



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

03 NOV 2005

The Honorable Mark Forbes
Speaker
Mina' Bente Ocho Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Substitute Bill No. 220 (EC), "AN ACT TO REPEAL AND REENACT ARTICLE 2 OF CHAPTER 14 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GUAM WATERWORKS AUTHORITY TO ISSUE REVENUE BONDS AND TO INCUR OTHER INDEBTEDNESS FOR THE PURPOSE OF FINANCING THE WATER AND WASTEWATER SYSTEM OF GUAM; AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE FOR SUCH PURPOSES" which I signed into law on November 3, 2005, as Public Law 28-71.

Sinseru yan Magåhet,

[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Eddie Baza Calvo
Senator and Legislative Secretary

Office of the Speaker

MARK FORBES

Date: 11/04/05

Time: [Handwritten]

Rec'd by: [Handwritten]

Print Name: [Handwritten]

Senator Edward J.B. Calvo
SECRETARY OF THE LEGISLATURE
ACKNOWLEDGEMENT RECEIPT

Rec'd by: Bernice C. Manibusan
Print Name & Initial

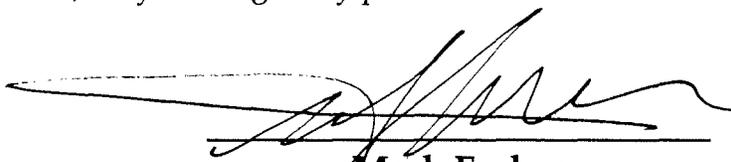
Time: 11:05 AM Date: 11/7/05

426

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

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

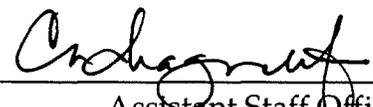
This is to certify that Substitute Bill No. 220 (EC), "AN ACT TO REPEAL AND REENACT ARTICLE 2 OF CHAPTER 14 OF TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING GUAM WATERWORKS AUTHORITY TO ISSUE REVENUE BONDS AND TO INCUR OTHER INDEBTEDNESS FOR THE PURPOSE OF FINANCING THE WATER AND WASTEWATER SYSTEM OF GUAM; AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE FOR SUCH PURPOSES" was on the 26th day of October, 2005, duly and regularly passed.


Mark Forbes
Speaker

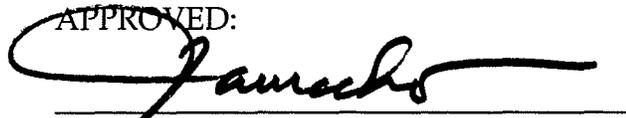
Attested:


Edward J.B. Calvo
Senator and Secretary of the Legislature

This Act was received by I Maga'lahaen Guåhan this 3rd day of ^{Nov.}~~October~~, 2005,
at 10:07 o'clock A.M.


Assistant Staff Officer
Maga'laha's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 11/2/05

Public Law No. 28-71

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

Bill No. 220 (EC)

As substituted by the Committee on Finance;
Taxation & Commerce, and amended in the
Committee of the Whole.

Introduced by:

J. M.S. Brown
Edward J.B. Calvo
F. B. Aguon, Jr.
B. J. F. Cruz
Mike Cruz
Mark Forbes
J. A. Lujan
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
A. B. Palacios
R. J. Respicio
Ray Tenorio
A. R. Unpingco
J. T. Won Pat

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

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

2 **Section 1. Legislative Findings and Intent.** (a) *I Liheslaturan Guåhan* finds

3 that the condition of Guam’s water and wastewater infrastructure has seriously
4 deteriorated over the past decades. The severe limitations of the infrastructure to
5 reliably deliver clean and safe drinking water has negatively impacted the quality of
6 life of the people of Guam. Additionally, it is reasonable to assert that Guam’s
7 economic development is also being negatively impacted by the inability of a failed
8 system to deliver the most basic of all utility services.

9 This finding is further supported by the conclusions of a recent study completed
10 by Brown and Caldwell, an engineering firm hired to assess the condition of Guam’s
11 water and wastewater infrastructure and to formulate a Master Plan for the
12 development of an infrastructure that will have the capacity to support current and
13 future demands for reliable and quality water and wastewater utility services.

14 This same conclusion was also reached by the U.S. Environmental Protection
15 Agency (U.S. EPA). After many years of warning from the U.S. EPA about the
16 inability of Guam Waterworks Authority’s (GWA) infrastructure to provide clean and
17 safe drinking water and properly dispose of the wastewater, the U.S. EPA filed a
18 lawsuit in the Federal District Court against the GWA to place the agency in
19 receivership. A receivership status will essentially mean that the U.S. EPA will have
20 the authority to select a third party of its choice to take over the GWA operation in
21 order to get the long standing deficiencies corrected. All costs incurred will
22 ultimately have to be paid for by the ratepayers of Guam.

23 (b) Recognizing that placing GWA into receivership is not a desirable position
24 to be in, the Consolidated Commission on Utilities (CCU), a newly created governing
25 entity, successfully persuaded the U.S. District Court of Guam to allow the CCU to
26 undertake the responsibility of rectifying the long standing problems. Hence, the
27 promulgation of the Stipulated Order which outlines the corrective actions that GWA

1 shall undertake. The GWA, under the auspices and direction of the CCU, has taken
2 many steps to improve the system, including hiring a professional management team,
3 cutting costs, and enacting policies that ensure improvements are made.

4 However, notwithstanding the CCU's efforts, the new construction and
5 upgrades that will be needed are estimated to cost approximately Two Hundred
6 Twenty Million Dollars (\$220,000,000.00). Indeed, despite the fact that the
7 Stipulated Order places a stringent time line for the corrective actions to be
8 accomplished, an even more compelling reason to ensure the timely upgrade and
9 improvement of Guam's water and wastewater infrastructure is simply because the
10 people of Guam deserve no less.

11 In addition to the estimated cost of Two Hundred Twenty Million Dollars
12 (\$220,000,000.00) to meet the terms of the Stipulated Order, there are the additional
13 costs of rebuilding, rehabilitating and modernizing the system which are expected to
14 cost an additional Two Hundred Thirty Million Dollars (\$230,000,000.00) thereby
15 bringing the total that GWA needs to Four Hundred Fifty Million Dollars
16 (\$450,000,000.00).

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

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

1 "Article 2

2 **Guam Waterworks Authority Revenue Bonds and Other**
3 **Indebtedness**
4

5 §14201. **Short Title.** This Article may be cited as the "*Guam*
6 *Waterworks Authority Revenue Bond Act.*"

7 §14202. **Definitions.** The following terms, wherever used or
8 referred to in this Article or in any indenture entered into pursuant hereto
9 (except to the extent modified therein in accordance with this Article),
10 shall have the following meanings, respectively, unless a different
11 meaning appears from the context:

- 12 a. "Authority" has the meaning given in 12 G.C.A. §14102.
13 b. "Board" has the meaning given in 12 G.C.A. §14102.
14 c. "Bonds" means bonds, notes or other evidences of
15 indebtedness.
16 d. "Bondholder" or "holder of bonds" or any similar term
17 means any person who shall be:
18 i. the bearer of any outstanding bond or bond registered
19 to bearer or not registered; or
20 ii. the registered owner of any such outstanding bond or
21 bond which shall at the time be registered other than to
22 bearer.
23 e. "Credit provider" means any municipal bond insurance
24 company, bank or other financial institution or organization which is
25 performing in all material respects its obligations under any credit
26 support arrangements for some or all of the bonds.

1 f. “Credit provider reimbursement agreement” means any
2 agreement providing for the Authority to repay, from revenues, amounts
3 advanced by a credit provider as credit support for bonds.

4 g. “Credit support” means a policy of insurance, a letter of
5 credit, a stand-by purchase agreement, revolving credit agreement or
6 other credit arrangement pursuant to which a credit provider provides
7 credit or liquidity support with respect to the payment of interest,
8 principal or the purchase price of any bonds.

9 h. “Guam Waterworks Authority Act” means Chapter 14 of
10 Title 12 of the Guam Code Annotated.

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

14 j. “Organic Act” means the Organic Act of Guam, as
15 amended, and in effect on the effective date of this Article (Title 48,
16 §1421 et seq. of the United States Code).

17 k. “Payment agreement” has the meaning given such term in
18 12 G.C.A. §14236.

19 l. “Person” includes any individual, firm, corporation,
20 association, partnership, trust, business trust or receiver or trustee or
21 conservator for any thereof, and also includes the United States, Guam or
22 any public corporation, political subdivision, city, county or district or
23 any agency or instrumentality of the United States or of Guam.

24 m. “Revenue” means all gross income and other amounts
25 received or receivable by the Authority as revenues of any kind from the
26 ownership or operation of any part of the system, including all rates, fees
27 and charges (including ground water, surface water and treated water

1 charges and all wastewater service charges), received by the Authority
2 for providing water and sewer services, all amounts received by the
3 Authority pursuant to any payment agreement, and all proceeds of
4 insurance or grants covering business interruption loss (and related
5 losses and expenses) relating to the system, and all other income and
6 revenue howsoever derived by the Authority from the ownership or
7 operation of, or arising from, the system, together with all interest,
8 profits or other income derived from the investment of amounts in the
9 Guam Waterworks Authority Revenue Fund.

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

13 o. "System operation and maintenance costs" means such
14 reasonable and necessary current expenses of the Authority, paid or
15 accrued, for operation, maintenance and repair of the System as may be
16 determined by the Board, and the term may include at the Board's
17 option, except as limited by contract or otherwise limited by law, without
18 limiting the generality of the foregoing:

19 i. legal and overhead expenses of the Authority directly
20 related and reasonably allocable to the administration of the
21 system;

22 ii. fidelity bond and insurance premiums appertaining to
23 the system or a reasonably allocable share of a premium of any
24 blanket bond or policy pertaining to the system;

25 iii. contractual services, professional services, salaries,
26 administrative expenses, and costs of labor appertaining to system;

1 iv. the costs incurred in the collection of all or any part
2 of the Revenues; and

3 v. any costs of utility services furnished to the system by
4 the Authority or otherwise.

5 p. “United States” means the United States of America.

6 **§14203. Powers of Board; Incurring Indebtedness.** Pursuant to
7 Section 50103(k), Chapter 50, Title 12 G.C.A., the Board, through the
8 agency of the Guam Economic Development and Commerce Authority
9 (GEDCA) by statutory legislation, has power and is hereby authorized,
10 in addition to and in amplification of all other powers conferred upon the
11 Board by the Guam Waterworks Authority Act or any other provision of
12 this Chapter or by any law of Guam or of the United States, *but subject*
13 *to the requirements of Title 12 G.C.A. § 12004*, to exercise any or all of
14 the powers granted to the Board by this Article. The Board, through the
15 agency of GEDCA, may at any time or from time to time, by statutory
16 legislation, incur indebtedness:

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

18 (b) by the issuance of bonds to raise funds for the purpose of
19 acquiring, constructing, improving, equipping, maintaining, repairing,
20 renewing, replacing, reconstructing or insuring the system, or any part
21 thereof, or for the purpose of refunding any such bonds or any other prior
22 obligations of the Authority, or for any combination of such purposes for
23 which bonds may be issued and secured as provided in this Article.

24 It is hereby declared that the system is and shall be a public
25 improvement or undertaking as that term is used in Section 11 of the
26 Organic Act (§1423a, Title 48, U.S. Code). All indebtedness issued by
27 the Authority pursuant to this 12 G.C.A. §14203 shall be repayable only

1 from funds of the Authority available therefore or solely from revenues of the
2 system and, therefore, will not be and shall not be deemed to be public
3 indebtedness of Guam as that term is used in said Section 11.

4 **§14204. Amounts of Rates and Charges; Refunds.** Except to
5 the extent otherwise permitted or required by an indenture or any
6 contract relating to indebtedness issued by the Authority, all rates and
7 charges shall at all times be fixed to yield annual revenues at least equal
8 to (a) the annual principal payments and interest charges and reserve
9 fund requirements on all bonds at any time issued and outstanding
10 hereunder, (b) the annual system operation and maintenance costs, and
11 (c) the annual principal payments and interest charges on all other
12 outstanding indebtedness issued by the Authority. An indenture or
13 contract of indebtedness may provide for payment from revenues of
14 refunds of rates and charges that are collected in error and that are
15 refundable by the Authority.

16 **§14205. Validity of Authorization and Issuance of Bonds and**
17 **Incurring of Other Indebtedness.** The validity of the authorization and
18 issuance of any bonds by the Authority is not dependent on nor affected
19 in any way by:

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

22 (b) Any contracts made by the Authority in connection with the
23 acquisition, construction or improvement of the system or any part
24 thereof; or

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

1 **§14206. Board to Determine Issuance of Bonds and Incurring**
2 **of Other Indebtedness; Guam Not Liable for Indebtedness;**
3 **Authority Only Liable as Provided by Indenture or Contract.**

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

6 (b) No bond issued or sold pursuant to this Article shall be or
7 become a lien, charge or liability against the government of Guam or
8 against the Authority or against any property or funds of the government
9 of Guam or the Authority, except to the extent of the pledge or revenues
10 or part of revenues, as may be provided by the indenture pursuant to
11 which such bonds are issued and every such bond shall contain a recital
12 on its face stating that neither the payment of the principal or any part
13 thereof, nor of any interest thereon, is a debt, liability or obligation of
14 Guam.

15 **§14207. Board to Declare Purpose and Maximum Amount of**
16 **Bonds to be Issued.** Before issuing any bond or bonds, the Board shall
17 declare the purpose for which the proceeds of the bonds proposed to be
18 issued shall be expended and shall specify the maximum amount of
19 bonds to be issued or sold for such purpose. Bonds shall not be issued or
20 sold for such purpose in an amount exceeding such specified maximum.

21 **§14208. Indenture Providing Terms and Conditions of Bonds.**
22 The Authority may enter into indentures providing for the aggregate
23 principal amount, date or dates, maturities, interest rates or methods for
24 determination thereof, denominations, form, registration, transfer and
25 interchange of any bonds and coupons issued pursuant to this Article and
26 the terms and conditions on which the same shall be executed, issued,
27 secured, sold, paid, redeemed, funded and refunded. Each taker and

1 subsequent holder of the bonds or coupons, whether the coupons are
2 attached to or detached from the bonds, has recourse to all the provisions
3 of the indenture and of this Article and is bound thereby.

4 **§14209. Issues of Bonds.** An indenture may provide for one or
5 several issues of bonds and that bonds may be issued in series or that any
6 issue may be divided into one or more divisions with different maturities
7 or dates of issue, different rates of interest or methods for determining
8 such rates, or different terms and conditions for the bonds of the several
9 series or divisions. It is not necessary that all bonds of the same
10 authorized issue be of the same kind or character, have the same security,
11 or be of the same interest rate, but the terms thereof shall in each case be
12 as authorized by the Board.

13 **§14210. Covenants and Agreements That May Be Contained**
14 **in Indenture.** An indenture pursuant to which bonds are issued may
15 include any and all covenants and agreements on the part of the
16 Authority as the Board deems necessary or advisable, including, without
17 limiting the generality of the foregoing, any one or more of the
18 following:

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

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

25 (ii) for reserve or sinking funds for the further security of
26 bonds.

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

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

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

13 (d) A provision requiring the Authority to maintain the system
14 and to make all necessary repairs, renewals and replacements to the
15 system and to keep the system at all times in good working order and
16 condition.

17 (e) A provision requiring the Authority to preserve and protect
18 the security of the bonds and the rights of the holders thereof and to
19 warrant and defend such rights.

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

25 (g) A provision which limits, restricts or prohibits any right,
26 power or privilege of the Authority to mortgage or otherwise encumber,
27 sell, lease or dispose of the system or any part thereof, in any manner that

1 impairs or impedes the operation of the system or any part thereof
2 necessary to secure adequate revenues or that otherwise impairs or
3 impedes the right of the holders of bonds with respect to such revenues.

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

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

13 (ii) sufficient to pay the annual system operation and
14 maintenance costs; and

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

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

20 (j) A provision requiring the Authority to hold or cause to be
21 held in trust the revenues or any part of revenues pledged to the payment
22 of such bonds and the interest thereon, or to any fund or account created
23 by any indenture relating to such bonds for the further security or
24 protection of such bonds and to apply such revenues or any part of
25 revenues or cause them to be applied only as provided in the indenture
26 and to invest all or any part of such revenues pending such application in

1 such securities and subject to such limitations as are specified in the
2 indenture.

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

6 (l) A provision permitting the Authority to issue additional
7 bonds or one or more additional series of bonds, equally secured with
8 bonds theretofore issued under the indenture, for the purpose of
9 acquiring, constructing or completing, improving or extending the
10 system or any part thereof or for the purpose of refunding any prior
11 bonds or any other prior obligations of the Authority; and a provision
12 limiting the power of the Authority to issue any additional bonds so
13 secured or any other additional bonds for such purpose.

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

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

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

1 (p) A provision prescribing a procedure by which the terms and
2 conditions of the indenture may be subsequently amended or modified
3 with the consent of the Authority and the vote or written consent of the
4 holders of a specified principal amount or specified proportion of the
5 bonds issued and outstanding, including provisions for meetings of
6 bondholders and for the manner in which the consent of the bondholders
7 may be given and specifically stating the effect of such amendment or
8 modification upon the rights of the holders of all of the bonds and
9 interest coupons appertaining thereto, whether attached thereto or
10 detached therefrom.

11 (q) With respect to any provision relating to the modification or
12 amendment of an indenture, the Authority may agree that bonds held by
13 the Authority, Guam, the United States or any instrumentality of either
14 thereof (including every public corporation, political subdivision, city,
15 county, district, board, agency or instrumentality of any kind of class)
16 shall not be counted as outstanding bonds, or be entitled to vote or
17 assent, but shall, nevertheless, be subject to any such modification or
18 amendment.

19 (r) A provision limiting the right of action by individual
20 bondholders in the event of a default by the Authority or proscribing the
21 procedure for the conduct of any such action by an individual
22 bondholder.

23 (s) A provision permitting the Authority to purchase
24 outstanding bonds of the Authority from any moneys or funds or
25 accounts referred to in the indenture or otherwise legally available for
26 such purpose.

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

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

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

8 **§14211. Trustee for Authority and Holders of Bonds.**

9 (a) The Authority or any agent designated by the Authority
10 shall act as trustee for the Authority and the holders of bonds issued
11 hereunder and the Authority may authorize the trustee to act on behalf of
12 the holders of the bonds or any stated percentage thereof and to exercise
13 and prosecute on behalf of the holders of the bonds such rights and
14 remedies as may be available to the holders.

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

16 (i) for the deposit of all or any portion of the revenues
17 with the Authority and for the holding thereof by the Authority in
18 one or more separate funds or accounts in the Guam Waterworks
19 Authority Revenue Fund; and

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

25 **§14212. Duties and Powers of Trustee.** The Authority shall
26 prescribe in any indenture the duties and powers of the trustee with
27 respect to the issuance, authentication, sale and delivery of the bonds

1 provided for in such indenture and with respect to the payment of
2 principal of and interest on such bonds, the redemption thereof, the
3 registration and discharge from registration thereof and the management
4 of any and all funds provided as security therefore.

5 **§14213. Issuance and Interchange of Coupon and Registered**
6 **Bonds.** An indenture may provide that bonds may be issued as coupon
7 bonds or as registered bonds and for the interchange of coupon bonds for
8 registered bonds and registered bonds for coupon bonds, and may
9 provide that bonds shall be registered as to principal only or as to both
10 principal and interest or otherwise as the Authority may determine.

11 **§14214. Redemption of Bonds Prior to Maturity.** An indenture
12 may provide that bonds may be redeemed prior to maturity upon such
13 terms, conditions and upon such notice as are stated in the indenture and
14 upon the payment of such premium as may be fixed by the indenture.

15 **§14215. Places of Payment.** An indenture may provide for the
16 payment of the principal and interest of bonds at any one or more places
17 in Guam or in the United States and in any specified coin or currency of
18 the United States.

19 **§14216. Execution and Authentication of Bonds.** An indenture
20 may provide for the execution and authentication of bonds by the manual
21 or facsimile signature of any one or more officers of the Authority and
22 by additional authentication by endorsement by the manual signature or a
23 signature stamp of any one or more officers of the Authority or of any
24 agent designated by the Authority as trustee. If any officer or agent
25 whose signature, countersignature or endorsement appears upon the
26 bonds or coupons ceases to be an officer or agent before the delivery of
27 the bonds or coupons, his signature, countersignature or endorsement is

1 nevertheless valid and of the same force and effect as if he had remained
2 such officer or agent until the delivery of the bonds and coupons.

3 **§14217. Dates and Maturities of Bonds.** Bonds shall bear dates
4 prescribed by the Authority in the indenture providing for their issuance.
5 Bonds may be serial bonds, term bonds or sinking fund bonds with such
6 maturities as the indenture shall specify. No bond by its terms shall
7 mature more than fifty (50) years after its date of issuance.

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

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

21 **§14220. Payments Which May be Made Out of Proceeds of**
22 **Sale of Bonds.** The proceeds of sale of any bonds may be expended for
23 any one or more of the following purposes, all as provided in the
24 indenture relating to such bonds:

25 (a) For payment of any costs or expenses of the acquisition,
26 construction or improvement of the system or any part thereof or any
27 costs or expenses incidental thereto, including payment to the United

1 States or any other public body for the portion to be borne by the
2 Authority of the cost of any work done by the United States or such
3 public body for or jointly or in conjunction with the Board;

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

6 i. the acquisition, construction or improvement of the
7 system or any part thereof; or

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

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

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

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

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

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

23 (h) For the payment of any prior bonds or other obligations of
24 the Authority.

25 **§14221. Bonds May be Secured by Revenues of System.** An
26 indenture may provide that payment of the bonds and the interest thereon
27 shall be secured by a pledge of and lien upon all or any portion of the

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

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

17 **§14223. Replacement of Bonds or Coupons.** The Authority
18 may provide for the replacement of lost, destroyed or mutilated bonds or
19 coupons.

20 **§14224. Tax Exemptions.** Bonds issued pursuant to the
21 provisions of this Article and the interest or income therefrom are
22 exempt from taxation to the extent permitted by the provisions of Section
23 11 of the Organic Act.

24 **§14225. Bonds as Legal Investments and as Security For**
25 **Performance of Any Act.** Notwithstanding any other provision of law,
26 all bonds issued pursuant to the provisions of this Article are legal
27 investments for all trust funds and for the funds of all banks, both

1 commercial and savings, and may be deposited as security for the
2 performance of any act whenever any evidence of indebtedness of Guam
3 may be so deposited and may also be used as security for the deposit of
4 public moneys in banks in Guam.

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

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

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

1 **§14229. Pledge by the Government of Guam.** The government
2 of Guam is fully committed to ensuring that the Authority has the ability
3 to implement the capital improvements authorized to be paid by this
4 legislation in order to meet the needs of Guam ratepayers for reliable and
5 affordable services. The government also is fully committed to ensuring
6 that bondholders are protected to ensure full and timely repayments of
7 their loans. In order to mirror the previous pledge that allowed Guam
8 Power Authority to successfully re-enter the financial markets as found
9 in 12 G.C.A. § 8113.3, and to model similar language found in laws
10 authorizing debt for the A.B. Won Pat International Airport Authority,
11 Guam, the government of Guam hereby pledges that while any bonds of
12 the Authority issued under this Article remain outstanding and not fully
13 performed or discharged (a) to maintain the rights, powers and duties of
14 the Board and the Guam Public Utilities Commission, or their respective
15 successors in accordance with law, to fulfill the terms of any agreements
16 made with bondholders in accordance with this Article, (b) to maintain
17 the rights and remedies of bondholders provided in this Article and any
18 indenture, (c) to protect the exclusive right of the Authority to operate or
19 maintain within Guam any water or wastewater system operated by the
20 government or its designees by preventing the acquisition, operation,
21 maintenance or permitting of any instrumentality of the Government or
22 any other public or private agency, entity or person to operate a separate
23 and competitive water and/or wastewater system , and (d) not to transfer
24 any additional non-system operating responsibilities or other unfunded
25 mandates to the Authority without providing for the payment of the costs
26 of such additional responsibilities, with the exception of annual
27 supplemental annuity and COLA contributions paid by the Authority on

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

3 **§14230. Guam Waterworks Authority Construction Fund.**

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

12 **§14231. Guam Waterworks Authority Revenue Fund.** All

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

18 (a) to pay principal or interest on any bonds;

19 (b) to pay any amounts due and owing under any payment
20 agreement or any credit provider reimbursement agreement;

21 (c) to pay the annual system operation and maintenance costs;

22 and

23 (d) for any other purposes of the Authority; all as provided in
24 any indenture or indentures and subject to any restrictions provided by
25 law or any indenture.

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

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

9 **§14233. Use of Balances of Funds and of Surplus Money in**
10 **Funds.** Any balance remaining in any of the funds or accounts created
11 by this Article or any indenture after payment of all costs, expenses and
12 charges required or authorized to be expended therefrom, may be
13 allocated and used for such other purposes relating to the acquisition,
14 construction, improvement, operation and maintenance of the system or
15 to the Authority, as the Board may determine, subject to the limitations
16 and restrictions in any indenture. After all bonds shall have been fully
17 paid and discharged or provision for their payment and discharge
18 irrevocably made, any surplus moneys in any fund or account created by
19 this Article or any indenture shall, subject to the limitations and
20 restrictions in any indenture, be transferred to the Authority and shall be
21 and remain available for the acquisition, construction, improvement,
22 maintenance or operation of the system or for any other purposes of the
23 Authority herein or hereafter authorized by law.

24 **§14234. Appropriation of Money in Funds.** All money in the
25 funds and accounts created by this Article or any indenture is hereby
26 appropriated for expenditure in carrying out the purposes herein and
27 therein provided.

1 **§14235. Short Term Borrowing.** Pursuant to the agency of
2 GEDCA, the Board may at any time or from time to time, by resolution
3 adopted by a majority of the members of the Board, authorize the
4 Authority to incur indebtedness, with the approval of *I Maga'lahi* (the
5 Governor), for any lawful purpose for any period not exceeding five (5)
6 years evidenced by contract with any person. Any such indebtedness
7 shall be incurred subject and subordinate to any contractual obligation of
8 the Authority to the holders of any bonds and the principal thereof and
9 interest thereon may be repaid:

10 (a) from revenues; or

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

13 The total cumulative amount borrowed pursuant to this Section
14 shall not exceed Five Million Dollars (\$5,000,000.00).

15 **§14236. Payment Agreements.** In addition to and in
16 amplification of the powers conferred upon the Board by the Guam
17 Waterworks Authority Act, this Article or any other law of Guam or of
18 the United States, the Board has power and is hereby authorized to cause
19 the Authority to enter into any contracts in connection with, or incidental
20 to, the issuance of bonds or other indebtedness, or the carrying of any
21 investment or program of investment or entering into or maintaining any
22 agreement which secures bonds or other indebtedness (each, a “payment
23 agreement”), which the Board determines to be necessary or appropriate
24 to place the obligation or investment of the Authority, as represented by
25 the bonds or such indebtedness, investment, program of investment or
26 agreement and the contract or contracts, in whole or in part, on the
27 interest rate, currency, cash-flow, or other basis desired by the Board in

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

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

21 **§14237. Credit Enhancement.** The Board has the power and is
22 hereby authorized to cause the Authority to enter into such contracts or
23 agreements with such banks, insurance companies or other financial
24 institutions as it determines are necessary or desirable to improve the
25 security and marketability of the bonds or the security of the
26 government's obligations under any contract or agreement entered into
27 under 12 G.C.A. §14236. Such contracts or agreements may contain an

1 obligation to reimburse, with interest, any such banks, insurance
2 companies or other financial institutions for advances used to pay
3 principal of or interest on the bonds and to indemnify any such banks,
4 insurance companies or other financial institutions for costs and
5 expenses incurred in connection with any such advance; provided, that
6 any obligation of the Authority under any reimbursement agreement
7 shall be payable solely from revenues.

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

14 **§14238. No Personal Liability.** No member of the Board,
15 employee of the Authority or elected official of the government of Guam
16 shall be individually or personally liable for the payment of any amounts
17 due on any bonds, or for any other liability arising in connection with the
18 bonds; provided, however, that nothing in this Section shall relieve any
19 employee or elected official from the performance of any ministerial
20 duty required by law.

21 **§14239. Waiver of Immunity.** Notwithstanding any substantive
22 or procedural provision of Chapter 6 of Title 5, Guam Code Annotated,
23 the Authority shall not be entitled to immunity from any suit or action in
24 contract on the indebtedness authorized by this Article. For the purposes
25 of this Act only, immunity is waived as to the award of attorney fees in
26 connection with any suit brought to enforce any right or obligation given

1 under this Act or in connection with the enforcement of the terms of any
2 agreement or indenture that arises directly from the issuance of bonds.

3 **§14240. Construction of Article.** This Article shall be liberally
4 construed to carry out the objects and purposes and the declared policy
5 of Guam as in this Article set forth. Nothing contained in this Article
6 shall be construed directly or by implication to be in any way in
7 derogation or limitation of powers conferred upon or existing in the
8 Authority or the Board by virtue of any provisions of the Organic Act or
9 laws of Guam.”

10 **Section 3. Local Sales of Bonds.** The Authority shall undertake its best
11 efforts to cause a portion of any bonds issued pursuant to Article 2, Chapter 14, Title
12 12, Guam Code Annotated and approved pursuant to Section 4 of this Act, to be
13 offered for sale to residents of Guam, as well as to residents of other jurisdictions, if
14 and to the extent that such offer and any sales resulting from such offer do not
15 increase the costs to the Authority of issuing and repaying such bonds.
16 Notwithstanding any other provision of law to the contrary, these bonds may be sold
17 to employees of the Guam Waterworks Authority.

18 **Section 4. Approval of Guam Waterworks Authority Revenue Bonds.**
19 The Guam Legislature, *I Liheslaturan Guåhan*, pursuant to Section 50103 of Title 12
20 of the Guam Code Annotated, hereby approves the issuance and sale by the Authority
21 of revenue bonds pursuant to Article 2, Chapter 14, Title 12, Guam Code Annotated
22 (the "Act") in one or more series or issues; provided that the issuance, terms and
23 conditions of the bonds shall have been approved by the Guam Public Utilities
24 Commission, and further provided that such bonds shall have a principal amount not
25 to exceed Two Hundred Twenty Million Dollars (\$220,000,000), shall have a final
26 maturity not later than 2055, shall bear interest at such rate or rates and shall be sold
27 for such price or prices as shall result in a yield to the bondholders not exceeding Six

1 and One half percent (6.5%) per annum (treating payments and receipts under any
2 interest rate hedging contracts as if they were payments to and receipts from the
3 bondholders), shall be issued and sold in the manner, for the purposes and subject to
4 the requirements and limitations provided in Article 2, Chapter 14, Title 12, Guam
5 Code Annotated, and shall be issued pursuant to an Indenture in substantially the
6 form as attached to this Act as Exhibit A.

7 **Section 5. Title 12 G.C.A. Section 50103 (k) is hereby amended to read,**
8 **effective the enactment of P.L. 28-68:**

9 “(k) The Corporation shall act as a central financial manager and consultant for
10 those agencies or instrumentalities of the Government requiring financial guidance
11 and assistance. Such technical assistance by the Corporation shall include, but not be
12 limited to, obtaining of funds through bond or other obligations, structuring such
13 bond issuances, preparation and dissemination of financial and investment
14 information, including bond prospectuses, development of interest among investment
15 bankers and bond brokers, maintenance of relationships with bond rating agencies
16 and brokerage houses and, generally, acting as the centralized and exclusive financial
17 planner and investment banker for all the agencies and instrumentalities of the
18 Government to include, but not be limited to, such public corporations as the Guam
19 Economic Development and Commerce Authority, the Jose D. Leon Guerrero
20 Commercial Port of Guam, the A.B. Won Pat International Airport Authority Guam,
21 the Guam Power Authority, the Guam Memorial Hospital Authority, the University of
22 Guam, *the Guam Waterworks Authority* and all other agencies or instrumentalities of
23 the Government given the power, now or in the future, to issue and sell bonds or
24 other obligations for the purpose of raising funds. Such agencies or instrumentalities
25 of the Government shall issue bonds and other obligations only by means of and
26 through the agency of the Corporation, and each such agency or instrumentality shall
27 furnish the Corporation long-term estimates of financial needs so that the Corporation

1 can coordinate a long-term plan for obtaining necessary funds for all such agencies
2 and instrumentalities on a rational, non-competitive and efficient basis. The
3 Corporation shall not issue or sell any bond without the approval of *I Liheslatura* of
4 the terms and conditions of the bonds. For the purpose of this Subsection, the terms
5 bond or other obligations do not include an instrument evidencing debt for a term of
6 one (1) year or less. The provisions of this Section whereby the Corporation shall act
7 as a central financial manager and consultant for those agencies requiring financial
8 assistance shall not apply to those bonds or obligations which are sold by or to an
9 agency of the Government of the United States, however, the provisions of this
10 Section where *I Liheslatura* must approve the terms and conditions of the issuance of
11 the bonds shall apply to said bonds or obligations. The provisions of this Subsection
12 shall *not* apply to bonds or other obligations issued pursuant to Article V or Article
13 VI of this Division on or before March 31, 1984, provided such bonds or other
14 obligations are secured by a pledge of and lien upon the revenues and other funds or
15 moneys derived from the projects or programs financed by the proceed of the sale of
16 such bonds or other obligations and *not* by revenues and other funds or moneys
17 derived from other projects or programs of the Corporation.”

I MINA' BENTE OCHO NA LIHESLAI TURAN GUAHAN

2005 (FIRST) Regular Session

Date: 10/26/05

VOTING SHEET

S Bill No. 220 (ec)

Resolution No. _____

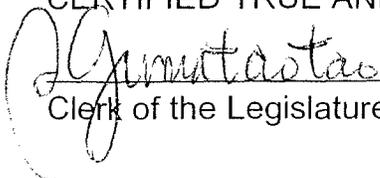
Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSEN
AGUON, Frank B., Jr.					EA ✓
BROWN, Joanne M.S.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J.F.					EA ✓
CRUZ, Michael (Dr.)	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
KLITZKIE, Robert	✓				
LEON GUERRERO, Lourdes A.			Recused		
LUJAN, Jesse A.					EA ✓
PALACIOS, Adolpho B.	✓				
RESPICIO, Rory J.		✓			
TENORIO, Ray	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

10 1 1 0 3 ~~EA~~

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

PL. 28-71

GUAM WATERWORKS AUTHORITY

and

BANK OF GUAM,
as Trustee,

and

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

INDENTURE

Dated as of November 1, 2005

Relating to

Guam Waterworks Authority Water and Wastewater System Revenue Bonds

DOCSSF1:836871.4
43133-2 SJD/SJD

Guilbert, A

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THIS INDENTURE, made and entered into as of November 1, 2005, by and between the GUAM WATERWORKS AUTHORITY, a duly organized public corporation of the government of Guam (the "Authority"), BANK OF GUAM, a domestic banking corporation duly organized and existing under and by virtue of the laws of Guam, having a corporate trust office in Guam, and being qualified to accept and administer the trusts hereby created and to do business within Guam, as trustee (the "Trustee"), and U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America and qualified to accept and administer the trusts hereby created, as co-trustee (the "Co-Trustee")

WITNESSETH:

WHEREAS, the Authority owns certain water and sewer system facilities;

WHEREAS, pursuant to Chapter 14 of Title 12 of the Guam Code Annotated, as amended (the "Act"), the Authority is authorized from time to time by statutory legislation authority, to incur indebtedness, and issue bonds, secured by a pledge on all or any portion of the revenues of the Authority to raise funds for the purpose of establishing the System (as hereinafter defined), or acquiring lands for the System, or acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the System, or any part thereof, or for the purpose of the refunding any such indebtedness, or for any combination of such purposes;

WHEREAS, the Authority has determined to issue revenue bonds for such purposes and to that end has duly authorized the execution and delivery of this Indenture to secure the payment of the principal thereof and the interest and premium, if any, thereon, and the observance of the covenants and conditions herein contained;

WHEREAS, said revenue bonds issued hereunder are to be designated as the "Guam Waterworks Authority Water and Wastewater System Revenue Bonds" (the "Bonds") and are to be issued from time to time in an aggregate principal amount not limited except as hereinafter provided; and

WHEREAS, the forms of each series of Bonds and various other matters relating to such series shall be prescribed in indentures supplemental hereto;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, and the premium, if any, and interest on, all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee and the Co-Trustee for the benefit of the respective owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; EFFECT OF INDENTURE

SECTION 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. Unless

otherwise defined in this Indenture, all terms used herein shall have the meanings assigned to such terms in the Act.

Account

“Account” means each account established and given a designation pursuant to this Indenture or any Supplemental Indenture.

Accreted Value

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

Act

“Act” means Chapter 14 of Title 12 of the Guam Code Annotated, as amended, and as it may from time to time hereafter be amended or supplemented.

Additional Bonds

“Additional Bonds” means bonds, notes or other obligations of the Authority payable from Revenues and ranking on a parity with the Bonds then outstanding and authorized to be issued under and pursuant to Sections 3.04 and 3.05.

Aggregate Annual Debt Service

“Aggregate Annual Debt Service” means, for any year, Annual Debt Service for such year on all Bonds.

Annual Debt Service

“Annual Debt Service” means, for any year, and with respect to any Bonds (A) the sum of (1) the interest falling due on such Bonds then Outstanding (assuming that all then Outstanding Serial Bonds are retired on their respective maturity dates and that all then Outstanding Term Bonds are retired at the times of and in amounts provided for by the Mandatory Sinking Account Payments applicable to such Term Bonds), but not including Capitalized Interest, plus (2) the principal amount of such Bonds then Outstanding that are Serial Bonds falling due by their terms, plus (3) the aggregate amount of all Mandatory Sinking Account Payments falling due with respect to such Bonds then Outstanding that are Term Bonds, plus (4) the aggregate amount of Payment Agreement Payments under Related Parity Payment Agreements then Outstanding falling due, minus (B) the aggregate amount of Payment Agreement Receipts under Related Payment Agreements then Outstanding falling due; all as calculated for said year and provided that for purposes of determining the interest payable on Variable Rate Bonds, any obligation of the Authority to make Payment Agreement Payments based on a variable rate under Parity Payment Agreements and any obligation of a Qualified Counterparty to make payments under a Payment Agreement to the Authority based on a variable rate, the following assumptions shall be made:

(i) for purposes of determining the interest payable on Variable Rate Bonds, the interest rate used in making such determination shall be (a) for periods for which such rate has been determined, the actual interest rate on such Bonds; (b) for purposes of Section

3.05(B)(1)(c)(i)(D) for any other period, a rate equal to 1.1 times the highest rate of interest borne by such Bonds, or if such Bonds were not Outstanding during any portion of any such period bonds with similar ratings and terms, during the next preceding twelve months; or (c) for any other period or purpose, the prevailing interest rate on such Bonds as of the date of such determination;

(ii) for purposes of determining the amount of Payment Agreement Payments based on a variable rate under Parity Payment Agreements, the rate used in making such determination shall be assumed to be (a) for periods for which such rate has been determined, the actual rate used to calculate such payments, (b) for purposes of Section 3.05(B)(1)(c)(i)(D) for any other period, a rate equal to 1.1 times the highest such rate during the next preceding twelve months, and (c) for any other period or purpose, the prevailing rate being used to determine such payment obligation as of the date of such determination; in each such case without regard to the occurrence of any event that, under the provisions of such Payment Agreement, would permit or require the Authority to make payments on any basis other than such rates;

(iii) for purposes of determining the amount of payments by a Qualified Counterparty under a Payment Agreement to the Authority based on a variable rate, the rate used in making such determination shall be (a) if such Payment Agreement obligates a Qualified Counterparty to make payments to the Authority based on a variable rate that is equal to the actual rate on the Related Bonds, the actual rate on such Bonds; and (b) if such Payment Agreement obligates a Qualified Counterparty to make payments to the Authority based on a variable rate other than the actual rate on the Related Bonds (1) for periods for which such rate has been determined, the actual rate used to calculate such payments, (2) for purposes of Section 3.05(B)(1)(c)(i)(D) for any other period, a rate equal to 1.1 times the highest such rate during the next preceding twelve months, and (3) for any other period or purpose, the prevailing rate being used to determine such payment obligation as of the date of such determination; in each such case without regard to the occurrence of any event that, under the provisions of such Payment Agreement, would permit or require the Qualified Counterparty to make payments on any basis other than such rates.

Authority

“Authority” means the Guam Waterworks Authority, a public corporation of the Government of Guam, or any successor to the rights, powers, functions and duties with respect to the management, administration and control of the System which are now or hereafter vested in the Authority.

Authorized Officer

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

Board

“Board” means the Consolidated Commission on Utilities established in Chapter 79 of Title 12 of the Guam Code Annotated or any other governing board of the Authority hereinafter provided for pursuant to law.

Bond Counsel

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

Bond Reserve Fund Requirement

“Bond Reserve Fund Requirement” means, as of any particular date of calculation, an amount equal to the Maximum Annual Debt Service for the then current or any future Fiscal Year on all Outstanding Bonds; provided, however, that if upon issuance of a Series of Bonds, such amount would require moneys to be credited to the Bond Reserve Fund from such Bond proceeds in an amount in excess of the maximum amount permitted from tax-exempt bond proceeds under the Code, the Bond Reserve Fund Requirement shall mean an amount equal to the sum of the Bond Reserve Fund Requirement immediately preceding issuance of such Bonds plus the maximum amount permitted under the Code to be deposited therein from the proceeds of such Bonds, as specified by Certificate of the Authority.

Bond Reserve Fund

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

Bond Year

“Bond Year” means, with respect to any Series, the period of twelve consecutive months ending on the day in each year specified in the Supplemental Indenture authorizing the issuance of such Series if Bonds are or will be Outstanding in such twelve-month period.

Bondowner, Owner, Holder

“Bondowner” or “Owner” or “Holder” means any person who shall be the registered owner of any Outstanding Bond, or, if such Outstanding Bond shall have a maturity of one year or less and shall have been issued in bearer form, shall mean the bearer of such Bond.

Bonds, Serial Bonds, Term Bonds, Variable Rate Bonds

“Bonds” means the Guam Waterworks Authority Water and Wastewater System Revenue Bonds authorized by, and at any time Outstanding pursuant to, this Indenture and a Supplemental Indenture, including any Additional Bonds authorized by, and at any time Outstanding pursuant to, this Indenture and any Supplemental Indenture.

“Serial Bonds” means Bonds designated as Serial Bonds in the Supplemental Indenture providing for the issuance of such Series and for which no Mandatory Sinking Account Payments are provided.

“Term Bonds” means Bonds designated as Term Bonds in the Supplemental Indenture providing for the issuance of such Series and which are payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

“Variable Rate Bonds” means Bonds which bear interest at a variable rate of interest.

Business Day

“Business Day” means any day other than a Saturday, Sunday or other day upon which banks in the cities in which the Principal Offices of the Trustee, the Co-Trustee, each Depositary, each Paying Agent and each Credit Provider are located are authorized or required to be closed.

Capital Improvement

“Capital Improvement” means any addition, betterment, improvement or extension of the System having costs in excess of \$100,000 and a useful life in excess of five (5) years.

Capital Improvement Fund

“Capital Improvement Fund” means the fund by that name established pursuant to Section 5.01 for the purposes provided in Section 5.10.

Capitalized Interest

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

Certificate of the Authority

“Certificate of the Authority” means an instrument in writing signed by the Chairperson or by the General Manager or by any other officer of the Authority duly authorized by resolution of the Board for that purpose. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by the provisions of Section 1.03, each Certificate of the Authority shall include the statements provided for in Section 1.03.

Certified Public Accountant

“Certified Public Accountant” means (i) any nationally recognized U.S. certified public accountant or accounting firm or (ii) any other U.S. certified public accountant or accounting firm approved by each Credit Provider, if any, not then in default of its obligations under a Credit Facility.

Chairperson

“Chairperson” means the chairperson of the Board.

Code

“Code” means the Internal Revenue Code of 1986 or any similar or successor federal law.

Construction Account

“Construction Account” means an account by that name established pursuant to Section 3.03.

Construction Fund

“Construction Fund” means the Guam Waterworks Authority Construction Fund established pursuant to the Act.

Consulting Engineer

“Consulting Engineer” means an Independent architect, engineer, consultant, or architectural, engineering, or consulting firm experienced in water and sewer system design, construction, or operation, having a favorable reputation with respect thereto and retained by the Authority to perform the acts and carry out the duties of a Consulting Engineer under this Indenture and, in any case, nationally recognized as being experienced in the preparation of feasibility studies for use in connection with the financing of water and sewer systems.

Costs of Issuance

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

Co-Trustee

“Co-Trustee” means U.S. Bank National Association, appointed by the Authority as Co-Trustee in Section 8.02 and acting as an independent trustee with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Section 8.03.

Credit Agreement

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

Credit Agreement Payments

“Credit Agreement Payments” means Credit Agreement Reimbursement Payments and Other Credit Agreement Payments.

Credit Agreement Reimbursement Payments

“Credit Agreement Reimbursement Payments” means any payment obligation of the Authority pursuant to a Credit Agreement designated as such in a Supplemental Indenture.

Credit Facility

“Credit Facility” means any letter of credit, insurance policy, surety bond or other instrument designated by a Supplemental Indenture as providing supplemental credit support for a Series of Bonds (including by substituting for a deposit in a Bond Reserve Fund).

Credit Provider

“Credit Provider” means any person, firm or entity designated in a Supplemental Indenture as providing a Credit Facility for a Series of Bonds, and any successor thereto.

Date of Completion

“Date of Completion” means, for any particular Project, the date on which such Project is projected to be available for use by the Authority for the purposes for which it is intended to be used.

Debt Service Fund

“Debt Service Fund” means the fund by that name established pursuant to Section 5.01.

Depository

“Depository” means, with respect to any particular fund or account, the bank or trust company or other financial institution with similar powers designated by a Supplemental Indenture or a Statement of the Authority to act as the Depository hereunder for such fund or account, its successors and assigns, and any other bank or trust company or financial institution which may at any time be substituted in its place, as provided in Section 8.03.

Event of Default

“Event of Default” means an event of that name described in Section 7.01.

Federal Securities

“Federal Securities” means (1) direct obligations of the United States of America for which the full faith and credit of the United States of America are pledged for the payment of principal and interest (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America); (2) obligations for which the payment of principal and interest is guaranteed directly by the full faith and credit of the United States of America of the following types issued by the following agencies: U.S. Export-Import Bank (direct obligations or fully guaranteed certificates of beneficial ownership), Farmers Home Administration (certificates of beneficial ownership), Federal Financing Bank, General Services Administration (participation certificates), U.S. Maritime Administration (guaranteed Title XI financing), U.S. Department of Housing and Urban Development (project notes, local authority bonds, new communities debentures--U.S. government guaranteed debentures, or U.S. public housing notes and bonds--U.S. government guaranteed public housing notes and bonds); (3) obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (collectively, “Municipal Obligations”) (a) which are fully secured as to principal and interest and redemption premium, if any, by an escrow or trust fund consisting only of cash or obligations of the character described in clauses (1) or (2) of this definition (“Government Obligations”), which fund may be applied only to the payment of interest on such municipal obligations when due and principal of and redemption premium, if any, on such municipal obligations on the maturity

date or dates thereof or the redemption date or dates specified in an irrevocable notice, as appropriate, (b) as to which the cash and the principal of and interest on the Government Obligations in such escrow or trust fund will be sufficient to pay such interest, principal and redemption premium on such date or dates, and (c) which at the time of purchase are rated in the highest rating category by each Rating Agency; (4) certificates which evidence ownership of the right to the payment of any specified portion of the principal of and interest on obligations described in clause (1) of this definition, provided that such obligations have been stripped by the Treasury of the United States of America; and (5) the interest component of Resolution Funding Corp. stripped securities, which have been stripped by request to the Federal Reserve Bank of New York, in book entry form.

Fiduciaries

“Fiduciaries” means the Trustee, the Co-Trustee, each Depositary, each Registrar and each Paying Agent.

Financial Newspaper or Journal

“Financial Newspaper or Journal” means, collectively, The Wall Street Journal, The Bond Buyer or any one or more other newspapers or journals publishing financial news and selected by the Trustee, whose decision shall be final and conclusive, printed in the English language, customarily published on each business day and circulated in New York, New York, San Francisco, California, and Hagatña, Guam.

Fiscal Year

“Fiscal Year” means the period beginning on October 1 of each year and ending on the next succeeding September 30, or such other fiscal year as may be adopted by the Authority.

Fund

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

General Manager

“General Manager” means the person appointed by the Board under the Act to supervise the administration of the Authority as its chief executive officer.

Government

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

Indenture

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

Independent

“Independent” means, when used with respect to any given person, that such person (who may be selected and paid by the Authority or the Government) (1) is in fact independent and not under

domination of the Authority or the Government; (2) does not have any substantial interest, direct or indirect, with the Authority or the Government; and (3) is not connected with the Authority or the Government as an officer or employee of the Authority or the Government, but who may be regularly retained to provide services to the Authority or the Government.

Interest Accrual Period

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

Interest Payment Date

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

Investment Securities

“Investment Securities” means any of the following which at the time are legal investments under the laws of Guam for moneys held hereunder and then proposed to be invested therein (the Trustee and the Co-Trustee shall be entitled to rely upon a Request of the Authority directing investments hereunder as a determination that such investment constitutes a legal investment):

(1) Federal Securities;

(2) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Federal Home Loan Banks, Federal National Mortgage Association, Government National Mortgage Association, Federal Housing Administration or Federal Home Loan Mortgage Corporation;

(3) interest-bearing demand or time deposits (including certificates of deposit) which are continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund;

(4) obligations, including deposits, federal funds borrowings and banker’s acceptances, of any bank, or of the subsidiary lead bank of any bank holding company, which has an unsecured, uninsured and unguaranteed obligation of equivalent maturity rated at least the second highest major rating category by each Rating Agency;

(5) commercial paper rated at least the second highest rating category by each Rating Agency;

(6) money market funds which are (a) restricted to Federal Securities or (b) registered under the Investment Company Act of 1940 and the shares of which are registered under the Securities Act of 1933, and have a rating by S&P of AAAM-G; AAA-m; or AA-m and Moody’s of Aaa, Aa1 or Aa2;

(7) repurchase agreements, the underlying securities of which are specifically designated and are obligations described in clause (1) or (2) of this definition, provided that, (a) the agreement is between the municipal entity and a dealer bank or securities firm; (b) such dealer bank or securities firm

is either a primary dealers on the Federal Reserve reporting dealer list rated "A" or better by Standard & Poor's and Moody's, or a bank rated "A" or better by Standard & Poor's and Moody's; (c) the agreement provides that the securities be delivered to the Authority, the Trustee, the Co-Trustee or third party acting as agent for either (if the Trustee or Co-Trustee is supplying the collateral) before payment or on a delivery versus payment basis; (d) the securities must be valued weekly, marked-to-market at current market price plus accrued interest; (e) the value of collateral must be equal to 104% (or 105% if the collateral is comprised of obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) of the amount of cash transferred to the dealer bank or security firm plus accrued interest; and (e) the Authority receives a legal opinion that the agreement is a legal investment under the laws of Guam;

(8) subject to the provisions of any Supplemental Indenture, investment agreements (a) with corporations, associations or financial institutions which have general obligations, or whose holding companies have general obligations, rated at least the second highest rating category by each Rating Agency, or (b) which agreements are continuously secured by obligations described in clause (1) or (2) of this definition which have a market value (valued at least weekly) not less than 103% of the amount so invested; and

(9) any other investment approved in writing by each Credit Provider then providing a Credit Facility for Bonds not then in default of its obligations thereunder.

None of the Trustee, the Co-Trustee nor any Depositary shall be deemed, by entering into this Indenture, to have agreed to make the valuation required by clauses (7) and (8) above, but such agreement by or on behalf of the Trustee, the Co-Trustee or a Depositary shall be a condition precedent to investment in obligations of the type described in such clauses.

Legislature

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

Mandatory Sinking Account Payment

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

Maximum Annual Debt Service

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

Navy/GPA Surcharge

"Navy/GPA Surcharge" means that certain surcharge established by order of the Guam Public Utilities Commission on September 13, 2001, as amended on June 23, 2003 [and October __, 2005], for the purpose of collecting revenues for the payment of amounts due to the United States Treasury, the Guam Power Authority and the Guam Public Utilities Commission and any successor surcharge to the extent provided for the same purpose or purposes.

Net Revenues

“Net Revenues” means, for any particular period, (a) the sum of (i) all of the Revenues (other than Payment Agreement Receipts) received during such period plus (ii) the aggregate amount of all transfers from the Rate Stabilization Fund to the Revenue Fund during such period, less (b) the sum of (x) all Operation and Maintenance Expenses incurred during such period plus (y) the amount of all transfers from the Revenue Fund to the Rate Stabilization Fund during such period.

Operation and Maintenance Expenses

“Operation and Maintenance Expenses” means such reasonable and necessary current expenses of the Authority, paid or accrued, for operation, maintenance and repair of the System as may be determined by the Board, and the term may include at the Board’s option, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

- (a) Legal and overhead expenses of the Authority directly related and reasonably allocable to the administration of the System;
- (b) Fidelity bond and insurance premiums appertaining to the System or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the System;
- (c) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to System, including fees and expenses of the Trustee;
- (d) The costs incurred in the collection of all or any part of the Revenues; and
- (e) Any costs of utility services furnished to the System by the Authority or otherwise.

However, the term “Operation and Maintenance Expenses” as used herein does not include:

- (i) Any allowance for depreciation;
- (ii) Any costs of System capital renewals, replacements, major repairs, reconstruction, improvements, extensions or betterments;
- (iii) Any accumulation of reserves for System capital renewals, replacements, major repairs or reconstruction;
- (iv) Any reserves for operation, maintenance or repair of the System;
- (v) Any liabilities incurred in the acquisition or improvement of any properties comprising the System or any combination thereof;
- (vi) Any other legal liability not based on contract;
- (vii) Payments made by the Authority to the United States Treasury, the Guam Power Authority or the Guam Public Utilities Commission from revenues derived from the Navy/GPA Surcharge; and
- (viii) Payments made by the Authority to Guam Power Authority for power delivered prior to the Fiscal Year commencing October 1, 2003.

Operation and Maintenance Fund

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

Operation, Maintenance, Renewal and Replacement Reserve Fund

“Operation, Maintenance, Renewal and Replacement Reserve Fund” means the fund by that name established pursuant to Section 5.01.

Opinion of Counsel

“Opinion of Counsel” means a written opinion of counsel (who may be counsel for the Authority) retained by the Authority. If and to the extent required by the provisions of Section 1.03, each Opinion of Counsel shall include the statements provided for in Section 1.03.

Order, Request, Requisition or Statement of the Authority

“Order of the Authority”, “Request of the Authority”, “Requisition of the Authority”, or “Statement of the Authority” mean, respectively, a written order, request, requisition or statement signed by or on behalf of the Authority by the Chairperson or the General Manager or by any person (whether or not an officer of the Authority) who is specifically authorized by resolution of the Board to sign or execute such a document on behalf of the Authority.

Other Credit Agreement Payments

“Other Credit Agreement Payments” means any payment obligation of the Authority pursuant to a Credit Agreement designated as such in a Supplemental Indenture.

Outstanding

“Outstanding,” when used as of any particular time with reference to

(A) Bonds, means (subject to the provisions of Section 9.03) all Bonds theretofore executed, issued and delivered by the Authority under this Indenture except --

(1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(2) Bonds for the payment or redemption of which funds or securities in the necessary amount (as set forth in Section 10.01) shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or redemption date of such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(3) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered by the Authority pursuant to Section 2.08;

(B) Payment Agreements, means all Payment Agreements which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Payment

Agreements have been incurred; provided that Payment Agreements shall not be Outstanding if the Authority or the Qualified Counterparty with respect thereto is in default thereunder; and

(C) Credit Agreements, means all Credit Agreements which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Credit Agreements have been incurred; provided that a Credit Agreement shall not be Outstanding during any period in which the Credit Provider with respect thereto is in default on its payment obligations thereunder.

Parity Payment Agreement

“Parity Payment Agreement” means a Payment Agreement which is designated as such in a Supplemental Indenture, the payment of which constitutes a charge and lien on Revenues equal to and on a parity with the charge and lien upon the Revenues for the payment of the Bonds.

Parity Payment Agreement Payments

“Parity Payment Agreement Payments” means Payment Agreement Payments under a Parity Payment Agreement.

Paying Agent

“Paying Agent” means any paying agent appointed pursuant to a Supplemental Indenture, and its successors and assigns as provided in Section 8.03.

Payment Agreement

“Payment Agreement” means any contract entered into by the Authority with a Qualified Counterparty in connection with, or incidental to, the issuance of Bonds, or the carrying of any investment or program of investment or entering into or maintaining any agreement which secures Bonds, which the Authority determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by such Bonds, investment, program of investment or agreement and the contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by the Authority, including, without limitation, contracts commonly known as interest rate swap agreements or contracts providing for payments based on levels of, or changes in, interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, put or call to hedge payment, rate, spread, or similar exposure and which is designated as such and as Related to particular Bonds in a Supplemental Indenture.

Payment Agreement Payment Accrual Period

“Payment Agreement Payment Accrual Period” means, for any Payment Agreement, each period between successive Payment Agreement Payment Dates for such Payment Agreement, including in each case in such period the concluding Payment Agreement Payment Date but not the beginning Payment Agreement Payment Date, and treating the day prior to the effective date of such Payment Agreement as if it were a Payment Agreement Payment Date for such Payment Agreement for this purpose.

Payment Agreement Payment Date

“Payment Agreement Payment Date” means, for any particular Payment Agreement, each date specified as a payment date in such Payment Agreement.

Payment Agreement Payments

“Payment Agreement Payments” means amounts required to be paid periodically by the Authority to any Qualified Counterparty pursuant to a Payment Agreement, but not including (i) Termination Payments or (ii) such other payments as may be specified in a Supplemental Indenture.

Payment Agreement Receipts

“Payment Agreement Receipts” means amounts required to be paid periodically by a Qualified Counterparty to the Authority pursuant to a Payment Agreement, but not including Termination Payments.

Principal Office

“Principal Office” means, with respect to the Trustee, the Co-Trustee and any other Fiduciary, the office at the respective address set forth in Section 12.07 hereof or at such other address as the respective party may have designated for such purpose. The Principal Office of any Credit Provider shall be as specified by such Credit Provider pursuant to its Credit Facility or Credit Agreement.

Principal Payment Period

“Principal Payment Period” means, for any particular Bond, each period so designated by the Supplemental Indenture authorizing the issuance of such Bond.

Project

“Project” means any particular additions, enlargements, betterments, extensions and other improvements to or related to, and the equipping of, the System, including, without limitation, the acquisition of land and furnishings therefor or the payment of any claims or judgments relating thereto, as specified and described by the Supplemental Indenture authorizing issuance of the first Series of Bonds for such Project, and as such specification and description may be modified in accordance with Section 3.03.

Project Costs

“Project Costs” means, with respect to any given Project, all costs which are chargeable to the capital account of such Project, including, but not limited to, the following:

- (1) costs of the Authority and all contractors for land (including franchises, licenses or other interests in land), labor, materials, machinery, equipment and furnishings in connection with the acquisition, construction, reconstruction, installation and equipping of the Project or otherwise attributable to the Project;
- (2) the cost of relocation and installation of utilities, environmental cleanup and noise abatement;

(3) the cost of contract bonds and insurance of all kinds that may be required or necessary during the construction of the Project;

(4) all costs of architectural and engineering services, including the costs of test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for inspecting and supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction of the Project;

(5) relocation costs and any claims, awards or judgments relating to the Project;

(6) Capitalized Interest; and

(7) all amounts required to reimburse the Authority for advances made by it for any of the above items or for any other costs incurred and for work done, whether before or after the date of this Indenture, which are properly chargeable to the Project.

Qualified Counterparty

“Qualified Counterparty” means the party, other than the Authority, to a Payment Agreement; provided that any such party must satisfy the following requirements: (1) either (a) the obligations of such party under the Payment Agreement (or obligations of such type) must be rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds (without regard to any gradations within a rating category), or (b) the obligations of such party under the Payment Agreement are guaranteed by a bond insurer or other institution, in each case the obligations of such type of which must be rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating the Bonds (without regard to any gradations within a rating category); and (2) such party must be otherwise qualified to act as the other party to a Payment Agreement with the Authority under any applicable laws.

Rate Stabilization Fund

“Rate Stabilization Fund” means the fund by that name established pursuant to Section 5.01.

Rating Agency

“Rating Agency” means, as of any given date, each nationally recognized securities rating agency designated by this Indenture or any Supplemental Indenture as a Rating Agency hereunder and then rating any Series of Bonds.

Rebate Fund

“Rebate Fund” means the fund by that name established pursuant to Section 5.01.

Record Date

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

Redemption Price

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

Registrar

“Registrar” means any registrar appointed pursuant to a Supplemental Indenture, and its successors and assigns as provided in Section 8.03.

Related

“Related” means, with respect to any particular Payment Agreement, having been designated as such with respect to any particular Bonds pursuant to a Supplemental Indenture.

Renewal and Replacement Costs

“Renewal and Replacement Costs” means the costs of System capital renewals, replacements, major repairs or reconstruction.

Revenue Fund

“Revenue Fund” means the Guam Waterworks Authority Revenue Fund established pursuant to the Act.

Revenues

“Revenues” means all gross income and other amounts received or receivable by the Authority as revenues of any kind from the ownership or operation of any part of the System, including all rates, fees and charges (including ground water, surface water and treated water charges and all sewer and wastewater service charges), received by the Authority for providing water and sewer services (but excluding development charges and assessments and hook-up fees and other special charges such as penalties and fines), all Payment Agreement Receipts, and all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the System, and all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the System, together with all interest, profits or other income derived from the investment of amounts in the Revenue Fund, but not including:

- (1) amounts received as insurance proceeds (except as hereinabove provided) or from the sale, transfer or other disposition of, or upon the taking by or under the threat of eminent domain of, all or any part of the System (which moneys shall be received and disposed of pursuant to Sections 6.03, 6.06 and 6.11, as the case may be),
- (2) proceeds from any securities issued by the Authority or proceeds from loans obtained by the Authority,
- (3) the proceeds of any court or arbitration award or settlement in lieu thereof received by the Authority,

- (4) amounts received by the Authority as gifts or as grants (except as hereinabove provided), whether restricted or unrestricted,
- (5) amounts received by the Authority as revenues from the Navy/GPA Surcharge;
- (6) other amounts (except as hereinabove provided), the use of which is restricted by the donor or grantor.

Series

“Series” or “Series of Bonds” means and refers to all Bonds of like designation and described as such in a Supplemental Indenture authenticated and delivered on original issuance at the same time pursuant to this Indenture, and any Bonds thereafter delivered in lieu of or substitution for any of such Bonds pursuant to this Indenture.

Series 2005 Certificates

“Series 2005 Certificates” means the certificates of participation [two series?] issued pursuant to that certain indenture, dated as of July 1, 2005, between the Guam Waterworks Facilities Corporation and J.P. Morgan Trust Company, National Association.

Sinking Accounts

“Sinking Accounts” means any special account or accounts established by any Supplemental Indenture or Indentures in the Debt Service Fund for the payment of Term Bonds.

Subordinate Securities

“Subordinate Securities” means any obligations of the Authority payable from the Subordinate Securities Fund and having a lien, if any, on Revenues subordinate to the pledge and lien of this Indenture securing the payment of the Bonds.

Subordinate Securities Fund

“Subordinate Securities Fund” means the fund by that name established pursuant to Section 5.01 for the purposes provided in Section 5.07.

Supplemental Indenture

“Supplemental Indenture” means any indenture hereafter duly authorized under and in compliance with the Act, entered into by and between the Authority, the Trustee and the Co-Trustee and accepted by each Depository, Paying Agent and Registrar the duties of which are affected thereby, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

System

“System” means the water and sewer systems, now or hereafter existing, owned and/or operated by the Authority or its contractors, agents or subcontractors.

Tax Certificate

“Tax Certificate” means a Certificate of the Authority concerning the calculation of any amount to be paid to the United States of America pursuant to Section 148(f) of the Code and any other matters relating to the exclusion of interest on Bonds from gross income for federal income tax purposes.

Termination Payments

“Termination Payments” means amounts required to be paid by the Authority or a Qualified Counterparty pursuant to a Payment Agreement in connection with a termination of all or any portion thereof.

Treasurer

“Treasurer” means the Treasurer of the Authority.

Trustee

“Trustee” means Bank of Guam, appointed by the Authority as Trustee in Section 8.01 and acting as an independent trustee with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Section 8.03.

SECTION 1.02 Equal Security. In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the Series, number or date thereof or the time of issue, sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 1.03 Content of Certificates and Opinions. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture, including each Certificate of the Authority, shall include (A) a statement that the person or persons making or giving such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (C) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (D) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an officer of the Authority may be based, insofar as it relates to legal, accounting or System matters, upon a certificate or opinion of or representations by counsel, accountants or consultants, respectively, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based, as aforesaid, are erroneous. Any such certificate or opinion made or given by counsel, accountants or consultants may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the Authority, upon the certificate or opinion of or representations by an officer or officers of the Authority,

unless such counsel, accountant or consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representations with respect to the matters upon which his opinion may be based as aforesaid are erroneous.

ARTICLE II

THE BONDS

SECTION 2.01 Authorization of Bonds. Bonds may be issued hereunder from time to time in order to obtain funds for the purposes authorized herein. The Bonds shall be issued under the Act for the purpose of financing or refinancing the acquisition, construction, reconstruction, improvement, betterment, extension, financing and refinancing of the System. The aggregate principal amount of Bonds which may be issued hereunder is not limited (subject, however, to the right of the Authority, which is hereby reserved, to limit or restrict the aggregate principal amount of Bonds which may at any time be issued and Outstanding hereunder) and consists or may consist of one or more Series of varying denominations, dates, maturities, interest rates and other provisions, all issued and to be issued pursuant to this Indenture and the Act, subject to the limitations contained in Sections 3.04 and 3.05. The Bonds are designated as the "Guam Waterworks Authority Water and Wastewater System Revenue Bonds." The Bonds may be issued in such Series as from time to time shall be established and authorized by the Authority by Supplemental Indenture, subject to the provisions and conditions herein contained.

SECTION 2.02 Execution of Bonds. The Bonds shall be executed on behalf of the Authority by the manual or facsimile signature of the Chairperson, sealed with the seal of the Authority and countersigned by the manual or facsimile signature of the Secretary of the Authority. Such seal may be in the form of a facsimile of the Authority's seal and may be imprinted or impressed upon the Bonds. The Bonds shall then be delivered to the applicable Registrar for authentication by it. In case any of the officers who shall have signed or countersigned any of the Bonds shall cease to be such officer or officers before the Bonds so signed or countersigned shall have been authenticated or delivered by the Registrar or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though those who signed and countersigned the same had continued to be such officers of the Authority, and also any Bond may be signed and countersigned on behalf of the Authority by such persons as on the actual date of the execution of such Bond shall be the proper officers of the Authority although at the nominal date of such Bond any such person shall not have been such officer of the Authority.

Except as may be provided in any Supplemental Indenture, only such of the Bonds as shall bear thereon a certificate of authentication in the form hereinbefore recited, manually executed by the applicable Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Registrar shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.03 Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.05, by the person in whose name it is registered, in person or by its duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the applicable Registrar.

Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the applicable Registrar shall authenticate and deliver a new Bond or Bonds of the same Series and maturity, for a like aggregate principal amount of authorized denominations. The Registrar

shall require the payment by any Bondowner requesting any such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

No transfer or exchange of any Bond of any Series shall be required during the period established by the applicable Registrar for the selection of Bonds of such Series for redemption or at any time after selection of such Bond for redemption.

SECTION 2.04 Exchange of Bonds. Bonds may be exchanged at the Principal Office of the applicable Registrar, for a like aggregate principal amount of Bonds of other authorized denominations of the same Series and maturity. The Registrar shall require the payment by the Bondowner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

SECTION 2.05 Bond Register; Right of Inspection. Each Registrar will keep or cause to be kept, at the Principal Office of the Registrar, sufficient books for the registration and transfer of the Bonds of the applicable Series, which shall at all times be open to inspection during regular business hours by the Authority, the Co-Trustee or the Trustee; and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as the Registrar may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as hereinbefore provided.

SECTION 2.06 Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority, shall be in registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and be authenticated by the applicable Registrar upon the same conditions and in substantially the same manner as the definitive fully registered Bonds. If the Authority issues temporary Bonds, it may execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Principal Office of the applicable Registrar, and the Registrar shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of the same Series and maturity or maturities in authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds executed and delivered hereunder.

SECTION 2.07 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the applicable Registrar shall thereupon authenticate and deliver a new Bond of like tenor in exchange and substitution for the Bond so mutilated (except that such number may be preceded by a distinguishing prefix), but only upon surrender to the Registrar of the Bond so mutilated. Every mutilated Bond so surrendered to the Registrar shall be cancelled by it and delivered to, or upon the order of, the Authority. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Registrar and, if such evidence be satisfactory to both and indemnity satisfactory to them shall be given, the Authority, at the expense of the Owner, shall execute, and the Registrar shall thereupon authenticate and deliver a new Bond in lieu of and in substitution for the Bond so lost, destroyed or stolen (except that such number may be preceded by a distinguishing prefix). The Authority may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Registrar in the premises. Any Bond issued under the provisions of this Section in exchange for any Bond mutilated or in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority, whether or not the Bond so mutilated or so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately

entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. Neither the Authority, the Trustee nor the Co-Trustee shall be required to treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the Accreted Value of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same.

SECTION 2.08 Book-Entry Registration of Exchanges. (A) Notwithstanding any of the provisions of Sections 2.02 through 2.07 to the contrary, the Supplemental Indenture providing for the issuance of a Series of Bonds may provide: (1) that one or more Bonds of such Series shall be delivered upon initial issuance to, and registered in the name of, or in the name of one or more nominees of, one or more bond depositories, (2) that such Bonds may not be exchanged, transferred or replaced on the registration books maintained pursuant to Section 2.05, subject to such exceptions as may be provided by such Supplemental Indenture, (3) that, while any such Bond is held by such a bond depository, the Authority, the Trustee, the Co-Trustee, any Paying Agent and any Registrar for such Bond may treat the bond depository as the absolute owner of such Bond for all purposes and shall have no liability with respect to (a) the accuracy of the records of such bond depository or any participant with respect to any ownership interest in such Bond, (b) the delivery to any participant, any beneficial owner or any other person, other than such bond depository, of any notice with respect to such Bond, including any notice of redemption, or (c) the payment to any participant, any beneficial owner or any other person, other than such bond depository, of any amount with respect to the principal or Redemption Price of or interest on such Bond.

(B) In the alternative, notwithstanding any of the provisions of Sections 2.02 through 2.07 to the contrary, the Supplemental Indenture providing for the issuance of a Series of Bonds may provide: (1) that one or more Bonds shall be delivered upon initial issuance to, and registered in the name of, or in the name of one or more nominees of, the Trustee, the Co-Trustee or any other Registrar for such Series of Bonds, in order to set forth the terms of such Bonds in the same manner as for Bonds that are subject to exchange, transfer and replacement in written certificated form, (2) that no person other than the Trustee, the Co-Trustee or such other Registrar may receive an authenticated Bond, subject to such exceptions as may be provided by such Supplemental Indenture, (3) that the ownership of such Bonds shall be evidenced solely by the bond registration books of the Trustee, the Co-Trustee or such other Registrar, and (4) that the transfer of the ownership of such Bonds shall take place subject to such regulations as may be provided by such Supplemental Indenture.

ARTICLE III

ISSUANCE OF BONDS; ISSUANCE OF A SERIES OF BONDS; PARITY PAYMENT AGREEMENTS

SECTION 3.01 Issuance of Bonds. At any time after the execution of this Indenture and one or more appropriate Supplemental Indentures, the Authority may sell and execute one or more Series of Bonds and the Registrar for each such Series of Bonds shall authenticate and, upon the Order of the Authority, deliver such Series of Bonds.

SECTION 3.02 Application of Proceeds of Bonds. The proceeds received by the Authority from the sale of each Series of Bonds shall be deposited with the Trustee or the Co-Trustee, who shall forthwith set aside such proceeds in such respective funds and accounts as are directed by a Request of the Authority, subject to the requirements of this Indenture.

SECTION 3.03 Establishment and Application of Construction Accounts; Modification of Projects. (A) With respect to each Project or Series, as determined by the Authority, the

Depository for the Construction Account for such Project or Series shall establish within the Construction Fund and maintain and hold in trust hereunder a separate account designated as the “_____ Construction Account” (inserting therein the Project or Series designation). Amounts in each Construction Account shall be used and withdrawn, as provided in this Section, solely for the payment of Project Costs of such Project (or of the Project or Projects for which such Series is being issued), including by (1) direct payment, (2) payment of any debt obligations issued by the Authority, or repayment of any advances made from any source, to finance temporarily such Project Costs, (3) payment of Capitalized Interest accruing on Bonds issued for such Project as specified in the Supplemental Indenture relating thereto, and (4) payment of Costs of Issuance of such Bonds. A Depository shall disburse moneys in a Construction Account only upon Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper and lawful charge against such account.

The Authority may modify the specifications or description of any Project or Projects by filing with the Trustee and each Depository for each Construction Account for such Project or Projects a Certificate of the Authority describing such modification, together with a written report of an Consulting Engineer to the effect that such modification will have no material adverse effect on the Authority’s ability to comply with Section 6.12 and an opinion of Bond Counsel to the effect that such modification and the use of amounts in such Construction Accounts for such modified Project or Projects will not adversely effect the exclusion, if any, of interest on any Bonds from gross income for federal income tax purposes.

Upon receipt of a Certificate of the Authority that amounts in any Construction Account are no longer required for the purpose of such account, said amounts shall be transferred to the Capital Improvement Fund or any other fund or account designated by the Authority in such Certificate; provided, however, that any such transfer shall be subject to receipt by the Trustee of an opinion of Bond Counsel to the effect that such transfer and the use of such amounts for the purposes intended by the Authority after such transfer will not adversely affect the exclusion, if any, of interest on any Bonds from gross income for federal income tax purposes.

(B) All interest and other profits derived from the investment of moneys in each Construction Account shall be retained therein.

(C) The Authority may provide in the Supplemental Indenture providing for the issuance of Additional Bonds that the proceeds of such Additional Bonds shall otherwise be limited as to use or application.

SECTION 3.04 Issuance of Additional Series of Bonds; Additional Parity Payment Agreements; Other Payment Agreements. (A) In addition to the initial Series of Bonds, the Authority may by Supplemental Indenture establish one or more other Series of Bonds payable from Revenues on a parity with the initial Series of Bonds and Parity Payment Agreements and secured by a lien upon and pledge of Revenues equal to the lien and pledge securing the initial Series of Bonds and Parity Payment Agreements, and the Authority may issue Bonds of any Series so established, in such principal amount and for such lawful purpose or purposes (including refunding of any Bonds issued hereunder and then Outstanding) as shall be specified by the Authority in said Supplemental Indenture, but only upon compliance by the Authority with the provisions of Section 3.05 and any applicable provisions of any Supplemental Indenture, and subject to the following specific conditions, which are hereby made conditions precedent to the issuance of any such additional Series of Bonds:

(1) No Event of Default shall have occurred and then be continuing.

(2) The Supplemental Indenture providing for the issuance of such additional Series of Bonds shall specify the purposes for which such Series is being issued, which shall be one or more of the following (1) to provide moneys for deposit into a Construction Account and withdrawal therefrom in accordance with law for purposes other than the refunding of Bonds, or (2) to refund all or part of the Bonds of any one or more Series then Outstanding, by depositing with the Trustee, in trust, moneys or noncallable Federal Securities in the necessary amount to discharge all liability of the Authority with respect to the Bonds to be refunded as provided in Section 10.02 and to make any payment necessary or desirable in connection with the termination of any Related Payment Agreement in connection with such refunding.

(3) The Supplemental Indenture providing for the issuance of such additional Series of Bonds shall require that the amount in the Bond Reserve Fund be increased, if and to the extent necessary, to an amount at least equal to the Bond Reserve Fund Requirement for such Series. Said deposit may be made from such proceeds or any other source, as provided in Sections 5.02 and 5.06 and said Supplemental Indenture.

(4) The aggregate principal amount of Bonds issued hereunder shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(5) The representations and estimates set forth in the certificates and written reports required by Section 3.05 for such Series shall have been made by the parties required to give such certificates and written reports.

(B) The Authority may enter into Parity Payment Agreements payable from Revenues on a parity with the Bonds and other Parity Payment Agreements and secured by a lien upon and pledge of Revenues equal to the lien and pledge securing the Bonds and other Parity Payment Agreements, but only upon compliance by the Authority with the provisions of Section 3.05 and any applicable provisions of any Supplemental Indenture, and subject to the following specific conditions, which are hereby made conditions precedent to the entering into by the Authority of any Parity Payment Agreement:

(1) No Event of Default shall have occurred and then be continuing.

(2) The representations and estimates set forth in the certificates and written reports required by Section 3.05 shall have been made by the parties required to give such certificates and written reports.

(3) The Authority, the Trustee and the Co-Trustee shall have executed and delivered a Supplemental Indenture designating such agreement as a Parity Payment Agreement and the Bonds to which such Parity Payment Agreement is Related.

(C) In addition to Parity Payment Agreements, the Authority may enter into Payment Agreements payable from Revenues after and subordinate to the payment from Revenues of payments with respect to the Bonds and Parity Payment Agreements, but only upon compliance by the Authority with any applicable provisions of any Supplemental Indenture and any such agreement shall constitute a Payment Agreement upon execution and delivery by the Authority, the Trustee and the Co-Trustee of a Supplemental Indenture designating such agreement as a Payment Agreement and the Bonds to which such Payment Agreement is Related.

SECTION 3.05 Proceedings for the Issuance of a Series of Bonds; Parity Payment Agreements. The requirements of this Section 3.05 are in addition to the other applicable conditions precedent set forth in Section 3.04.

(A) Whenever the Authority shall determine to issue a Series of Bonds, the Authority shall execute and deliver a Supplemental Indenture providing for the issuance of such Series of Bonds and specifying the terms and conditions of such Series of Bonds, including the following:

- (1) the authorized principal amount of such Series;
- (2) the purpose or purposes for which such Series is being issued and, if such purpose is the deposit of moneys in a Construction Account, the Project or Projects for which such Series is being issued (including any appropriate modifications to any previously specified or described Project or Projects);
- (3) the amount of the Bond Reserve Fund Requirement upon the issuance of such Series;
- (4) the amount to be deposited (or otherwise available) in the Bond Reserve Fund upon the issuance of such Series, the source or sources of such amount (which may be proceeds of such Series, a Credit Facility or other amounts available for such purpose);
- (5) the amount, if any, to be deposited in the applicable Construction Account, if any, upon the issuance of such Series, and the source or sources of such deposit (which may be the proceeds of such Series or other amounts available for such purpose);
- (6) the amounts, if any, to be reserved within the applicable Construction Account to pay Costs of Issuance and Capitalized Interest of such Series and the source or sources of such amounts (which may be the proceeds of such Series or other amounts available for such purpose);
- (7) the amount, if any, to be deposited in the Debt Service Fund as accrued interest upon the issuance of such Series;
- (8) the Credit Facility and Credit Provider, if any, for such Series and any special provisions not inconsistent with the terms of this Indenture relating to such Credit Facility and designating any Credit Agreement Payments with respect thereto;
- (9) the Related Payment Agreement, if any, and Qualified Counterparty with respect thereto and any provisions not inconsistent with the terms of this Indenture relating to such Payment Agreement;
- (10) the appointment of the Registrar and any Paying Agents for such Series and, if necessary, any Depositary for any Funds or Accounts relating to such Series;
- (11) the form, title and designation of, and the manner of numbering and lettering, Bonds of such Series;
- (12) the denomination or denominations of Bonds of such Series;