

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

Bill No. _____ ()

Introduced By: _____

AN ACT TO ENACT ARTICLE 8 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GOVERNMENT OF GUAM TO ~~[ISSUE]~~ PROCURE SOLID WASTE MANAGEMENT ~~[SYSTEM REVENUE BONDS]~~ FEES FOR THE PURPOSE OF FINANCING ~~[FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF GUAM;~~ APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE 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 ENACT ARTICLE 9 OF CHAPTER 51 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING 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;~~ 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.]

1

2 BE IT ENACTED BY THE PEOPLE OF GUAM:

1 U.S. EPA filed a lawsuit in the U.S. District Court of Guam (the "District
2 Court") against the government. A Consent Decree between the government
3 of Guam and the U.S. EPA was approved by the District Court in February
4 2004. The Consent Decree provided timelines for the Government to plan
5 finance and execute the closure of the Ordot Dump and the construction of a
6 new municipal landfill. The Government has made efforts to identify a source
7 of financing for the closure of the Ordot Dump and the construction of a new
8 landfill, but the District Court determined that the Government has not met
9 the milestones required under the Consent Decree. On March 17, 2008, the
10 Court placed the DPW in receivership, appointing Gershman, Brickner &
11 Bratton, Inc. (the "Receiver") to take over the government's solid waste
12 operations in order to correct the longstanding deficiencies. All the costs
13 incurred in connection with the U.S. EPA lawsuit will ultimately have to be
14 paid for by the ratepayers of Guam.

15 (c) The Receiver's quarterly report to the District Court, presented
16 October 22, 2008, estimated that approximately \$159.7 million of capital
17 funding will be needed to meet the requirements of the Consent Decree,
18 \$40.1 million of which would be required for the closure of the Ordot Dump
19 and \$119.6 million of which would be required for the construction of the

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

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

15 **~~Section 2. Enactment of the Guam Solid Waste Management System~~**

16 **~~Revenue Bond Act.~~** Article 8 of Title 10, Chapter 51 of the Guam Code

17 Annotated, is hereby enacted to read as follows:

18 **~~Article 8~~**

19 **~~Solid Waste Management System Revenue Bonds~~**

1 ~~**551801. Short Title.** This Article may be cited as the Guam~~
2 ~~Solid Waste Management System Revenue Bond Act.~~

3 ~~**551802. Definitions.** The following terms wherever used or referred to in this~~
4 ~~Article or in any indenture entered into pursuant hereto (except to the extent~~
5 ~~modified therein in accordance with this Article), shall have the following~~
6 ~~meanings, respectively, unless a different meaning appears from the context:~~

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

9 (b) ~~"Bondholder" or "holder of bonds" or any similar term means any person~~
10 ~~who shall be:~~

11 (i) ~~the bearer of any outstanding bond or bonds registered to bearer or not~~
12 ~~registered; or~~

13 (ii) ~~the registered owner of any such outstanding bond or bonds which shall at~~
14 ~~the time be registered other than to bearer.~~

15 (c) ~~"Department" means the Department of Public Works, acting on behalf of~~
16 ~~the government of Guam.~~

17 (d) ~~"Director" means the Director of the Department of Public Works.~~

18 (e) ~~"Guam Solid Waste Management and Litter Control Act" means Chapter~~
19 ~~5-1 of Title 10 of the Guam Code Annotated.~~

1 ~~(f) "Indenture" means an agreement pursuant to which bonds are issued,~~
2 ~~regardless of whether such agreement is expressed in the form of a certificate~~
3 ~~of the director and I *Maga'laha*n *Guahan* or by other instrument.~~

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

7 ~~(h) "Person" includes any individual, firm, corporation, association,~~
8 ~~partnership, trust, business trust or receiver or trustee or conservator for any~~
9 ~~thereof, and also includes the United States, Guam or any public corporation,~~
10 ~~political subdivision, city, county or district or any agency or instrumentality~~
11 ~~of the United States or of Guam.~~

12 ~~(i) "Pledged revenue" means any revenue of the system and any Section 30~~
13 ~~revenue pledged to the payment of bonds.~~

14 ~~(j) "Rates, fees and charges" means all rates, fees and charges (including~~
15 ~~tipping fees, residential pick up fees, collection fees, self drop fees and all~~
16 ~~other solid waste management service charges), received or receivable by or~~
17 ~~on behalf of the department for providing solid waste management services.~~

18 ~~(k) "Revenue of the system" means all gross income and other amounts~~
19 ~~received by or on behalf of the department as revenues of any kind from the~~

1 ~~ownership or operation of any part of the system, including all rates, fees and~~
2 ~~charges received by the department, and all proceeds of insurance or grants~~
3 ~~covering business interruption loss (and related losses and expenses) relating~~
4 ~~to the system, and all other income and revenue howsoever derived by the~~
5 ~~department from the ownership or operation of, or arising from, the system,~~
6 ~~together with all interest, profits or other income derived from the investment~~
7 ~~of amounts in the Solid Waste Operations Fund, to be deposited to the Solid~~
8 ~~Waste Operations Fund in accordance with 10 G.C.A. 135-1833.~~

9 ~~(l) "Section 30 revenue" means revenues derived by the government of~~
10 ~~Guam under Section 30 of the Organic Act.~~

11 ~~(m) "Solid Waste Operations Fund means the fund by that name established~~
12 ~~pursuant to 10 G.C.A. 135-1-18(f).~~

13 ~~(n) "System" means the solid waste management system, now or hereafter~~
14 ~~existing, owned and/or operated by the department or its contractors, agents~~
15 ~~or subcontractors, including but not limited to landfills (whether closed or~~
16 ~~open and including Ordot dump), transfer stations, recycling facilities,~~
17 ~~collection trucks, appurtenant equipment such as scales, ground water~~
18 ~~monitoring equipment and pollution control equipment, and administrative~~

1 facilities supporting the provision of solid waste management services,
2 including facilities for payroll, billing and collections.
3 ~~(0) "System operation and maintenance costs" means such reasonable and~~
4 ~~necessary current expenses of the department, paid or accrued, for operation,~~
5 ~~maintenance and repair of the system, including, without limiting the~~
6 ~~generality of the foregoing:~~
7 ~~(i) legal and overhead expenses of the department directly related and~~
8 ~~reasonably allocable to the administration of the system;~~
9 ~~(ii) fidelity bond and insurance premiums appertaining to the system or a~~
10 ~~reasonably allocable share of a premium of any blanket bond or policy~~
11 ~~pertaining to the system;~~
12 ~~(iii) contractual services, professional services, salaries, administrative~~
13 ~~expenses, and costs of labor appertaining to system; and~~
14 ~~(iv) the costs incurred in the collection of all or any part of the revenues.~~
15 ~~(p) "United States" means the United States of America.~~

16 **551803. Power to Incur Indebtedness.** ~~*I Maga'lahaen Guåhan*, through the~~
17 ~~agency of GEDA pursuant to 12 G.C.A. §50103(k), and with the approval of~~
18 ~~*I Liheslaturan Guåhan* by statute, has the power and is hereby authorized, in~~
19 ~~addition to and in amplification of all other powers conferred by the Guam~~

1 ~~Solid Waste Management and Litter Control Act or any other provision of~~
2 ~~this Chapter or by any law of Guam or of the United States, to incur limited~~
3 ~~obligation indebtedness on behalf of the government of Guam,~~
4 ~~by the issuance of bonds pursuant to this Article to raise funds for the~~
5 ~~purpose of acquiring, constructing, improving, equipping, maintaining,~~
6 ~~repairing, renewing, replacing, reconstructing or insuring the system, or any~~
7 ~~part thereof, or for the purpose of refunding any such bonds or any other prior~~
8 ~~obligations of the government issued for any of such purposes, or for any~~
9 ~~combination of such purposes for which bonds may be issued and secured as~~
10 ~~provided in this Article. It is hereby declared that the system and each facility~~
11 ~~of the system is and shall be a public improvement or undertaking as that~~
12 ~~term is used in Section 11 of the Organic Act (§1423a, Title 48, U.S. Code).~~
13 ~~Indebtedness issued by the government pursuant to this Article that is payable~~
14 ~~only from funds in the Solid Waste Operations Fund available therefore and~~
15 ~~from revenue of the system will not be and shall not be deemed to be public~~
16 ~~indebtedness of Guam as that term is used in said Section 11. Indebtedness~~
17 ~~that is issued by the government pursuant to this Article and that is payable~~
18 ~~from both Section 30 revenue and revenue of the system may not be issued in~~
19 ~~an amount that would cause a violation of the debt limitation provisions~~

1 ~~of said Section 11. No obligation undertaken by the government pursuant to~~
2 ~~this Article shall be or become a lien, charge or liability against the~~
3 ~~government of Guam or against the department or against any property or~~
4 ~~funds of the government of Guam or the department, except to the extent of~~
5 ~~the pledge of revenue of the system and, if applicable, Section 30 revenues~~
6 ~~provided by the indenture.~~

7 **~~§51804. Powers of Department.~~** ~~Notwithstanding any provision of law or~~
8 ~~regulation, the department has power and is hereby authorized, in addition to~~
9 ~~and in amplification of all other powers conferred upon the department by the~~
10 ~~Guam Solid Waste Management and Litter Control Act or any other~~
11 ~~provision of this Chapter or by any law of Guam, to exercise any or all of the~~
12 ~~powers granted to the department by this Article. The department has~~
13 ~~jurisdiction over and may collect and transport to permitted solid waste~~
14 ~~facilities, or contract for the collection and transportation to permitted solid~~
15 ~~waste facilities of, solid waste from all individual dwelling units, single~~
16 ~~family residences, duplexes, and government managed housing units or~~
17 ~~residences. The department does not have jurisdiction over the collection and~~
18 ~~transportation of solid waste from any hotels, commercial or industrial~~
19 ~~establishments, government agencies or from any multiple dwelling units~~

1 other than duplexes. The department may operate the Ordot Dump, or it may
2 contract for the operation of the Ordot Dump, in accordance with Guam law
3 and its permit under this Chapter. The department may contract for the
4 operation of the landfill. The department may also operate, or contract for the
5 operation of, all other permitted solid waste management facilities and
6 operations not addressed above and within the policy guidelines of the
7 Integrated Solid Waste Management Plan. Any such contract for the
8 operation of the Ordot Dump or the landfill may be entered into pursuant
9 hereto or pursuant to Article 9 of this Chapter and may be with any person or
10 corporation duly qualified to provide such services, whether public or private,
11 domestic or foreign.

12 **~~§51805. Rates, Fees and Charges; Refunds.~~**

13 Notwithstanding any provision of law or regulation to the contrary, the
14 department is authorized to establish and modify from time to time, with
15 prior approval by the Public Utilities Commission, reasonable rates, fees and
16 charges for solid waste services at least adequate to cover the full cost of such
17 services, including the costs of debt service for capital improvements of
18 permitted solid waste facilities, and to collect money from all users or
19 customers, and to refund charges collected in error. Rates, fees and charges

1 may be collected before or after the provision of the service for which they
2 are charged. Except to the extent otherwise permitted or required by an
3 indenture pursuant to which bonds are issued, rates, fees and charges shall at
4 all times be fixed to yield annual revenue of the system at least equal to the
5 sum of annual principal payments and interest charges on all bonds then
6 outstanding, all coverage and reserve fund requirements relating to such
7 bonds, any obligations undertaken pursuant to Article 9 of this Chapter, and
8 the annual system operation and maintenance costs; provided, however, that
9 Section 30 revenue may be used for the purposes and treated as satisfying the
10 requirements of this paragraph with respect to the costs of the closure of the
11 Ordot Dump and the bonds or other obligations related thereto. An indenture,
12 lease or contract of indebtedness may provide for payment from revenue of
13 the system of refunds of rates and charges that are collected in error and that
14 are refundable by the department.

15 **~~851806. Validity of Authorization and Issuance of Bonds.~~**

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

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

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

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

7 **~~§51807. Governor to Determine Issuance of Bonds and~~**

8 **~~Incurring of Other Indebtedness; Government Only Liable as~~**

9 **~~Provided by Indenture or Contract.~~**

10 (a) ~~*I Maga'lahaen Gudhan* shall determine the time, form and manner of~~
11 ~~issuance of bonds.~~

12 (b) ~~No bond issued or sold pursuant to this Article and no other obligation~~
13 ~~undertaken by the government under any indenture, lease or other instrument~~
14 ~~shall be or become a lien, charge or liability against the government of Guam~~
15 ~~or against the department or against any property or funds of the government~~
16 ~~of Guam or the department, except to the extent of the pledge of revenue of~~
17 ~~the system and, if applicable, Section 30 revenues provided by such~~
18 ~~indenture, lease or other instrument. Every such bond shall contain a recital~~
19 ~~on its face stating that it is a limited obligation of the government of Guam~~

1 and shall not be deemed to be secured by the faith and credit of the
2 government of Guam.

3 ~~**\$51808. Governor to Declare Purpose and Maximum Amount of Bonds**~~

4 ~~**to be Issued.**~~ Before issuing any bond or bonds, I *Maga'laken Guåhan* shall
5 declare the purpose for which the proceeds of the bonds proposed to be
6 issued shall be expended and shall specify the maximum amount of bonds to
7 be issued or sold for such purpose. Bonds shall not be issued or sold for such
8 purpose in an amount exceeding such specified maximum.

9 ~~**551809. Indenture Providing Terms and Conditions of Bonds. I**~~

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

18 ~~**\$51810. Issues of Bonds.**~~ An indenture may provide for one or several series
19 of bonds and that any series may be divided into one or more divisions with

1 ~~different maturities or dates of issue, different rates of interest or methods for~~
2 ~~determining such rates, or different terms and conditions for the bonds of the~~
3 ~~several series or divisions. It is not necessary that all bonds of the same~~
4 ~~authorized series be of the same kind or character, have the same security, or~~
5 ~~be of the same interest rate, but the terms thereof shall in each case be as~~
6 ~~authorized by I *Maga'lahaen Guåhan*.~~

7 ~~**\$51811. Covenants and Agreements That May Be Contained in**~~

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

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

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

17 ~~(i) for payment of the principal of and interest on bonds at or prior to~~
18 ~~maturity; or~~

19 ~~(ii) for reserve or sinking funds for the further security of bonds.~~

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

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

7 ~~(e) A provision requiring the government to preserve and protect the security~~
8 ~~of the bonds and the rights of the holders thereof and to warrant and defend~~
9 ~~such rights.~~

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

14 ~~(g) A provision which limits, restricts or prohibits any right, power or~~
15 ~~privilege of the government to mortgage or otherwise encumber, sell, lease or~~
16 ~~dispose of the system or any part thereof, in any manner that impairs or~~
17 ~~impedes the operation of the system or any part thereof necessary to secure~~
18 ~~adequate pledged revenue or that otherwise impairs or impedes the right of~~

1 ~~the holders of bonds or other obligations with respect to such pledged~~
2 ~~revenue.~~

3 ~~(h) A provision requiring the government, with the prior approval of the~~
4 ~~Guam Public Utilities Commission, to fix, prescribe and collect annually~~
5 ~~rates or other charges in connection with the solid waste management~~
6 ~~services furnished from the system which, together with other available~~
7 ~~revenues, including, to the extent provided by 10 G.C.A. § 1805, Section 30~~
8 ~~revenue, will be:~~

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

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

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

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

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

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

8 ~~(k) A provision defining the power of the government in applying the~~
9 ~~proceeds of the sale of any issue of bonds for the acquiring, constructing or~~
10 ~~completing of the system or any part thereof.~~

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

1 ~~(m) A provision requiring, specifying or limiting the kind, amount and~~
2 ~~character of insurance (or any reserve fund or funds in lieu of insurance) to~~
3 ~~be maintained by the government on the system or any part thereof and the~~
4 ~~use and disposition of the proceeds of any such insurance thereafter collected~~
5 ~~or of the moneys in any such reserve fund.~~

6 ~~(n) A provision specifying the events of default and the terms and conditions~~
7 ~~upon which any or all of the bonds then or thereafter issued may become or~~
8 ~~be declared due and payable prior to maturity, and the terms and conditions~~
9 ~~upon which such declaration and its consequences may be waived.~~

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

13 ~~(p) A provision prescribing a procedure by which the terms and conditions of~~
14 ~~the indenture may be subsequently amended or modified with the consent of~~
15 ~~the government and the vote or written consent of the holders of a specified~~
16 ~~principal amount or specified proportion of the bonds issued and outstanding,~~
17 ~~including provisions for meetings of bondholders and for the manner in~~
18 ~~which the consent of the bondholders may be given and specifically stating~~

1 ~~the effect of such amendment or modification upon the rights of the holders~~
2 ~~of all of the bonds.~~

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

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

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

16 ~~(t) A provision for any working capit⁴ fund or account or contingency fund~~
17 ~~or account relating to the system.~~

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

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

4 ~~**\$51812. Trustee for Government and Holders of Bonds.**~~

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

11 ~~(b) The government may provide in an indenture:~~

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

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

1 ~~**\$51813. Duties and Powers of Trustee.** The government shall prescribe in~~
2 ~~any indenture the duties and powers of the trustee with respect to the~~
3 ~~issuance, authentication, sale and delivery of the bonds provided for in such~~
4 ~~indenture and with respect to the payment of principal of and interest on such~~
5 ~~bonds, the redemption thereof, the registration and discharge from~~
6 ~~registration thereof and the administration of any and all funds provided as~~
7 ~~security therefore.~~

8 ~~**\$51814. Issuance and Interchange of Bearer and Registered Bonds.** An~~
9 ~~indenture may provide that bonds may be issued as bearer bonds or as~~
10 ~~registered bonds and for the interchange of bearer bonds for registered bonds~~
11 ~~and registered bonds for bearer bonds, and may provide that bonds shall be~~
12 ~~registered as to principal only or as to both principal and interest or otherwise~~
13 ~~as I *Maga'laha*n *Guåhan* may determine.~~

14 ~~**\$51815. Redemption of Bonds Prior to Maturity.** An indenture may~~
15 ~~provide that bonds may be redeemed prior to maturity upon such terms,~~
16 ~~conditions and upon such notice as are stated in the indenture and upon the~~
17 ~~payment of such premium as may be fixed by the indenture.~~

1 ~~**\$51816. Places of Payment.** An indenture may provide for the payment of~~
2 ~~the principal and interest of bonds at any one or more places in Guam or in~~
3 ~~the United States and in any specified coin or currency of the United States.~~

4 ~~**\$51817. Execution and Authentication of Bonds.** An indenture may~~
5 ~~provide for the execution and authentication of bonds by the manual or~~
6 ~~facsimile signature of any one or more officers of the government and by~~
7 ~~additional authentication by endorsement by the manual signature or a~~
8 ~~signature stamp of any one or more officers of the government or of any~~
9 ~~agent designated by the government as trustee. If any officer or agent whose~~
10 ~~signature, countersignature or endorsement appears upon the bonds ceases to~~
11 ~~be an officer or agent before the delivery of the bonds, his signature,~~
12 ~~countersignature or endorsement is nevertheless valid and of the same force~~
13 ~~and effect as if he had remained such officer or agent until the delivery of the~~
14 ~~bonds.~~

15 ~~**\$51818. Dates and Maturities of Bonds.** Bonds shall bear dates prescribed~~
16 ~~in the indenture providing for their issuance. Bonds may be serial bonds, term~~
17 ~~bonds or sinking fund bonds with such maturities as the indenture shall~~
18 ~~specify. No bond by its terms shall mature more than fifty (50) years after its~~
19 ~~date of issuance.~~

1 ~~**\$51819. Sale of Bonds.** Bonds authorized to be issued under this Article shall~~
2 ~~be sold for cash, in accordance with the provisions of a certificate or~~
3 ~~agreement executed by I Maga'lahaen Guahan. The bonds may be sold at~~
4 ~~either public or private sale, and upon such terms and conditions as shall be~~
5 ~~authorized by I Maga'lahaen Guahan, which may provide that the bonds may~~
6 ~~be sold at less than their par or face value.~~

7 ~~**\$51820. Payment of Bonds from Sources Other Than Revenue.** The~~
8 ~~government may use and expend all or any part of any funds other than~~
9 ~~revenue or proceeds of any property owned by it other than the system,~~
10 ~~whether received by gift, appropriation or otherwise (if not restricted as to the~~
11 ~~use of such funds or proceeds of property by the terms of gift or trust or~~
12 ~~provision of law) for the payment of bonds issued pursuant to the provisions~~
13 ~~of this Article and of interest due thereon.~~

14 ~~**\$51821. Payments Which May be Made Out of Proceeds of Sale of**~~
15 ~~**Bonds.** The proceeds of sale of any bonds may be expended for any one or~~
16 ~~more of the following purposes, all as provided in the indenture relating to~~
17 ~~such bonds:~~

18 ~~(a) For payment of any costs or expenses of the acquisition, construction or~~
19 ~~improvement of the system or any part thereof (including any closed landfill~~

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

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

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

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

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

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

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

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

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

3 ~~**\$51822. Bonds May be Secured by Revenue of the System.**~~

4 ~~An indenture may provide that payment of the bonds and the interest thereon~~
5 ~~shall be secured by a pledge of and lien upon all or any portion of the revenue~~
6 ~~of the system, subject to any parity lien created or to be created pursuant to~~
7 ~~Article 9 of this Chapter. Any such pledge and lien shall be valid and binding~~
8 ~~from the time the pledge is made. The revenue of the system pledged and~~
9 ~~thereafter received by the government or by any trustee, depository or~~
10 ~~custodian shall be deposited in a separate subaccount of the revenue account~~
11 ~~in the Solid Waste Operations Fund and shall be immediately subject to the~~
12 ~~lien of such pledge without any physical delivery thereof or further act, and~~
13 ~~the lien of such pledge shall be valid and binding against all parties having~~
14 ~~claims of any kind in tort, contract or otherwise against the government or~~
15 ~~such trustee, depository or custodian, irrespective of whether the parties have~~
16 ~~notice thereof. The indenture by which such pledge is created need not be~~
17 ~~recorded.~~

18 ~~**\$51823. Bonds May be Secured by Section 30 Revenue.** If and to the extent~~
19 ~~determined by *I Maga'lahaen Guahan*, all or any part of the revenues derived~~

1 ~~by the government of Guam under Section 30 of the Organic Act (Section 30~~
2 ~~revenue) may also be pledged to secure the payment of any bonds issued~~
3 ~~pursuant to this Article, subject to any previously created lien on or pledge of~~
4 ~~such Section 30 revenue and to any parity lien created pursuant to Article 9~~
5 ~~of this Chapter. Any pledge of Section 30 revenue shall be valid and binding~~
6 ~~from the time the pledge is made. The Section 30 revenue pledged and~~
7 ~~thereafter received by the government of Guam or by any trustee, depository~~
8 ~~or custodian shall be deposited in a separate subaccount of the revenue~~
9 ~~account in the Solid Waste Operations Fund and shall be immediately subject~~
10 ~~to the lien of such pledge without physical delivery thereof or further act, and~~
11 ~~the lien of such pledge shall be valid and binding against all parties having~~
12 ~~claims of any kind in tort, contract or otherwise, against the government or~~
13 ~~such trustee, depository or custodian, irrespective of whether the parties have~~
14 ~~notice thereof. The indenture by which such pledge is created need not be~~
15 ~~recorded. All Section 30 revenue so pledged is hereby continuously~~
16 ~~appropriated for the purpose for which they have been pledged. Indebtedness~~
17 ~~issued by the government pursuant to this Article that is repayable from both~~
18 ~~Section 30 revenue and revenue of the system may not be issued in an~~

1 amount that would cause a violation of the debt limitation provisions of
2 Section 11 of the Organic
3 Act.

4 ~~**\$51824. Temporary Bonds.** An indenture may provide that pending the
5 actual issuance or delivery of definitive bonds, the government may issue
6 temporary or interim bonds, certificates or receipts or any denomination
7 whatsoever, to be exchanged for definitive bonds when ready for delivery.~~

8 ~~**\$51825. Replacement of Bonds.** The government may
9 provide for the replacement of lost, destroyed or mutilated bonds.~~

10 ~~**\$51826. Tax Exemption.** Bonds issued pursuant to the provisions of this
11 Article and the interest or income therefrom are exempt from taxation to the
12 extent permitted by the provisions of Section 11 of the Organic Act.~~

13 ~~**\$51827. Bonds as Legal Investments and as Security For**~~

14 ~~**Performance of Any Act.** Notwithstanding any other provision of law, all
15 bonds issued pursuant to the provisions of this Article are legal investments
16 for all trust funds and for the funds of all banks, both commercial and savings
17 and may be deposited as security for the performance of any act whenever
18 any evidence of indebtedness of Guam may be so deposited and may also be
19 used as security for the deposit of public moneys in banks in Guam.~~

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

7 ~~**\$51829. Use of Other Funds for System.** In addition to the proceeds of any~~
8 ~~bonds issued and sold pursuant to this Article, the department may use for the~~
9 ~~payment of the costs of acquisition, construction or improvement of the~~
10 ~~system or any part thereof any available money or funds of the department~~
11 ~~and any money or funds made available to the department by any person or~~
12 ~~provided from any source which may be expended for the accomplishing of~~
13 ~~the purposes set forth in this Article or in the Guam Solid Waste Management~~
14 ~~and Litter Control Act.~~

15 ~~**\$51830. Insurance.** The department may insure against loss of revenue of the~~
16 ~~system from any cause whatsoever. The department may insure against~~
17 ~~public liability or property damage from any cause. An indenture, lease or~~
18 ~~other instrument may provide for the carrying of such insurance or any other~~
19 ~~insurance in such amount and~~

1 ~~of such character as shall be specified in such indenture, lease, or other~~
2 ~~instrument for the payment of the premiums thereon and for the disposition~~
3 ~~of all proceeds received from any such insurance. At the option of the~~
4 ~~director, subject to the requirements of any indenture, lease, or other~~
5 ~~instrument, any insurance may be provided by funded reserves or any other~~
6 ~~means.~~

7 **~~551831. Pledge by the Government of Guam.~~** ~~The government of Guam is~~
8 ~~fully committed to ensuring that the department has the ability to implement~~
9 ~~the capital improvements authorized to be paid by this legislation in order to~~
10 ~~meet the needs of Guam ratepayers for reliable and affordable services. The~~
11 ~~government also is fully committed to ensuring that bondholders are~~
12 ~~protected to ensure full and timely payments of their bonds. In accordance~~
13 ~~with prior similar situations and precedents, the government hereby pledges,~~
14 ~~while any bonds issued under this Article remain outstanding and not fully~~
15 ~~performed or discharged, (a) to maintain the rights, powers and duties of the~~
16 ~~director, the department and the Guam Public Utilities Commission, or their~~
17 ~~respective successors in accordance with law, to fulfill the terms of any~~
18 ~~agreements made with bondholders in accordance with this Article, (b) to~~
19 ~~maintain the rights and remedies of bondholders provided in this Article and~~

1 any indenture, and (c) not to transfer any additional non-system operating
2 responsibilities or other unfunded mandates to the system without providing
3 for the payment of the costs of such additional responsibilities.

4 ~~**\$51832. Construction Account.** The proceeds from the sale of all bonds
5 authorized by this Article shall be deposited to the credit of a construction
6 account, which account is hereby created within the Solid Waste Operations
7 Fund. The money in the account shall be expended in the manner provided by
8 law for any of the purposes authorized by this Article, including any or all of
9 the purposes specified by 10 G.C.A. 95-1821, and for such other purposes,
10 subject to the restrictions provided by law or by such indenture, as may be
11 authorized by such indenture.~~

12 ~~**\$51833, Revenue Account.** All revenue of the system and, to the extent
13 provided by 10 G.C.A. §51805 or by Article 9 of this Chapter, the Section 30
14 revenue, shall be deposited to the credit of the applicable subaccount of the
15 Revenue Account, which account is hereby created within the Solid Waste
16 Operations Fund. The money in such subaccounts may be used for any of the
17 following purposes in the order of priority set forth in any indenture as
18 provided in 10 G.C.A. §5181-1(j) or any lease or lease-back as provided in
19 Article 9 of this Chapter:~~

- 1 ~~(a) to pay principal or interest on any bonds or any other obligations of the~~
2 ~~department;~~
- 3 ~~(b) to pay amounts due and owing under any lease or leaseback entered into~~
4 ~~pursuant to Article 9 of this Chapter;~~
- 5 ~~(c) to pay any amounts due and owing under any credit provider~~
6 ~~reimbursement agreement;~~
- 7 ~~(d) to pay the annual system operation and maintenance costs; and~~
- 8 ~~(e) for any other purposes of the system; all as provided in any indenture or~~
9 ~~indentures and subject to any restrictions provided by law or any indenture.~~

10 ~~**951834. Investment of Money in Funds and Accounts.**~~

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

19 ~~**\$51835. Use of Balances of Funds and Accounts and**~~

1 ~~**Surplus Money in Funds and Accounts.** Any balance remaining in any of~~
2 ~~the funds or accounts created by this Article or any indenture, including the~~
3 ~~Construction Account established pursuant to 10 G.C.A. 551832, after~~
4 ~~payment of all costs, expenses and charges required or authorized to be~~
5 ~~expended therefrom, may be allocated and used for such other purposes~~
6 ~~relating to the acquisition, construction, improvement, operation and~~
7 ~~maintenance of the system, subject to the limitations and restrictions in any~~
8 ~~indenture. After all bonds shall have been fully paid and discharged or~~
9 ~~provision for their payment and discharge irrevocably made, any surplus~~
10 ~~moneys in any fund or account created by this Article or any indenture shall,~~
11 ~~subject to the limitations and restrictions in any indenture, be transferred to~~
12 ~~the department and shall be and remain available for the acquisition,~~
13 ~~construction, improvement, maintenance or operation of the system or for~~
14 ~~any other purposes of the department herein or hereafter authorized by law.~~

15 ~~**\$51836. Appropriation of Money in Funds and Accounts.**~~

16 ~~All money in the funds and accounts created by this Article or any indenture~~
17 ~~is hereby continuously appropriated for expenditure to carry out the purposes~~
18 ~~herein and therein provided.~~

1 ~~**\$51837. Credit Enhancement.** I *Maga 'lahen Guiihan* is hereby authorized~~
2 ~~to enter into such contracts or agreements on behalf of the government with~~
3 ~~such banks, insurance companies or other financial institutions as I~~
4 ~~*Maga'lahen Guiihan* determines are necessary or desirable to improve the~~
5 ~~security and marketability of the bonds. Such contracts or agreements may~~
6 ~~contain an obligation to reimburse, with interest, any such banks, insurance~~
7 ~~companies or other financial institutions for advances used to pay principal of~~
8 ~~or interest on the bonds and to indemnify any such banks, insurance~~
9 ~~companies or other financial institutions for costs and expenses incurred in~~
10 ~~connection with any such advance; provided, that any obligation of the~~
11 ~~government under any reimbursement agreement shall be payable solely from~~
12 ~~pledged revenue.~~

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

1 ~~**551838. No Personal Liability.** Neither *I Maga'lahen GuKhan*, the director,
2 any employee of the department, any employee of the government nor any
3 elected official of the government shall be individually or personally liable
4 for the payment of any amounts due on any bonds, or for any other liability
5 arising in connection with the bonds; provided, however, that nothing in this
6 10 G.C.A. §5 1838 shall relieve any employee or elected official from the
7 performance of any ministerial duty required by law.~~

8 ~~**551839. 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
11 contract on the indebtedness authorized by this Article. For the purposes of
12 this Act only, immunity is waived as to the award of attorney fees in
13 connection with any suit brought to enforce any right or obligation given
14 under this Act or in connection with the enforcement of the terms of any
15 agreement or indenture that arises directly from the issuance of bonds.~~

16 ~~**§51840. Construction of Article.** This Article shall be liberally construed to
17 carry out the objects and purposes and the declared policy of the government
18 of Guam as in this Article set forth.~~

1 ~~Nothing contained in this Article shall be construed directly or by implication~~
2 ~~to be in any way in derogation or limitation of powers conferred upon or~~
3 ~~existing in the department, the director or I Maga'lahaen Guiihan by virtue of~~
4 ~~any provisions of the Organic Act or laws of Guam."~~

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

12 ~~Notwithstanding any other provision of law to the contrary, these bonds may~~
13 ~~be sold to employees of the Department of Public Works.~~

14 **~~Section 4. Approval of Government of Guam Solid Waste~~**

15 **~~Management System Revenue Bonds.~~** ~~The Legislature, **1** Liheslaturan~~
16 ~~Guahan, pursuant to Section 50103 of Title 12 of the Guam Code Annotated,~~
17 ~~hereby approves the issuance and sale by the government of revenue bonds~~
18 ~~pursuant to Article 8, Chapter 51, Title 10, Guam Code Annotated (the "Act")~~
19 ~~in one or more series or issues (together with any related reimbursement~~

1 obligations); provided that the issuance, terms and conditions of the bonds
2 and any reimbursement agreements shall have been approved by the Guam
3 Public Utilities Commission, and further provided that such bonds shall have,
4 together with any lease back obligations issued pursuant to Article 9, Chapter
5 51, Title 10, Guam Code Annotated, an aggregate principal amount not to
6 exceed Two Hundred Two Million Four Hundred Twenty Five Thousand
7 Dollars (\$202,425,000), shall have a final maturity not later than 2041, shall
8 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
10 not exceeding nine percent (9%) per annum, and shall be issued and sold in
11 the manner, for the purposes and subject to the requirements and limitations
12 provided in Article 8, Chapter 5 1, Title 10, Guam Code Annotated.

13 **Section 5. Enactment of the Guam Solid Waste Management System**

14 **Lease Financing Act.** Article 9 of Title 10, Chapter 51 of the Guam Code
15 Annotated, is hereby enacted to read as follows:

16 **Article 9**

17 **Solid Waste Management System Lease Financing**

18 **\$51901. Short Title and Purpose.** This Article may be cited as the Guam
19 Solid Waste Management System Lease Financing Act. The purpose of this

1 ~~Article is to authorize the use of lease financing in addition to, in lieu of, or in~~
2 ~~conjunction with the use of bond financing pursuant to Article 8 of this~~
3 ~~Chapter, in order to achieve the most efficient and lowest cost financing,~~
4 ~~construction, operation and maintenance of the solid waste management~~
5 ~~system.~~

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

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

17 ~~(b) "Department" means the Department of Public Works, acting on behalf of~~
18 ~~the government of Guam.~~

19 ~~(c) "Director" means the Director of the Department of Public Works.~~

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

4 ~~(e) "Lease back" shall mean the facilities lease or other lease of the property~~
5 ~~from the Contractor back to the department, over the term of which the costs~~
6 ~~of the construction, financing, operation and maintenance of a solid waste~~
7 ~~facility are amortized according to the terms agreed to between the~~
8 ~~department and the Contractor.~~

9 ~~(f) "Pledged revenue" means any revenue of the system and any Section 30~~
10 ~~revenue pledged to secure lease back payments.~~

11 ~~(g) "Property" shall mean any property on which a solid waste facility is~~
12 ~~located.~~

13 ~~(h) "Revenue of the system" means all gross income and other amounts~~
14 ~~received by or on behalf of the department as revenues of any kind from the~~
15 ~~ownership or operation of any part of the system, including all rates, fees and~~
16 ~~charges received by the department, and all proceeds of insurance or grants~~
17 ~~covering business interruption loss (and related losses and expenses) relating~~
18 ~~to the system, and all other income and revenue howsoever derived by the~~
19 ~~department from the ownership or operation of, or arising from, the system,~~

1 ~~together with all interest, profits or other income derived from the investment~~
2 ~~of amounts in the Solid Waste Operations Fund, to be deposited to the~~
3 ~~Solid Waste Operations Fund in accordance with 10 G.C.A. §5 1833.~~

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

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

10 (k) ~~"Solid Waste Operations Fund" means the fund by that name established~~
11 ~~pursuant to 10 G.C.A. §5 11 18(f).~~

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

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

5 ~~(i) legal and overhead expenses of the department directly related and~~
6 ~~reasonably allocable to the administration of the system;~~

7 ~~(ii) fidelity bond and insurance premiums appertaining to the system or a~~
8 ~~reasonably allocable share of a premium of any blanket bond or policy~~
9 ~~pertaining to the system;~~

10 ~~(iii) contractual services, professional services, salaries, administrative~~
11 ~~expenses, and costs of labor appertaining to system; and~~

12 ~~(iv) the costs incurred in the collection of all or any part of the revenues.~~

13 **~~551903. Authorization to Enter Into Long-Term Leases. I *Maga'laha*n~~**

14 ~~*Guihan* may enter into a lease and lease-back on behalf of the department for~~
15 ~~the financing of the acquisition, construction, improvement, equipping,~~

16 ~~repair, renewal, replacement, or reconstruction of any solid waste facility,~~

17 ~~together with operation and maintenance of all or any portion of such solid~~

18 ~~waste facility over the term of the lease-back, according to the needs of the~~

19 ~~department and consistent with this Article.~~

1 ~~The costs of the construction and financing of a solid waste facility financed~~
2 ~~pursuant to this Article shall be amortized in periodic installments over the~~
3 ~~term of the lease back period, which shall be mutually determined by I *Maga*~~
4 ~~*'lahen Gu4han* and the contractor, but which will not exceed forty (40) years.~~

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

17 ~~It is hereby declared that the system and each solid waste facility is and shall~~
18 ~~be a public improvement or undertaking as that term is used in Section 11 of~~
19 ~~the Organic Act (5 1423a, Title 48, U.S. Code). Obligations incurred by the~~

1 ~~government pursuant to this Article that are payable only from funds in the~~
2 ~~Solid Waste Operations Fund available therefore and from revenue of the~~
3 ~~system will not be and shall not be deemed to be public indebtedness of~~
4 ~~Guam as that term is used in said Section 11. Obligations incurred by the~~
5 ~~government pursuant to this Article and that are payable from both Section~~
6 ~~30 revenue and revenue of the system may not be issued in an amount that~~
7 ~~would cause a violation of the debt limitation provisions of said Section 11.~~
8 ~~No obligation undertaken by the government pursuant to this Article shall be~~
9 ~~or become a lien, charge or liability against the government of Guam or~~
10 ~~against the department or against any property or funds of the government of~~
11 ~~Guam or the department, except to the extent of the pledge of revenue of the~~
12 ~~system and, if applicable, Section 30 revenues provided by the lease-back.~~
13 **551904. Procurement.** ~~Subject to the approval of I Liheslaturan Guihan, the~~
14 ~~government of Guam or the department may solicit proposals, in compliance~~
15 ~~with the Guam Procurement Law, for the financing and construction of the~~
16 ~~solid waste facility, together with the operation and maintenance of the solid~~
17 ~~waste facility over the term of the lease-back, according to the needs of the~~
18 ~~department and consistent with this Article.~~

1 ~~**551905. Powers of Department.** Notwithstanding any provision of law or~~
2 ~~regulation, the department has power and is hereby authorized, in addition to~~
3 ~~and in amplification of all other powers conferred upon the department by the~~
4 ~~Guam Solid Waste Management and Litter Control Act or any other~~
5 ~~provision of this Chapter or by any law of Guam, to exercise any or all of the~~
6 ~~powers granted to the department by this Article.~~

7 ~~**851906. Assignments.** To facilitate the purposes of this Article and to~~
8 ~~provide security for the bondholders, the contractor may assign, with the~~
9 ~~consent of the department, the lease and the lease back to any trustee,~~
10 ~~underwriter or other appropriate party as may be necessary to facilitate the~~
11 ~~issuance of certificates of participation in lease back payments or other~~
12 ~~financial instruments to provide the financing for the solid waste facility.~~

13 ~~**\$51907. Use of Tax-Exempt Financing.** To minimize the financing cost to~~
14 ~~the department, all financing utilized by the contractor to fund the~~
15 ~~construction, operation and maintenance of a solid waste facility shall be~~
16 ~~through tax-exempt obligations, if a mechanism to do so is available. The~~
17 ~~purpose for this requirement is to assure that the department pays the lowest~~
18 ~~possible interest rate so that the cost of financing the construction, operation~~
19 ~~and maintenance of a solid waste facility to the department, amortized~~

1 through the lease back payments from the department to the contractor, will
2 be lower than regular commercial rates.

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

1 ~~**\$51909. Lease-Back May be Secured by Section 30 Revenue. If**~~ and to the
2 extent determined by I Maga'lahaen GuGhan, all or any part of the revenues
3 derived by the government of Guam under Section 30 of the Organic Act
4 (Section 30 revenue) may also be pledged to secure the payment by the
5 department of obligations under any lease back entered into pursuant to this
6 Article, subject to any previously created lien on or pledge of such Section 30
7 revenue and to any parity lien created or to be created pursuant to Article 8 of
8 this Chapter. Any pledge of Section 30 revenue shall be valid and binding
9 from the time the pledge is made. The Section 30 revenue pledged and
10 thereafter received by the government of Guam or by any trustee, depository
11 or custodian shall be deposited in a separate subaccount of the revenue
12 account in the Solid Waste Operations Fund and shall be immediately subject
13 to the lien of such pledge without physical delivery thereof or further act, and
14 the lien of such pledge shall be valid and binding against all parties having
15 claims of any kind in tort, contract or otherwise, against the government or
16 such trustee, depository or custodian, irrespective of whether the parties have
17 notice thereof. The instrument by which such pledge is created need not be
18 recorded. All Section 30 revenue so pledged is hereby continuously
19 appropriated for the purpose for which they have been pledged. Lease back

1 obligations that are payable by the department pursuant to this Article and
2 that are payable from both Section 30 revenue and revenue of the system may
3 not be in an amount that would cause a violation of the debt limitation
4 provisions of Section 11 of the Organic Act.

5 **~~§51910. Payment of Lease-back Obligations from Sources Other Than~~**

6 **~~Revenue.~~** The government may use and expend all or any part of any funds
7 other than revenue or proceeds of any property owned by it other than the
8 system, whether received by gift, appropriation or otherwise (if not restricted
9 as to the use of such funds or proceeds of property by the terms of gift or trust
10 or provision of law) for the payment of obligations due under a lease back
11 entered into pursuant to the provisions of this Article.

12 **~~§51911. Pledge by the Government of Guam,~~** The government of Guam is
13 fully committed to ensuring that the department has the ability to implement
14 the capital improvements authorized to be leased by this legislation in order
15 to meet the needs of Guam ratepayers for reliable and affordable services.

16 The government also is fully committed to ensuring that the holders of
17 certificates of participation or other financial instruments are protected to
18 ensure full and timely payment of obligations due under the leaseback. In
19 accordance with prior similar situations and precedents, the government

1 hereby pledges, while any obligations are owing on any lease back entered
2 into pursuant to this Article, (a) to maintain the rights, powers and duties of
3 the director, the department and the Guam Public Utilities Commission, or
4 their respective successors in accordance with law, to fulfill the terms of any
5 agreements made with a contractor in accordance with this Article, (b) to
6 maintain the rights and remedies of a contractor provided in this Article and
7 any lease or lease back, and (c) not to transfer any additional non-system
8 operating responsibilities or other unfunded mandates to the system without
9 providing for the payment of the costs of such additional responsibilities.

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

1 ~~**551913. Credit Enhancement.** I *Maga 'lahen Gudhnn* is hereby authorized~~
2 ~~to enter into such contracts or agreements on behalf of the department with~~
3 ~~such banks, insurance companies or other financial institutions as it~~
4 ~~determines are necessary or desirable to improve the security and~~
5 ~~marketability of the lease back obligations. Such contracts or agreements~~
6 ~~may contain an obligation to reimburse, with interest, any such banks,~~
7 ~~insurance companies or other financial institutions for advances used to pay~~
8 ~~lease back obligations and to indemnify any such banks, insurance~~
9 ~~companies or other financial institutions for costs and expenses incurred in~~
10 ~~connection with any such advance; provided, that any obligation of the~~
11 ~~department under any reimbursement agreement shall be payable solely from~~
12 ~~pledged revenue. Any reimbursement agreement may include a provision that~~
13 ~~the obligations of the department under the agreement shall be secured by all~~
14 ~~or by part of pledged revenue; provided that, at the time of execution and~~
15 ~~delivery of each such agreement, any such provision shall be in compliance~~
16 ~~with and shall not violate or breach any provision of any indenture, lease or~~
17 ~~other instrument to which the government or the department is a party.~~
18 ~~**551914. No Personal Liability.** Neither *I Maga 'lahen Gubhan*, the director,~~
19 ~~any employee of the department, any employee of the government nor any~~

1 ~~elect~~ed official of the ~~government shall be individually or personally liable~~
2 ~~for the payment of any amounts due under any lease or lease back, or for any~~
3 ~~other liability arising in connection with a lease or lease back; provided,~~
4 ~~however, that nothing in this 10 G.C.A. §51914 shall relieve any employee or~~
5 ~~elect~~ed official from the performance of any ministerial duty required by law.

6 ~~**§51915. Rules, Regulations and Restrictions.** The department may~~
7 ~~promulgate rules and regulations pursuant to Guam law necessary to~~
8 ~~implement the provisions of this Article.~~

9 ~~**§51916. Construction of Article.** This Article shall be liberally construed to~~
10 ~~carry out the objects and purposes and the declared policy of the government~~
11 ~~of Guam as in this Article set forth. Nothing contained in this Article shall be~~
12 ~~construed directly or by implication to be in any way in derogation or~~
13 ~~limitation of powers conferred upon or existing in the department, the~~
14 ~~director or I Maga'lahaen Guahan by virtue of any provisions of the Organic~~
15 ~~Act or laws of Guam.~~

16 ~~**§51916. Severability.** If any provision of this Article or its application to any~~
17 ~~person or circumstance is found to be invalid or contrary to law, such~~
18 ~~invalidity shall not affect other provisions or applications of this Article~~

1 ~~which can be given effect without the invalid provisions or application, and~~
2 ~~to this end the provisions of this Article are severable.~~

3 ~~**Section 6. Approval of Lease and Lease-Back.** The Legislature, I~~

4 ~~Liheslaturan Guåhan, hereby approves the execution and delivery of the lease~~
5 ~~and lease back by the government pursuant to Article 9, Chapter 51, Title 10,~~
6 ~~Guam Code Annotated; provided that the terms and conditions of the lease~~
7 ~~and lease back shall have been approved by the Guam Public Utilities~~
8 ~~Commission, and further provided that the certificates of participation or~~
9 ~~other financial instruments shall have, together with any bonds issued~~
10 ~~pursuant to Article 8, Chapter 5 1, Title 10, Guam Code Annotated, an~~
11 ~~aggregate principal amount not to~~
12 ~~exceed Two Hundred Two Million Four Hundred Twenty Five Thousand~~
13 ~~Dollars (\$202,425,000), shall have a final maturity not later than 2041, shall~~
14 ~~result in a yield to the holders of the certificates of participation or other~~
15 ~~financial instruments not exceeding nine percent (9%) per annum, and shall~~
16 ~~be entered into for the purposes and subject to the requirements and~~
17 ~~limitations provided in Article 9, Chapter 5 1, Title 10, Guam Code~~
18 ~~Annotated.]~~

1 (d) I Liheslaturan Guahan additionally finds that the federal court has
2 ordered that the people of Guam must pay \$1,000,000 a week to the federal
3 receiver GBB for the closure of Ordot Dump and the opening of a new
4 landfill. I Liheslaturan Guahan additionally finds over eighty percent of the
5 budget of Guam’s public structure goes toward the salaries of Guam’s Public
6 Servants. I Liheslaturan Guahan additionally find Guam’s hard working
7 public servants are already struggling to provide for their families because
8 they are the lowest paid in the Nation, with the worst health benefits and
9 retirement plans and a further cut in pay would be unfair, unconscionable and
10 cause undue hardship to these families. I Liheslaturan Guahan additionally
11 finds that borrowing the necessary money by issuing a bond would cost the
12 people of Guam and our future generations potentially \$576,000,000 which
13 could build ten state of the art, fully furnished and computerized class rooms
14 for the children of Guam or provide universal healthcare for everyone on
15 Guam or buy new state of the art fire and life saving vehicles and police cars.
16 I Liheslaturan Guahan additionally finds that unlike most other jurisdictions
17 almost all of the waste that goes into Guam’s land fill comes through the Port
18 of Guam. I Liheslaturan Guahan additionally finds that for less than one
19 cent per can of Spam we can completely pay for the closure of Ordot dump

1 and the opening of a new land fill in a fair in equitable manner so that every
2 member of our community, the military, the tourist industry, public, Federal
3 and private sector employees contribute their fair share toward disposing of
4 the waste that is shipped onto our island;

5 *It is therefore the intent of I Liheslaturan Guåhan to create the following new*
6 waste disposal fees which will be collected by the Port of Guam and be
7 deposited into a separate account, on a weekly basis, to be used exclusively
8 by the receiver for the Closure of Ordot dump and the opening of a new
9 landfill in compliance with the Court order and the Consent Degree. At such
10 time as said obligations are fulfilled the balance will then be used to subsidize
11 any residential tipping fees needed to maintain the operations DPW's solid
12 waste division. Said fees will go into effect on March 1st, 2009 and remain in
13 effect ad infinitum. Said fee will increase by three percent per annum
14 starting on October 1st, 2009.

15 **Section 2. § 51801 of GCA Article 8, Title 10, Chapter 51 is hereby**
16 **created to read:**

17 **§ 51801. Short Title. This article may be cited as the Guam**
18 **Solid Waste Management System Fair Share Act.**

1 Section 3. § 51802 of GCA Article 8, Title 10, Chapter 51 is hereby
2 created to read.

3 **§ 51801 Fees for Cargo:**

4 (a) Effective March 1st, 2009, The Government of Guam shall
5 implement a Waste Disposal Fee upon all cargo incoming to
6 ports owned by the territory of Guam. Said fee shall be
7 imposed by the Guam Port Authority upon any and all cargo
8 containers or shipments of raw material under their
9 jurisdiction and shall be charged either per cargo-container, or,
10 strictly in the case of materials shipped without cargo
11 container classified as Breakbulk/RoRo/Bulk under Port
12 Authority guidelines, on a per-revenue ton basis.

13 (b) The removal of materials previously stored in a cargo
14 container from said container for the purposes of defrauding
15 the Government of Guam and the Port Authority of Guam by
16 reducing cargo to the per-ton rate shall be strictly prohibited
17 under law, punishable by fines that shall be no less than triple
18 the per-ton rate normally levied upon cargo in addition to any

1 applicable criminal or civil penalties under law or fines, fees
2 and penalties imposed under Port Authority Regulation.

3 (c) Any individual who either refuses to pay applicable fees or
4 otherwise violates any provisions of law pertaining to the
5 Waste Disposal Fee shall be guilty of a misdemeanor in
6 addition to any other civil and criminal penalties applicable to
7 non-payment of fees to the Port Authority of Guam.

8 **Section 4. §51803 of Article 8, Title 10 Chap. 51 is hereby created to read**

9 **§ 51803. WASTE DISPOSAL FEE SCHEDULE:**

10 The Guam Waste Disposal Fee Schedule shall be established at the
11 following rates, rates to be adjusted as described ad infinitum:

12 March 1st, 2009 October 1st, 2009 October 1st, 2010

13 **25 feet and Less** \$200/container \$206/container \$212.18/container

14 **Over 25 Feet** \$400/ container \$406/container \$412/container

15 **All Other Cargo** \$20/revenue ton \$20.60/revenue ton \$21.20/revenue ton

16

1 **Section 5. § 51805 of GCA Article 8, Title 10, and Chapter 51 are hereby**
2 **created to read:**

3 “§ 51805.Account. There is hereby created separate from all
4 other funds, the Guam Landfill Construction Fund into which all
5 revenue derived from the § 51804 waste disposal fees applied to all
6 cargo unloaded within Guam’s ports, the revenue being collected by the
7 Guam Port Authority , shall be deposited upon a weekly basis by the
8 Port Authority of Guam for the sole purpose of paying the weekly
9 balance of the receiver towards the construction of the new Guam
10 Land-Fill and the closing of the Ordot Dump. Said funds shall be
11 accessible only to the Receiver for the purpose of financing the
12 obligations imposed upon the Government of Guam by the Court order
13 and the Consent Degree pertaining to the closure of the Ordot Dump
14 and the mandated construction of the new Guam Land-fill and thus
15 shall not be subject to legislative appropriation or appropriation by
16 other agencies, contractors, or individuals involved with the
17 construction of the Guam Landfill or the closure of the Ordot Dump.”

1 **Section 6. § 51806 of GCA Article 8, Title 10 Chapter 51 is hereby**
2 **created to read:**

3 **“§ 51806.Use of Guam Waste Disposal Fund.**

4 Other laws notwithstanding, the Port Authority of Guam shall
5 have responsibility for collection of fees and maintenance of records
6 relating to said fees, which must transmitted monthly to *I Liheslatura*,
7 as well as to the Guam Office of the Public Auditor. Revenue collected
8 under § 51802 of Article 8, Chapter 10 Title 51 , shall be used
9 exclusively to finance the federally mandated closure of the Ordot
10 dump, as well as the construction of the mandated landfill project, with
11 appropriation power for these funds exclusively resting with the
12 receiver . At such a time when the Ordot closure has been completed,
13 and the new Guam landfill has been constructed, and the legal
14 obligations of the Government of Guam have been met as they pertain
15 to completion of the new landfill, additional revenue may be used to
16 finance necessary tipping fees of the Guam Department of Public
17 Works continued operation of the Solid Waste Division, if, and only if,

1 construction on all mandated projects pertaining to the mandated
2 construction of the land-fill have been completed.”

3 **§ 51807, of GCA Article 8, Chapter 51 Title 10 is hereby created to read:**

4 “§ 51807. Accountability. The Guam Landfill Construction
5 Fund shall be subject to auditing by a the office of the public auditor on
6 an annual basis per fiscal year until the completion of the mandated
7 landfill construction has been completed. Any and all parties convicted
8 of misappropriation of funding from the Guam Landfill Construction
9 Fund or prosecuted as part of a criminal conspiracy to misappropriate
10 funds from The Guam Landfill Construction Fund shall face the
11 maximum penalties imposable by law.”

12 **§ 51808. Severability.** If any provision of this Article or its application to
13 any person or circumstance is found to be invalid or contrary to law, such
14 invalidity shall not affect other provisions or applications of this Article
15 which can be given effect without the invalid provisions or application, and
16 to this end the provisions of this Article are severable.

17