRANTEE, its successors and assigns, shall immediately and quietly quit possession thereof and forfeit all right, title, and interest in and to the Property and in any and all of the tenements, hereditaments, and appurtenances thereunto belonging, conveying all right, title, and interest conveyed to it in this Deed except for encumbrances authorized and approved by the GRANTOR in writing as provided in condition subsequent 2 of Paragraph 9 of this Deed.

23. If the GRANTEE, its successors or assigns, shall cause the Property and/or any improvements thereon to be insured

against loss, damage or destruction, or if the GRANTOR requires such insurance while the Property is subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed, and any such loss, damage or destruction shall occur during the period GRANTEE holds title to the Property subject to conditions subsequent 1, 2, 3, and 4 set forth in Paragraph 9 of this Deed, said insurance and all moneys payable to GRANTEE, its successors or assigns, shall be held in trust by the GRANTEE, its successors or assigns, and shall be promptly used by GRANTEE for the purpose of repairing, and restoring the Property to its former condition or replacing it with equivalent or more suitable facilities; or, if not so used, shall be paid over to the Treasurer of the United States in an amount equal to the unamortized public benefit allowance of Property multiplied by the current fair market value of the improvements lost, damaged or destroyed. If the Property is located in a floodplain, GRANTEE will, during the period it holds title subject to conditions subsequent 1, 2, 3, and 4 of Paragraph 9 of this Deed insure the Property and any machinery, equipment, fixtures, and furnishings contained therein against loss, damage, or destruction from flood, to the maximum limit of coverage made available with respect to the Property under §102 of the Flood Disaster Protection Act of 1973 (P.L. No. 93-234). Proceeds of such insurance will be used as set forth above.

24. GRANTEE further covenants to pay damages for any time period held over beyond the time period stated in a demand to

quit possession of the Property at the fair market rental value plus reasonable attorneys fees and costs of the GRANTOR in securing the return of the Property.

25. All covenants, conditions subsequent, and restrictions contained in this Deed shall run with the land and be binding upon GRANTEE, its successors and assigns, to all or any part of the Property. All rights and powers reserved to GRANTOR by this Deed may be exercised by any successor in function to GRANTOR, and all reference in this Deed to GRANTOR shall include its successor in function. All covenants and conditions subsequent contained herein are for the sole benefit of GRANTOR and may be modified or abrogated by it as provided in the Act.

V. SIGNATURES

TO INDICATE THEIR AGREEMENT to the provisions contained in this agreement, GRANTOR and GRANTEE have executed this document as of the date and year first above written.

UNITED STATES OF AMERICA
Acting by and through the
Secretary of Education
GRANTOR:

By: 

David B. Hakola, Director
Federal Real Property Assistance
Program, Office of the
Administrator for Management
Services

ACCEPTANCE

The Territory of Guam, and its Department of Education, GRANTEE, hereby accepts this Quitclaim Deed and accepts and

agrees to all the terms, covenants, conditions subsequent, and restrictions contained therein.

Territory of Guam

GRANTEE:

By: Franklin Quitugua
Franklin Quitugua
Director of Education
Territory of Guam

ACKNOWLEDGMENTS

WASHINGTON)

DISTRICT OF COLUMBIA)

On this 23rd day of October, 1992, personally appeared before me, a Notary Public in and for the District of Columbia, David B. Hakola, Director, Federal Real Property Assistance Program, Office of the Administrator for Management Services, United States Department of Education, acting for the United States of America and the Secretary of Education, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on the date hereof as his free and voluntary act and deed for the purposes and consideration therein expressed and with full authority and as the act and deed of the United States of America and the Secretary of Education.

IN WITNESS WHEREOF, I have set my hand and seal at Washington, DC, this 23rd day of October, 1992.

Harry Goldsman
Notary Public
My Commission Expires: August 31, 1992

TERRITORY OF GUAM)

On this 17th day of November, 1992, personally appeared before me, a Notary Public in and for the Territory of Guam, Franklin Quitugua, Director of Education, Territory of Guam, to me known to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on the date hereof as his free and voluntary act and deed

for the purposes and consideration therein expressed and with full authority and as the act and deed of the Territory of Guam.

17th IN WITNESS WHEREOF, I have set my hand and seal on this day of November, 1992.

Glenda S. Martinez
Notary Public
My Commission Expires: Mar 7, 1996

GLEND A. MARTINEZ
NOTARY PUBLIC
In and for the Territory of Guam
My Commission Expires: Mar, 07, 1996

ANDERSEN AIR FORCE BASE
TERRITORY OF GUAM, MARIANA ISLANDS

FORMER MARBO BASE COMMAND, AREA "B"-4
Land situated on the Municipality of Yigo,
Territory of Guam Guam, Mariana Islands

DESCRIPTION OF PROPERTY: Portion of former Marbo Base Command, Andersen,
Air Force Base

All that tract or parcel of land designated as Lot MARBO BASE COMMAND
"B"-4, situated in Land Square 10, Section 4, municipality of Yigo, more
particularly bounded and described as follows:

Beginning at a point, a concrete monument set and marked R.L.S. 65
having Land and Claims Commission 1945 (L&CC 1945) coordinates of
North 180,663.55 feet (55,066.362m) and East 209,559.68 feet
(63,873.918m), being South 00 degrees 09' 40" East, 941.58 feet
(286.944m) from Guam Geodetic Triangulation Net Station 1E.31, having
coordinates of North 181,605.13 feet (55,353.355m) and East
209,557.12 feet (63,873.137m);

Thence by bearings and distances as follows:

1) South 01 degree 57' 49" East, 1,744.33 feet (531.673m) to
corner No. 2, a concrete monument set and marked R.L.S. 65;

2) Then, along a curve concave to the left, with a central angle
of 02 degrees 01' 30", a radius of 1,617.00 feet (492.863m), a
chord bearing of South 02 degrees 58' 34" East, 57.15 feet
(17.419m) to corner No. 3, a concrete monument set and marked
R.L.S. 65;

3) Then, South 03 degrees 59' 19" East, 149.34 feet (45.519m) to
corner No. 4, a concrete monument set and marked R.L.S. 65;

4) Then, South 88 degrees 39' 35" West, 2,143.61 feet (653.374m)
to corner No. 5, a concrete monument set and marked R.L.S. 65;

5) Then, North 01 degree 57' 49" West, 1,309.87 feet (399.249m)
to corner No. 6, a concrete monument set and marked R.L.S. 65;

6) Then, North 71 degrees 55' 13" East, 2,224.62 feet (678.066m)
to the point of beginning, containing an area of Three Million
Four Hundred Eighty Four Thousand Seven Hundred Forty Seven
(3,484,747) square feet or Three Hundred Twenty Three Thousand
Seven Hundred Forty Five (323,745) square meters or Eighty (80)
Acres as shown on survey map prepared by Nestorio C. Ignacio,
Registered Land Surveyor No. 65, having Drawing No. DSI-S-90-11
(said map having been revised by Pacific Division, Naval
Facilities Engineering Command, Pearl Harbor, Hawaii to correct
the geometry of the curve at Course No. 2), marked Exhibit "A",
attached hereto and made a part hereof.

479882

Together with a non-exclusive, perpetual access and utility easement to the above described land over the following described property:

FORMER MARBO BASE COMMAND, AREA "B"-5-R/W
Land situated on the Municipality of Yigo,
Territory of Guam Guam, Mariana Islands

DESCRIPTION OF PROPERTY: Portion of former Marbo Base Command, Andersen, Air Force Base

All that tract or parcel of land designated as lot MARBO BASE COMMAND "B"-5-R/W, situated in Land Square 10, Section 4, Municipality of Yigo, more particularly bounded and described as follows:

Beginning at a point, a concrete monument set and marked R.L.S. 65 having Land and Claims Commission 1945 (L&CC 1945) coordinates of North 180,663.55 feet (55,066.362m) and East 209,559.68 feet (63,873.918m), being South 00 degrees 09' 40" East, 941.58 feet (286.994m) from Guam Geodetic Triangulation Net Station 1E.31, having coordinates of North 181,605.131 feet (55,353.355m) and East 209,557.1182 feet (63,873.137m);

Thence by bearings and distances as follows:

- 1) North 01 degree 57' 49" West, 708.27 feet (215.881m) to corner No. 2, a concrete monument set and marked R.L.S. 65;
- 2) Then, North 01 degree 00' 19" West, 164.06 feet (50.006m) to corner No. 3, a concrete monument set and marked R.L.S. 65;
- 3) Then, along a curve concave to the left, with a central angle of 108 degrees 47' 18", a radius of 20.00 feet (6.096m), a chord bearing of North 55 degrees 23' 57" West, 32.52 feet (9.912m) to corner No. 4, a concrete monument set and marked R.L.S. No. 65;
- 4) Then along a curve concave to the left, with a central angle of 01 degree 54' 43", a radius of 3,164.27 feet (964.471m), a chord bearing of North 69 degrees 15' 03" East, 105.59 feet (32.184m) to corner No. 5, a found No. 4 rebar with cap marked Gov. Guam;
- 5) Then, along a curve concave to the left, with a central angle of 69 degrees 18' 00", a radius of 20.00 feet (6.096m), a chord bearing of South 33 degrees 38' 45" West, 22.74 feet (6.931m) to corner No. 6, a found No. 4 rebar with cap marked Gov. Guam;
- 6) Then, South 01 degree 00' 19" East, 200.00 feet (60.960m) to corner No. 7, a found No. 4 rebar with cap marked Gov. Guam;
- 7) Then, South 01 degree 57' 49" East, 2,451.55 feet (747.234m) to corner No. 8, a concrete monument set and marked R.L.S. 65;
- 8) Then, along a curve concave to the left, with a central angle of 02 degrees 01' 30", a radius of 1,557.00 feet (474.575m), a chord bearing of South 02 degrees 58' 34" East, 16.772m (16.772m) to corner No. 9, a concrete monument marked R.L.S. No. 55;

9) Then, South 03 degrees 59' 19" East, 149.34 feet (45.519m) to corner No. 10, a concrete monument set and marked R.L.S. No. 65;

10) Then South 86 degrees 00' 41" West, 60.00 feet (18.288m) to corner No. 11, a concrete monument set and marked R.L.S. No. 65;

11) Then, North 03 degrees 59' 19" West, 149.34 feet (45.519m) to corner No. 12, a concrete monument set and marked R.L.S. No. 65;

12) Then, along a curve concave to the right, with a central angle of 02 degrees 01' 30", a radius of 1,617 feet (492.863m), a chord bearing of North 02 degrees 58' 34" West, 57.15 feet (17.419m) to corner No. 13, a concrete monument set marked R.L.S. No. 65;

13) Then, North 01 degree 57' 49" West, 1,744.33 feet (531.673m) to the point of beginning, containing an area of One Hundred Seventy One Thousand Eight Hundred Forty (171,840) square feet or Fifteen Thousand Nine Hundred Sixty Nine (15,965) square meters or 3.945 Acres more or less as shown on survey map prepared by Nestorio C. Ignacio, Registered Land Survey No. 65, having Drawing Number DS1-S-90-11, marked Exhibit "A", attached hereto and made a part hereof, with said map having been revised by Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii, to correct the geometry of curves in this roadway and onnection to Marine Drive (Route 1) to conform to design for Marine Drive.

ADDITIONAL NOTE

The conveyance deed for the fee simple and easement property described above should contain the following use restriction: Grantee agrees that it shall make no use of the property which damages the water lens under the property and the water lens and other water wells on adjacent properties; and that this covenant shall run with the land and be enforceable on all future owners of the land until this use restriction is cancelled by an authorized representative of the United States of America.

**REQUEST FOR PROPOSAL
CONSTRUCTION OF NEW SCHOOL AT MARBO BASE
COMMAND IN YIGO
FINANCE, DESIGN, BUILD, MAINTAIN AND
LEASEBACK (FDBML), PART I
PROJECT NO. 700-5-1019-L-YIG**

FINANCING

**FELIX P. CAMACHO
Governor of Guam**

Prepared by:

**Department of Public Works
Government of Guam**

2005

EXHIBIT B

**CONSTRUCTION OF NEW SCHOOL AT MARBO BASE COMMAND IN
YIGO
FINANCE, DESIGN, BUILD, MAINTAIN, LEASEBACK (FDBML), PART II
TECHNICAL SPECIFICATIONS**

PROJECT NO. 700-5-1019-L-YIG

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REQUEST FOR PROPOSAL

CONSTRUCTION OF NEW SCHOOL AT MARBO BASE COMMAND IN YIGO FINANCE, DESIGN, BUILD, MAINTAIN, LEASEBACK (FDBML), PART I FINANCING

PROJECT NO. 700-5-1019-L-YIG

I. INTRODUCTION

1. EXECUTING AGENCY

The Governor of Guam through the Department of Public Works (DPW) and with the assistance of the Guam Economic Development and Commerce Authority (GEDCA) hereby issues this Request for Proposal (RFP) for a Finance, Design, Build, Maintain and Leaseback Project (FDBML) for One (1) New Intermediate School at Marbo Base Command in Yigo.

All proposals submitted under this RFP must comply with Government of Guam requirements incorporated specifically in the FDBML invitation, or if silent in the RFP, as applicable under Guam Procurement Law, Rules and Regulations.

This solicitation for FDBML describes the scope of services required from the successful Proposer and provides instructions for the submission of proposals.

2. WHO MAY SUBMIT A PROPOSAL

Any "Developer, Contractor or Finance Company" may submit a proposal.

"Developer, Contractor or Finance Company" shall mean any COMPANY organized and operating under the laws of any state or territory of the United States and who may be subject to Guam Licensing laws. Specific information on licenses may be obtained from the Director of the Revenue and Taxation. A special purpose corporation proposal may also be a consideration.

3. PURPOSE

The successful Proposer will serve as the primary lessor of the schools for the Government of Guam.

II. INTENT

The Governor of Guam through the Department of Public Works intends to obtain intermediate school facility through a municipal leaseback program as described in this Finance, Design, Build, Maintain and Leaseback (FDBML) project with a maximum of One million dollars (\$ 1,000,000.00) annual amortization on best possible financial terms at the desired level of service to include two (2) years capitalization of principal and interest payments. The terms and conditions of the lease shall be as determined by I Maga'lāhen Guáhan by the execution of a lease agreement; provided, however, that the lease shall mature not later than the year 2025.

III. SCOPE OF WORK

The Scope of Work for Part I- Financing is part of the criteria in which all the proposals submitted will be based on. This section will be scored based on assigned weights as indicated in Evaluation Form. The overall weight of this Part I is 70%. The Municipal Leaseback Company shall be able to perform the following:

- a. Term Sheet to include all interest charges, fees and expenses
- b. Responsiveness of Proposal
- c. Ability of the Lessor to lease to Lessee the facilities described in Technical Specifications, which is Part 1 of this Request for Proposal.
- d. Ability of Lessor to structure municipal leases from \$50,000,000 to over \$300,000,000. Please provide examples of municipal leases financed.
- e. Ability of Lessor to offer suggestions on various arrangements for service and maintenance contracts in support of the upkeep and service of the leased facility. Please provide detail on suggested payment arrangements.
- f. Ability of Lessor to allow the purchase of the leased school facility by Lessee at any time during the lease period. Please provide detail on pre-payment arrangement scenario.
- g. Ability of Lessor to allow Lessee to cancel the lease obligation, without penalty, at the end of the current fiscal year in which appropriations were last budgeted, or otherwise made legally available, in the event budgetary funds become unavailable for appropriation in future years (Event of non-appropriation).

Non-Appropriation Clause (defined): In event that sufficient funds (a) are not appropriated by the governing body of the Government Body prior to the

REQUEST FOR PROPOSAL

Construction of New School at Marbo Base Command in Yigo
Finance, Design, Build, Maintain, Leaseback (FDBML) Part 1
Project No. 700-5-1019-L-YIG

beginning of any Renewal Term for the payment of the Base Rentals on the Base Rental Payment Dates and reasonably estimated Additional Rentals payable during such Renewal Term, or (b) are otherwise not legally available for such purpose, then an Event of appropriation shall be deemed to have occurred. If an Event of Non-appropriation shall occur, the Government Body shall not be obligated to make payment of the Base Rentals or Additional Rental's provided for herein beyond the last day of the Renewal Term during which such Event of non-appropriation occurs, except for the Government Body's obligation to pay Rentals which are payable prior to the termination of the Lease.

- h. Ability of Lessor to provide 100% financing for the facility, including design, construction, maintenance and other related costs to complete the projects as per Technical Specifications.
- i. Ability of Lessor to develop a payment schedule that can be structured on an annual basis.

IV. PROPOSER QUALIFICATION

The following minimum criteria shall be met:

1. Proposer shall be a Developer, Contractor or Finance Company who may be subject to Guam Licensing Laws, however, must be licensed to do business within Guam prior to the award.
2. Proposer must have and be willing to commit sufficient staff, resources, and capital to finance, develop, perform and deliver the services required by this FDBML, in accordance with the terms and conditions specified herein.
3. Proposer must have knowledge, experience in the municipal leaseback business. Examples should be provided.
4. Proposer must have knowledge, experience in managing a municipal leases for schools or related public buildings. Examples should be provided.

V. PLEDGED GENERAL FUNDS RESERVED

The Government intends to pledge general funds reserved from the debt service savings resulting from pay off of the government of Guam's 1995 General Obligation Bond pursuant to Public Law 28-49 to Guam Public School System for the purposes of financing, design, construction and maintenance of the Education Facility, as defined in 5GCA Section 58103(e) pursuant to the lease herein.

REQUEST FOR PROPOSAL

Construction of New School at Marbo Base Command in Yigo
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The amount for municipal lease and maintenance shall be a maximum of One Million Dollars (\$ 1,000,000.00) annually or best financial terms at the desired level of service for twenty (20) years.

VI. TECHNICAL SPECIFICATIONS

The Technical Specifications is a part of the criteria in which all proposal submitted will be base. This part has an overall weight of thirty (30%) percent. The technical specifications which is Part II.

VII. SPECIAL PROVISIONS

1. Indebtedness limitation.

Section 11 of the Organic Act of Guam (Section 1423a of Title 48 of the United States Code Annotated) limits the amount of "public indebtedness" of the Government of Guam to an amount "not in excess of 10 per centum of the aggregate tax valuation of the property in Guam". The intent of this RFP is that the obligation of the Government on the leases described herein not be "indebtedness" of the Government within the meaning of Section 11. Since there is, as yet, no case law in Guam creating a judicial exception to the debt limitation for financing leases, it is the intent of the Government to conduct a "validation action" to confirm that treatment prior to the signing of the lease.

VIII. GENERAL CONDITIONS

1. GENERAL INFORMATION

1.1 ISSUING OFFICER

This solicitation is issued by the Government of Guam through DPW with the assistance of GEDCA. The individual listed below is the sole point of contact from the date of release until the selection of the winning proposer:

Name:	Lawrence P. Perez
Title:	Acting Director, DPW
Department Name:	Department of Public Works
Mailing Address 1:	542 North Marine Drive Tamuning, Guam 96913

Telephone: (671) 646-3131/646-3217/646-3117
Facsimile: (671) 646-3169

1.2. CHIEF PROCUREMENT OFFICER

The Chief Procurement Officer is responsible for overseeing the RFP, including monitoring and assessing contractor performance. The Chief Procurement Officer for this RFP award is:

Chief Procurement Officer: Lawrence P. Perez
Title: Acting Director, DPW
Agency: Department of Public Works

Contact Number: (671) 646-3131/646-3217/646-3117
Fax Number: (671) 649-3169

1.3. PROPOSAL DUE DATE

Each qualified Proposer may submit only a basic proposal. Alternate proposals shall not be accepted. One (1) original and five (5) copies of the proposal shall be submitted. Proposals shall be received by DPW not later than [REDACTED] 2008. Any proposals received after this date and time SHALL NOT be accepted. The Government of Guam is not required to seek proposals for this service; it has chosen to do so in its best interest. The Government of Guam reserves the right to seek new proposals when such is reasonably in the best interest of the government.

1.4. INCURRED EXPENSES

Any costs incurred by Proposers in preparing or submitting a proposal are at the Proposers' sole responsibility.

1.5. DISQUALIFICATION OF PROPOSAL

DPW and GEDCA reserves the right to consider for award only those proposals submitted in accordance with all requirements set forth in this solicitation. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included in this FDBML, may be disqualified without further notice.

1.6. CANCELLATION OF FDBML

This solicitation may be canceled and any or all proposals may be rejected in whole or in part, when it is deemed to be in the best interest of the Government of Guam.