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8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9)
10 IN RE: EMERGENCY REQUEST BY THE) DOCKET NUMBER _____
11 GUAM WATERWORKS)
12 AUTHORITY FOR APPROVAL TO)
13 ENTER INTO A CONTRACT TO) **EMERGENCY PETITION FOR**
14 DESIGN AND CONSTRUCT THE) **APPROVAL OF A THE MORATORIUM**
15 MORATORIUM PROJECT AND TO) **PROJECT CONTRACT AND FOR**
16 ISSUE APPROXIMATELY \$168) **APPROVAL TO ISSUE**
17 MILLION DOLLARS IN BONDS TO) **APPROXIMATELY \$168 MILLION IN**
18 FUND THE MORATORIUM) **REVENUE FINANCED BONDS TO FUND**
19 PROJECT AND FUND CAPITAL) **GWA MASTERPLAN CAPITAL**
20 PROJECTS IDENTIFIED IN GWA'S) **PROJECTS AND THE MORATORIUM**
21 MASTER PLAN) **PROJECTMASTERPLAN DETECTION**
22) **CONTRACT FOR THE GUAM**
23) **WATERWORKS AUTHORITY**

24 Comes now, by and through Samuel J. Taylor, Attorney for Petitioner Guam
25 Waterworks Authority ("GWA"), does hereby file this Emergency Petition with the Guam Public
26 Utilities Commission ("PUC") for approval of the Moratorium Project Contract and the authority
27 to issue approximately one hundred and sixty eight million dollars (\$168,000,000.00) in revenue
28 bonds to fund the moratorium project and capital improvement projects required under GWA's
29 Master Plan. This Petition is being filed pursuant to the Contract Review Protocol adopted by
30 the Guam Public Utilities Commission on October 27, 2005.

31 **I. BACKGROUND**

32 On May 27, 2008, the Guam Consolidated Commission on Utilities passed Resolution
Number 16 – FY2008 which authorized the Guam Waterworks to issue a wastewater
moratorium for Central Guam based upon the following: (1) studies of GWA's wastewater
system performed by a nationally recognized engineering firm who identified a lack of

1 capacity in the affected areas as set forth in the GWA Mater Plan; (2) studies undertaken by the
2 Engineering firm of Duenas Borallo and Camacho (“Duenas”); and (3) GWA’s Engineering
3 Department’s empirical evaluations which included visual inspections of the GWA wastewater
4 system in the affected areas that identified surcharged lines and overflow events which
5 confirmed the evaluations established in the other two engineering reports. Exhibit A.

6
7 After a complete evaluation of the situation by GWA and Veolia, GWA’s PMC partner,
8 GWA decided that a complete overhaul of the way sewage was handled in Tamuning and at the
9 Chaot and Mamajano Sewage Pump Stations must occur in order to alleviate the problem and
10 account for increased flows related to the military buildup. See Exhibit B which contains a brief
11 summary of the project, a Functional Design Report and GWA’s Bid Evaluation Report. Given
12 the fact that GWA lacked funds to support a project with design and construction costs estimated
13 at thirty million dollars (\$30,000,000.00), GWA approached the Guam Legislature for specific
14 approval for the project that was identified by GWA and Veolia. On December 1, 2009, Bill 397
15 was introduced by Senator Espaldon which acknowledged the existence of an emergency and
16 that a new approach was needed to provide GWA flexibility in procurement authority for design,
17 construction and finance for the project to fast-track the project completion. The end result of
18 this Bill was P.L. 29-130 that was signed into law on January 8, 2009. Exhibit C. GWA had
19 been preparing for the eventuality that the bill would pass into law and issued an Invitation for
20 Bids for the project the day after P.L. 29-130 became law on January 9, 2009. Exhibit B. Given
21 the complexity of the project and the need to have some form of design returned with the bid, the
22 bid opening that was originally scheduled to occur in late March was delayed by request of the
23 potential bidders until May 1, 2009 at which time two firm bids were returned. Id.

24
25 Unfortunately, while both bidders offered competitive amounts for design and
26 construction that were valid for the 90 days as required under the bid (and as secured by bid
27 bonds), neither bidder offered equity financing or other forms of financing and instead offered
28 only to assist with the issuance of bonds (in one case qualified public activity bonds and the
29 other traditional revenue bonds). Exhibit B (Bid Evaluation Report). Given the horrible market
30 conditions in the public finance sector which existed at the time GWA was forced to make the
31 solicitation, these offers were not surprising. However, as the PUC and its staff knows, the
32 process to obtain public financing via revenue bonds under Guam law is a rather time consuming

1 process which is now forcing GWA to make raise this petition to an emergency thereby requiring
2 timely PUC approval otherwise GWA's costs for the project will likely increase substantially
3 due to project delays for risks that the bidders were not asked to assume in their bid amounts or
4 the worst case scenario is that the bidders will simply refuse to extend out their bid and walk
5 away from the project. Ironically, having a bidder walk away from the project is a distinct
6 possibility as the construction companies who bid are often successful at receiving federal
7 contracts and they may not want to keep their bonding capacity tied up in this project as it limits
8 their ability to bid on other projects. In addition, GWA lifted the Moratorium on April 1, 2009
9 because it received firm confirmation from two bidders that they would submit bids which
10 resulted in GWA issuing many building permits for the affected moratorium area which had been
11 on hold since May of 2008 – and these permits may not now be legally revoked. In sum, TIME
12 **IS OF THE ESSENCE** and GWA humbly asks for the PUC's expedited action to receive
13 approval in June or early July for this project.

14 15 **II. JUSTIFICATION FOR GRANTING THE PETITION**

16 **A. Moratorium Contract Approval.**

17
18 There are three separate components to this Petition and approval of the Moratorium
19 Project Contract is the first component that needs to be assessed. Under Section 1(c) of the
20 Contract Review Protocol, GWA is required to submit to the PUC for approval contracts that in
21 any given year exceed one million dollars. In addition, under Section 2 of the Protocol, GWA is
22 permitted to review contracts without prior PUC approval, although prior to executing the
23 contract, GWA is required to seek PUC approval. Moreover, because the bid was very flexible
24 as to what terms the bidders would respond with in terms of design, financing and construction
25 schedule and method, GWA believed that it would be next to impossible for the PUC to evaluate
26 the costs and benefits of the project until such time as GWA had received firm and fixed bids
27 where the design, construction method and costs were known. Exhibit B.

28
29 Via the findings in CCU Resolution No. 16-FY2008 (Exhibit A), the Legislative Intent
30 for P.L. 29-130 (Exhibit C) and the Functional Design Report (Exhibit B), there is more than
31 ample evidence that the project is "reasonable, prudent and necessary." In addition, the
32 requirements of Section 6(b) of the Contract Review Protocol are more than satisfied upon an

1 examination of the Functional Design Report and Project Summary contained in Exhibit C.
2 GWA therefore humbly seeks the approval of the proposed contract in the amount of thirty-seven
3 million four hundred fifty-one thousand dollars (\$37,451,000). Exhibit D. Finally, the
4 Consolidated Commission on Utilities in Resolution No. 18 – FY2009 approved the award of
5 this Contract to Guam Community Improvement Foundation Incorporated (“GCIFI”). Exhibit E.

6 **B. Moratorium Project Financing.**
7

8 GWA has stated above that because of the financial meltdown which affected public
9 finance sectors, the financing portion of the design-build-finance portion of the bid simply did
10 not produce the results that it may have one year from now. However, the need for the project
11 and the need to secure financing not later than August of 2009 is a very real and well defined
12 need. The CCU acknowledged this need and approved the issuance of revenue bond financing
13 for the project in the amount of thirty-seven million four hundred fifty-one thousand dollars
14 (\$37,451,000) which included the following costs that are to be added to the principal amount of
15 the borrowing: (1) all costs of issuance including the payments to GEDA that must be made
16 pursuant to Guam law; (2) allowed reimbursable amounts that GWA has incurred for project
17 development; (3) project management costs of not more than one million dollars (\$1,000,000);
18 and (4) any other reimbursable costs allowed under the relevant tax laws and rules which GWA
19 incurs or causes to be incurred in conjunction with the issuance of the aforementioned bonds.
20 Exhibit E.

21
22 **C. Master Plan Project Financing.**

23 During the time that GWA was examining the timing of issuing the bonds for the
24 Moratorium Project, it became apparent that GWA already had plans to issue one hundred forty-
25 eight million dollars (\$148,000,000.00) in bonds in early 2010 (January) to support capital
26 projects that were required to be identified under Paragraph 10 of the Stipulated Order (as
27 Amended) via GWA’s Master Plan. GWA was further required under Paragraph 10 to
28 implement the Master Plan that was developed and approved and incorporate that plan into a five
29 year financial plan that must be submitted to the PUC for approval. GWA has received USEPA
30 and CCU approval for its Master Plan and the five-year financial plan (including a CIP listing) is
31 currently pending approval before the Guam PUC.
32

1 It became apparent to GWA that issuing two sets of bonds (one in August of 2009 and
2 one in Dec of 2009 or January of 2010) with each requiring their own Official Statement (along
3 with associated printing costs), a separate Consulting Engineers Report, a separate rating and
4 other costs of issuance would simply constitute a waste of money and could easily cost the GWA
5 ratepayer an additional \$250 to \$300,000 dollars for no reason whatsoever. In addition, GWA
6 has projects currently on hold for lack of funds, including the remainder of the Water Tank
7 Inspection / Repair Project and which is now subject to fines by the USEPA in June of 2009.
8 Exhibit F. GWA decided to ask CCU approval to issue the remainder of the bonds authorized
9 under P.L. 28-71 four to five months earlier which will have little impact on its rate requirements
10 under the five year financial plan – although it will require the debt service capability to be
11 available at a much earlier date. Exhibit G. Thus, subtracting the amount of bonds sold in 2005
12 from the \$220 million authorized by the Guam Legislature, there is exactly one hundred eighteen
13 million eight hundred seventy-five thousand dollars (\$118,875,000.00) of bonds left. In
14 addition, the moratorium project has been removed from this proposed issuance to stand on its
15 own because of the authority given to GWA and the CCU to issue bonds specifically for the
16 moratorium project and also because the anticipated fifty million dollar (\$50,000,000) of the
17 project including financing would take up too much of the original proposed issuance as
18 contained in the financial plan. Exhibit H. In conjunction with this request, GWA modified its
19 2010/2011 capital project listing to reflect the changes stated above. Exhibit I.

20 21 22 **III. CONCLUSION**

23 GWA has filed a detailed and appropriately supported Petition seeking the approval by
24 the Public Utilities Commission for a much needed Moratorium Project, Moratorium Project
25 Financing and Master Plan Project Financing. These projects are either required or
26 contemplated under the Stipulated Order and/or the GWA Master Plan and these plans have been
27 formally approved by the Consolidated Commission on Utilities.

28
29 Finally, if GWA fails to obtains to the funds contemplated in the financings herein by the
30 end of August 2009, it is possible that the Moratorium contractor will refuse to honor their firm
31 bid and they may either extract a dear price for extending out their bid or they may simply walk
32 away from the project leaving GWA and the People of Guam with a potential health hazard

1 when the streets of Guam fill with wastewater which may end up in drinking water supplies or
2 public waterways.

3 Based upon the foregoing, GWA respectfully requests approval its petition as set forth
4 above.

5 Respectfully submitted this 10th day of June 2009.
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8 Samuel J. Taylor
9 GWA Legal Counsel
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EXHIBIT A

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**GUA M CONSOLIDATED COMMISSION ON UTILITIES
RESOLUTION NO. 16 – FY2008**

**RELATIVE TO APPROVING A TEMPORARY MORATORIUM FOR SEWER
CONNECTIONS TO GWA'S PUBLIC SEWER SYSTEM IN CENTRAL GUAM**

WHEREAS, pursuant to Chapter 72 of Title 12 of the Guam Code Annotated, the Consolidated Commission on Utilities has the authority to oversee the Guam Waterworks Authority ("GWA"); and

WHEREAS, the Chief Engineer and Senior Wastewater Engineer for the Guam Waterworks Authority has determined that GWA's wastewater system in Central Guam lacks sufficient sewer capacity to allow additional connections to be made to the system; and

WHEREAS, the GWA Engineering Department's determination was based upon studies of GWA's wastewater system performed by the nationally recognized engineering firm of Brown and Caldwell ("B&C") who identified a lack of capacity in the affected areas as set forth in the GWA Master Plan along with studies undertaken by the Engineering firm of Duenas Borallo and Camacho ("Duenas") and GWA's own empirical evaluations which included visual inspections of the GWA wastewater system in the affected areas, including observation of surcharged lines and overflow events which confirmed the evaluations established in the reports; and

WHEREAS, the military buildup and the resultant development which has accompanied such an unprecedented move has exacerbated GWA's capacity related issues established in the Master Plan and Duenas engineering reports; and

WHEREAS, there are two main choke points located in Route 4 from in front of McDonalds to Paseo and on Route 1 from Paseo to Bank Pacific in Tamuning, have affected GWA's ability to support further sewage connections in the villages of Sinajana, Ordot, Mongmong, Toto, Maite, Piti, Asan, Agana Heights, Mangilao and parts of Barrigada and Yona; and

1
2 **WHEREAS**, the Consolidated Commission on Utilities and the Guam Waterworks
3 Authority believes that it would be grossly irresponsible for GWA to continue to allow for
4 additional connections to the public sewer system as doing so would prevent GWA from being
5 able to adequately serve its existing customers, it would violate GWA's Rules and Regulations
6 and federal laws governing the operation of the GWA wastewater system and the additional
7 connections would negatively impact the public's health and safety due to the existence of
8 preventable sewage overflows; and

9
10 **WHEREAS**, the situation is temporary and GWA has identified a viable plan that will
11 quickly alleviate the problems as defined herein which will be based upon sound engineering
12 and financial footing that is in the best interest of the people of Guam.

13
14 **NOW THEREFORE, BE IT RESOLVED BY THE CONSOLIDATED**
15 **COMMISSION ON UTILITIES** that the Guam Waterworks Authority's request for a
16 temporary moratorium for connections to the GWA wastewater system in Central Guam is
17 hereby approved based upon the requirement that GWA must follow the laws of Guam and the
18 United States, its own rules and regulations and given the need to protect the public's health
19 and safety as well as the environment by preventing overflows of raw sewage that would result
20 if connections to the public sewage system in Central Guam continue unabated.

21
22 The Commission further resolves that GWA is directed to proceed with all due haste to
23 identify the engineering solutions to the capacity problem and find the funds necessary to
24 construct sufficient capacity to ensure the public sewer system is able to serve new customers.

25
26 **RESOLVED**, that the Chairman certifies and the Board Secretary attests to the
27 adoption of this Resolution.

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29 /

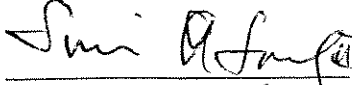
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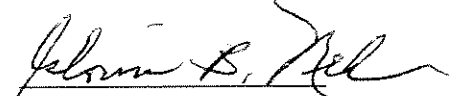
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1 DULY AND REGULARLY ADOPTED AND APPROVED THIS 28th DAY OF
2 MAY 2007.

3
4 Certified by:

5 
6 _____
7 **SIMON A. SANCHEZ, II**
8 Chairperson

Attested by:

9 
10 _____
11 **GLORIA B. NELSON**
12 CCU Board Secretary

13 I, Gloria B. Nelson, Board Secretary for the Consolidated Commission on Utilities, as
14 evidenced by my signature above do hereby certify as follows:

15 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
16 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
17 legally held at a place properly noticed and advertised at which meeting a quorum was
18 present and the members who were present voted as follows:

19 AYES: _____ 5 _____
20 NAYS: _____ 0 _____
21 ABSTENTIONS: _____ 0 _____

