GUAM PUBLIC UTILITIES COMMISSION REGULAR MEETING



June 26, 2025

SUITE 205, 241 FARENHOLT AVENUE, OKA BUILDING, TAMUNING, GUAM MINUTES

1. CALL TO ORDER

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:30 p.m., on June 26, 2025, pursuant to due and lawful notice. The meeting was called to order at 6:30 p.m. Commissioners Jeffrey C. Johnson, Peter B. Montinola, Joseph M. McDonald, Michael A. Pangelinan, Rowena Perez-Camacho and Doris Flores-Brooks were in attendance. The following matters were considered at the meeting under the Agenda included as Attachment "A" hereto.

2. APPROVAL OF MINUTES

The Chairman announced that the first item of business on the agenda was the approval of the minutes from the regular meeting held on May 29, 2025. Commissioner Montinola moved to approve the minutes, subject to corrections, which motion was seconded by Commissioner McDonald, and the motion was carried and unanimously passed.

The Chairperson announced that the next item of business on the agenda is the following Guam Waterworks Authority matter:

GUAM WATERWORKS AUTHORITY ("GWA")

3. GWA Docket No. 25-08 - Petition to Approve the Issuance and Sale of the Guam Waterworks Authority Water and Wastewater Series 2025A Revenue Bonds.

The Chairman introduced GWA Docket No. 25-08, GWA's Petition to Approve the Issuance and Sale of the Guam Waterworks Authority ("GWA") Water and Wastewater Series 2025A Revenue Bonds. Chairman Johnson announced that there is an ALJ Report and proposed Order and invited CALJ Frederick J. Horecky to present the matter. Commissioner Michael A. Pangelinan announced that GWA is a client of his law firm in pending litigation and recused himself from participating in this matter. CALJ Horecky thereafter informed the Commissioners that this matter comes before the PUC on GWA's petition to approve the issuance and sale of the GWA Water and Wastewater Services 2025A Revenue Bonds filed by GWA on June 6, 2025. In its Petition, GWA seeks to issue

and sell up to \$350M in water and wastewater system revenue bonds as authorized by Public Law 37-103. CALJ Horecky stated that in September 2024, the PUC in GWA Docket No. 24-05, issued a rate decision which approved a 5-year capital investment program estimated at a cost of \$899M. GWA submits that the \$350M amount is within GWA's current financing plan and rate structure, as approved by the PUC in the 2024 through 2029 five-year plan, which will cover both interest and principal payments on the financed amount once they begin.

Under the bond structure, the principal on the bonds will not become due within the first 5 years of the date of issuance. GWA states that no new rate increases will be required to support the issuance under GWA's present 5-year rate plan ending in FY2029. Since this docket involves bond funds, the PUC must approve the bond issuance and any expenditure of the bond funds under the Contract Review Protocol.

GWA submits that the proceeds from the bond issuance will fund critical infrastructure projects necessary to construct, improve, maintain, and repair GWA's water and wastewater systems. Additionally, these investments will support the plan and required additions, upgrades, and treatment systems mandated by court orders, federal regulations and environmental laws. The actual amount sought from the issuance of the bond proceeds is around \$274,947M, which GWA states may increase if the market interest rate moves unfavorably against GWA. GWA Resolution 27 FY 2025, issued by the CCU, authorized the issuance of 1 or more series of additional bonds in an aggregate principal not to exceed \$350M to finance various projects to pay for the cost of issuance of the bonds, for credit enhancements and to fund the deposit with debt service reserve fund. The CCU indicates that the issuance of the bonds is necessary to provide improvements to the system.

Public Law 37-103 authorized the bond issuance -- the Guam Legislature expressly approved GWA's issuance and sale of revenue bonds in a principal amount not to exceed \$560M. The Guam Legislature further provided that such bonds shall be issued for the purpose of (1) financing capital improvement projects necessary to comply with regulatory enforcement actions, including any consent decree entered between GWA and the U.S. Environmental Protection Agency and U.S. Department of Justice; financing capital improvement projects referenced in GWA's 20-year Master Plan and 4-year Revenue Plan; and for funding a reserve plan deposit with reserve to the bonds coupled with paying expenses related to the authorization, sale and issuance of new bonds. While the Legislature mentioned capitalized interest, there is no capitalized interest in these bonds but a provision that interest-only payments will be made for first 5 years of the bonds.

In Section 1 of the legislation, the Legislature recognized the current GWA 5-year financial plan, including the \$898M GWA capital investment program in which \$780M will need to be borrowed. CALJ Horecky stated that this is really the impetus for the bond issuance – to pay at least a portion and the actual bond fund would be \$250M. Thus, it is not to pay for the entire program over the 5 years, but it is mostly to pay for those capital improvement

projects. PUC always assesses whether there was GEDA approval and there was in this instance. On June 19, the GEDA Board of Directors enacted Resolution 25-09, which authorized the issuance and sale of the wastewater revenue bonds and wastewater bonds, in an amount not to exceed \$350M. Additionally, CALJ Horecky requested Georgetown Consulting Group (GCG) to assess the bond issuance and GCG filed its report dated June 14, 2025, concluding that: (1) the bond should be approved; (2) the petition is compliant with enabling legislation and in line with previously approved financing plans; and (3) serves infrastructure and regulatory compliance needs.

The financial documents received from the underwriters indicated the principal amount of \$268,185M and the bond premium of \$6,792M or approximately \$274M plus. The Total Interest Cost (TIC) calculation was at 5.14%. The amount of \$250M will be placed in the project funds and \$19.6M in the debt service reserve bond. Over the average life span of the bonds of 20.6 years, GWA and the ratepayers will pay debt service of \$554.9M with an average annual debt service of \$18.5M. CALJ Horecky concluded that the bond issuance is justified. The preliminary official statement in the Galardi Rostein Study, which was submitted with the Petition, indicates various reasons for the bond issuance. GWA has demonstrated the necessity for seeking bond issuance to provide adequate funding for its Capital Improvement Projects ("CIP") for FY2025-2029. An overview of the spending for the entire 5-year period is as follows:

- Approximately \$356.4M or 39.7% of the FY2025-2029 CIP is allowed for projects to comply with the 2011 Court Order and the 2024 Partial Consent Decree, which involves wastewater projects comprising of the gravity mains, the force mains and pumping stations that are improvements that the Federal Government is requiring GWA to undertake;
- Approximately \$203.1M or 22.6% of FY2025-2029 CIP for water loss control projects. In the district metered areas, GWA is attempting to measure water loss, take steps to improve water loss and rebuild water lines, etc. PUC has been concerned for years about the possible loss of 50% to 60% of the water as a non-revenue source;
- Approximately \$204.7M or 22.8% for PFAS and other contaminants like diodred.

Attached as Exhibit "A" to the Order approving the long-term debt is a summary of GWA's 2025-2026 CIP, which include water production, water treatment, distribution, piping, wastewater collection and correcting the issues in the consent decree. CALJ Horecky further stated he met with GWA representatives Theresa Rojas and Taling Taitano, Lester Carlson of BBMR and Tina Garcia from GEDA, to discuss the possible issues and timing of the bonds and how the current high inflation might affect the bond issuance. The rates are 5% for these bond issuances. GWA stated in its petition that interest rates could increase by 200 base points. Lester Carlson of BBMR spoke regarding this issue and stated that it was a good time for GWA to go out for the bonds – the interest rate is pretty much similar to what the other government bonds have been and the fact that the GWA bonds are triple tax exempt meant that it would be an advantageous concept. Mr. Carson also mentioned

that they are more knowledgeable and versed in bond issuance and thus are able to determine whether it would be a good time or not to go for the bonds. In some circumstances the interest rates were too high and, in the law of interest rates for bondholders, interest it should not exceed 7%. Mr. Carlson further indicated that if the interest rate was around 7%, there might be some concerns for Guam. CALJ Horecky believes that everyone is taking all proper matters into consideration.

CALJ Horecky stated that the bond issuance raised some concerns, i.e., an amount not to exceed \$350M, and yet the underwriters reflect the bonds as \$274M - what is the reason for the difference. GWA legal counsel Rojas explained that there are uncertainties about the issuance - GWA may have to go out for more than what it thought it would. The legislature authorized \$550M so it's hard to disagree with that. Additionally, the bond counsel and Mr. Carlson both agreed that they wanted the PUC to approve an amount not to exceed \$350M. The bond TIC rate for the issuance was 5.14%.

A discussion ensued between CALJ Horecky and Commissioner Brooks regarding the interest rate on the bonds, the sufficiency of proposed rate increases to cover debt service, and supplemental indenture agreements to cover the bonds.

Based on the record before the PUC and the independent review of its consultant, GCG, CALJ Horecky recommended that the PUC approve GWA's petition for issuance and sale of Guam Waterworks Authority Water and Wastewater Series 2025A Revenue Bonds. The legislature authorized the bonds and determined that the bonds were necessary and it is difficult for an administrative agency to question or overturn legal guidance from the legislature through enacted law. CALJ Horecky prepared 2 Orders -- one that provides that GWA obtain prior PUC approval of the projects listed in the long-term debt order (subject to certain exceptions or exclusions) and the other Order approves the long-term debt. The Order approving the long-term debt provides a lengthy explanation of every bond issuance since 2007 and approves the form and terms and conditions of the bond documents, which are attached to the Order.

Chairman Johnson then solicited for comments from GWA GM Miguel Bordallo, who offered the following:

- An explanation of the disparity of the current all-in TIC numbers and the lower numbers in the past and how the market conditions were more favorable to GWA back then than they are now.
- The 2024 refunding and tender and how a significant amount of marketing and investor presentations were involved, which drove up the interest rates. The underwriters aggressively acted to bring down the pricing, which is the reason for a much lower interest cost at the end of the process than when the negotiations first began and how GWA intends to exert the same aggressive efforts in marketing these bonds in an effort to lower the interest rates.

• With respect to the deferred principal on prior bond issuances, GWA employed a capitalized interest structure in the bonds. GWA has retained financial advisers since the last 5-year rate plan, who advises not to structure bonds that way. As a comparison on this issuance, if GWA utilized its prior capitalized interest structure, it would add an additional \$36M in total debt service and by not employing this structure, GWA is saving money. It does increase the debt service amounts a bit earlier, which is the reason GWA is using the principal deferment for the first 5-years to balance that out. GWA believes that it is saving ratepayers money with the current bond structure proposed through this transaction.

Discussions ensued between the Commissioners and GWA GM Bordallo regarding (1) the CIP funding source and the reasoning for the decrease in EPA grants; (2) GWA's disclosure requirements for the bond; (3) the bond reserve fund being reduced by 50% of the debt service payments and how the bond reserve would be applied; (4) GWA's financial projections and how it is calculated; (5) the necessity of these bonds to fund improvements to address the compliance of the partial decree; (6) the 12th indenture agreement and how it updates and corrects provisions of the 2005 indenture agreement; and (7) the 60% bondholder approval and the likelihood of the bonds' approval.

Following further discussions regarding GWA's on-going capital projects, Commissioner Montinola moved to approve GWA Docket 25-08, which was seconded by Commissioner McDonald, and the motion carried and was unanimously approved.

GUAM POWER AUTHORITY ("GPA")

4. GPA Docket No. 25-13 - Petition of the Guam Power Authority for two-step reduction in the Levelized Energy Adjustment Clause (LEAC) for the period August 1, 2025 through January 21, 2026.

Chairman Johnson addressed the next agenda item, GPA Docket No. 25-13, the Petition of the Guam Power Authority for a two-step reduction in the Levelized Energy Adjustment Clause (LEAC) for the period August 1, 2025 through January 31, 2026. The Chairman informed the Commissioners that there is an ALJ Report and a proposed Order. CALJ Frederick J. Horecky presented this matter and stated that GPA in its petition requests that the PUC implement a 2-step reduction in the LEAC factor. First, from 20.8802 cents per kilowatt hour (kWh) to 18.8781 cents per kWh for a 1-month period, from August 1, 2025 through August 31, 2025. Secondly, a further reduction from the 18.8781 cents per kWh to 13.5840 per kWh for a 5-month period, from September 1, 2025 through January 31, 2026.

Effective February 1, 2025, the PUC reduced the LEAC factor from 26.1995 per kWh to 20.8802, for meters read during the 6-month period ending July 31, 2025, which is the current LEAC factor. The basis for the reduction was a 14% decrease in fuel prices. In GPA Resolution FY 2025-17 dated May 17, 2025, the CCU authorized GPA to petition the PUC to reduce the current LEAC factor in a 2-step process over the next 6-month period. GPA's

rationale for continuing to reduce the LEAC factor for the next 6-month period is that there have been further decreases in fuel prices. The average market price of fuel percentage for the current LEAC period was at \$100.01 per barrel. However, the projected average price of fuel for the upcoming period is \$89.93 per barrel. A second reason offered by GPA for the requested decrease in the LEAC factor is the expected commissioning of the Ukudu powerplant in September 2025. According to GPA, the Ukudu powerplant is a "highly efficient combined cycle plant that significantly reduces the amount of fuel requirement."

CALJ Horecky solicited the assistance of Marianas Consulting Group ("MCG") to review and analyze GPA's LEAC petition and MCG filed its report of June 17, 2025. MCG and CALJ Horecky concluded that the LEAC factor should be set by the PUC for the entire 6-month period rather than in the 2-step process proposed by GPA. The reasons supporting this analysis are outlined by MCG and are as follows:

- A 6-month rate reduction appears to be more in line with the intent of the LEAC program and is consistent with the practice of prior LEAC rate adjustments;
- If GPA's 2-step proposal is accepted, basically over a period of 3-months, i.e., July, August and September, there would be 3 different LEAC rates and that is not consistent with the way the LEAC program operates;
- The overall impact of the 6-month rate adjustment will have essentially the same impact on ratepayers as the 2-step approach requested by GPA.

MCG has correctly characterized the history and purposes of the LEAC. It was established in part to levelize the impact of anticipated significant future fluctuations in fuel cost and usage on GPA ratepayers. In reviewing Tariff Z (LEAC), the rate schedule that this arises from, it contemplates that PUC will set 1 factor for the entire 6-month period. Schedule Z is attached to the ALJ Report. The fuel recovery charge refers to 1 charge – a charge that will be calculated semi-annually.

Additionally, the projected fuel expenses are required to be calculated over the entire 6-month period, not 1 month here and 5 months later. Schedule Z states on its face that the fuel recovery charge is 1 charge, which will be recalculated semi-annually for a 6-month period and be subject to the approval of the PUC. And, if the LEAC recommended by MCG is too high and GPA recovers more through the LEAC than expected, GPA can come back and petition the PUC, if there is an over-recovery, to have it adjusted. That is what has been done in the past. In comparing the MCG rates and that of GPA, there is about a 1% difference in terms of the 6-month LEAC period – GPA's equivalent factor proposal was about 14.5 and MCG was 15.5.

CALJ Horecky recommended that the PUC adopt the position of MCG and reduce the LEAC factor from 20.8802 cents per kWh down to 15.5495 cents per kWh, for meters read on and after August 1, 2025 through January 31, 2026. CALJ Horecky prepared an Order for the PUC's approval that sets the secondary, primary and transmission fuel recovery

factor levels, which will result in a 25.53% decrease in the LEAC factor for residential customers utilizing an average 1000 kWh per month and a 17.40% decrease in the total bill.

Chairman Johnson then solicited for comments and GPA GM John Benavente stated that GPA supports the recommendations of MCG and CALJ Horecky. He further stated that this is a revenue-neutral situation. Fuel prices have increased slightly and it is coming down again. However, GPA will make it up revenue-neutral in the January timeframe, when the Ukudu powerplant comes on-line on September 30th as it will provide energy cost.

Commissioner Flores-Brooks commented on her observation that it has been 6 years -- since August 2019 -- that we were doing that well and that really brought relief for ratepayers. Commissioner Montinola requested for a quick update on the under-recovery or over-recovery -- since the LEAC will be reduced, and GPA CFO John Kim stated that GPA is currently 240,000 over-recovery as of the end of May. Commissioner Montinola inquired whether we are now on the positive side to which GPA CFO Kim responded in the affirmative.

Commissioner Pangelinan commented that GPA's Petition and the CCU Resolution stated that GPA did not include the cost associated with the Demand Side Management Rebate Program in the LEAC period from February 2025 to July 2025 and asked if GPA can explain the significance of that statement. GPA GM Benavente stated the GPA still has the funds from the previous LEAC and whatever is received for the rebate stays in the fund. GPA GM Benavente believes GPA has enough to continue to cover the Demand Side Management Program and GPA did not need to include that rate to generate the \$1.5M per year for rebates. It has been a very successful program for everyone. There are 2 factor that reduce the cost for the consumers – one is the rates GPA provides in fuel, etc. – the other is consumption. Customers are now purchasing energy-efficient machines and vendors are bringing in higher seers. Guam is now stabilizing and we are seeing slow but real growth.

There being no further discussions or comments, Commissioner Pangelinan moved to approve the CALJ's proposed Order adopting the recommendation of MCG as to the adjustment of LEAC, which motion was duly seconded by Commissioner McDonald, and the motion was carried and approved.

5. GPA Docket No. 25-15 - Petition of the Guam Power Authority ("GPA") to Approve its Procurement of Energy Storage System Energy-Shifting and Grid Services.

Chairman Johnson addressed the next agenda item, GPA Docket Number 25-15, the Petition of the Guam Power Authority to Approve its Procurement of Energy Storage System Energy-Shifting and Grid Services. Chairman Johnson addressed ALJ Joephet Alcantara, who is presenting this matter, and inquired if this matter was being "tabled".

ALJ Alcantara confirmed in the affirmative and stated that the matter should be ready by the PUC's next scheduled meeting in August 2025. GPA GM John Benavente and GPA legal counsel Woloschuk confirmed that GPA will be working with ALJ Alcantara so that this matter will be ready for presentation.

ADMINISTRATIVE MATTERS

6. Update on Solicitation of Lease for Office Space.

The PUC then transitioned to administrative matters, beginning with an update on the Solicitation of Lease for Office Space. PUC Legal Counsel Anthony Camacho provided an update and presented the draft Request for Quotation ("RFQ") for office space, which is compliant and in line with the PUC's new procurement guidelines, namely, Item 6. The RFP is based on a CLTC recent solicitation and requests specification for the leased space to be approximately 1500 square feet, to accommodate an internal conference room. It also contains the following specifications:

- If a multi-story office, it should have an operational elevator or escalator. If the space offered is not on the ground floor and, if the elevator or escalator becomes inoperable during the term of the lease for any reason whatsoever, for a period exceeding 40 days, the PUC shall have the unilateral right to terminate the lease and abandon the leased-premises;
- Five (5) parking stalls, with PUC signage, similar to what the PUC currently has;
- A backup generator; and
- A lease term of five (5) years.

If the PUC approves the RFQ as to form, it could issue the RFQ to 2 potential vendors that have already been identified. Once an award has been issued by the PUC, the move-in date would be sixty (60) days after the award. PUC can then move from its current location to its new location. Commissioner Flores-Brooks inquired on the cost of moving. Legal counsel Camacho stated that PUC needs to secure a separate contract for moving. Commissioner Flores-Brooks further inquired if PUC's current landlord would be liable for PUC's moving expenses, as the anticipated move is a result of inoperable elevators – and non-ADA compliance. Commissioner Montinola inquired if the PUC tendered a security deposit for its current location, and legal counsel Camacho stated that he could find no evidence that a security deposit was made but that he would confirm if that is in fact that case. A discussion ensued regarding the possibility of inserting a provision in the RFQ/Lease for the landlord to pay for moving expenses in the event the move was due to landlord's negligence or default in the lease. Legal counsel Camacho stated he will revise the RFQ/Lease to include the provision for moving expenses in the event of landlord's negligence or default on the lease.

There being no further comments by the Commissioners, on motion duly made by Commissioner Flores-Brooks to approve the RFQ, subject to the suggested

revisions/amendments, and seconded by Commissioner Montinola, said motion was carried and unanimously approved.

7. Solicitation for In-House Counsel.

Chairman Johnson then addressed the next item on the agenda, Solicitation for In-House Counsel. CALJ Frederick J. Horecky presented this matter and stated that due to his current obligations, he has found it necessary to limit his duties with the PUC. CALJ Horecky stated that his present contract with the PUC expires in March 2026 and he will continue to work as CALJ until then. Thereafter, CALJ Horecky hopes to lessen his heavy workload and scope of services that he has provided to the PUC during his tenure -- the last 17 plus years. CALJ Horecky may continue, however, to provide advice concerning certain matters that he handled in the past for the PUC. CALJ Horecky further informed the PUC of his plans on winding down his legal practice, realty office and his environmental company.

At present, the PUC has 2 ALJs and a legal counsel. The PUC's workload has increased substantially during these past few years. It presently has 3 pending rate cases and 1 true-up that is turning out to be like a rate case. It is CALJ Horecky's belief that the PUC needs counsel who has a fair amount of experience with utilities and can devote a substantial amount of time to the PUC. There is a cost factor with an In-House Counsel, the PUC would have to pay a set salary – somewhere in the range of \$150K plus, as PUC does not have insurance and retirement. Under the procurement guidelines drafted by legal counsel Camacho, PUC has the authority to retain any professional services required and the statutory framework is broad. It also allows the PUC to employ administrative staff and personnel. Under those provisions, the professional services range is between \$1.00 to \$250,000.00, however the cost should substantially be less than \$250K. The PUC Administrator conducts the solicitation and CALJ Horecky would serve as a resource in providing advice on proposals, bids, etc. The scope of services for PUC's In-House Counsel, would include but not be limited to:

- Preparing Notices, Agendas and Minutes of Meeting;
- Preparing all PUC reports (i.e., Annual Reports, Citizen Centric Reports, FOIA Reports, etc.);
- Providing advice or reports on regulatory matters and contract review;
- Attend and represent the PUC's in Public Hearings and Legislative hearings;
- Reviewing notices and legislative bills being introduced by the Guam Legislature that affects the function of the PUC, and providing the necessary testimony in opposition or support of such legislation;
- PUC Public Officer;
- Assist with administration duties (e.g., RFPs and/or RFQs, etc.);
- Assist the PUC staff on in-house matters.

CALJ Horecky has prepared a position description for the PUC's review. CALJ Horecky also stated that he could assist the successful candidate with the tasks at hand. CALJ

Horecky stated that Harry Boertzel, who was at one time the sole ALJ for the PUC, did not have any outside clients. At that time, Mr. Boertzel was somewhat of in-house counsel and was paid a monthly flat salary. Together with Georgetown, who served as PUC's only consultant during Mr. Boertzel's tenure, Mr. Boertzel and Georgetown did all the work for the PUC.

Chairman Johnson added that Mr. Boertzel and Georgetown would return to Guam every 3 months, for about 2 weeks, to take care of whatever business the PUC needed to complete. The PUC meetings at that time were heard on a quarterly basis -- it was run in a quarterly system. There were a lot of deferred dockets – a lot of work that could not be handled in a timely manner.

Chairman Johnson also stated that CALJ Horecky has been performing the duties and essentially been operating almost as an In-House Counsel for the PUC for many years. He further stated that CALJ Horecky fully comprehends PUC's operations, is efficient with his duties and is very committed to completing the bulk of the business in a timely manner.

Commissioners Flores-Brooks, Montinola and legal counsel Camacho chimed in and stated that the obstacle for the position of In-House Counsel, was that it required someone with experience -- fully versed in matters involving utilities, who is also willing to work solely for the PUC. Chairman Johnson stated that it is worth pursuing an In-House Counsel for the PUC.

After discussion, Commissioner Pangelinan moved to approve the proposal to solicit potential candidates for PUC In-House Counsel. Said motion was duly seconded by Commissioner Montinola and the motion was carried and unanimously approved.

ADJOURNMENT

There being no further business before the Commission, Commissioner Pangelinan moved to adjourn the meeting, which motion was duly seconded by Commissioner Montinola. The motion passed unanimously and the meeting was adjourned at 8:09 p.m.

Jeffrey C. Johnson

Chairperson

ATTACHMENT "A"

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

241 Farenholt Avenue, Oka Bldg. 2nd Floor, Suite 205 Tamuning, GU 96913

> REGULAR MEETING June 26, 2025 at 6:30 p.m.

AGENDA

- 1. Call to Order
- 2. Approval of Minutes of May 29, 2025 Regular Meeting

GUAM WATERWORKS AUTHORITY

3. GWA Docket No: 25-08: Petition to Approve the Issuance and Sale of the Guam Waterworks Authority Water and Wastewater Series 2025A Revenue Bonds; ALJ Report and proposed Order.

GUAM POWER AUTHORITY

- **4. GPA Docket No. 25-13:** Petition of the Guam Power Authority for two-step reduction in the Levelized Energy Adjustment Clause (LEAC) for the period of August 1, 2025 through January 21, 2026; ALJ Report and proposed Order.
- 5. GPA Docket No. 25-15: Petition of the Guam Power Authority to Approve its Procurement of Energy Storage System Energy-Shifting and Grid Services; ALJ Report and proposed Order.

ADMINISTRATIVE MATTERS

- 6. Update on Solicitation of Lease for Office Space.
- 7. Solicitation for In House Counsel.

ADJOURNMENT

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)) GWA Docket 25-08
GUAM WATERWORKS AUTHORITY'S)
SERIES 2025 WATER AND WASTEWATER SYSTEM REVENUE)
BONDS)
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ORDER

On June 6, 2025, Guam Waterworks Authority ("GWA") petitioned the Commission for authority to issue revenue bonds (the "Bonds") for the purpose of financing new capital projects.

The Commission has examined the petition and the findings and recommendations of its regulatory consultant and Administrative Law Judge. After discussion at a duly convened Commission meeting on June 26, 2025 and upon specific findings and on motion duly seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission hereby ORDERS that:

- 1. The order approving long-term debt in form attached ("Debt Order"), shall be and is hereby adopted by the Commission.
- 2. GWA is reminded that it must obtain prior Commission approval of the projects listed in Exhibit A to the Debt Order before procurement can begin on such Projects or before bond proceeds can be expended or committed on them, except for such Projects otherwise approved by the Commission as conforming with the Stipulated Order or Amendments thereto of the United States District Court of Guam, or which have otherwise previously been exempted by the Commission from the Contract Review process.
- GWA must obtain prior approval to use any excess Bond proceeds or contingency funds not
 previously committed to an approved new project before such excess proceeds of the Bonds or
 contingency funds can be expended or committed.
- 4. No implied approval is provided by the Commission regarding revenue and expense pro-forma statements utilized in the financing if such statements have not been previously approved by the Commission.
- 5. The Commission authorizes its Chairman to approve any changes to the maximum principal amount of the Bonds to be issued and other matters not inconsistent with the terms of this Order.

Order – GWA Docket 25-08 Request by the Guam Waterworks Authority for Approval of the Issuance of Water and Wastewater System Revenue Bonds Page 2

6. As soon as possible after the bond issuance is completed, GWA shall provide PUC with the details and results of the bond issuance. GWA shall provide quarterly reports in a manner approved by the Commission 45 days after the close of each quarter on the actual uses of the Bonds.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Order - GWA Docket 25-08 Request by the Guam Waterworks Authority for Approval of the Issuance of Water and Wastewater System Revenue Bonds Page 3

Dated this 26th day of June 2025.

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Chairman

Peter Montinola Vice-Chairman

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Doris Flores Brooks Commissioner

Commissioner

Joseph M. McDonald

Michael A. Pangelinan Commissioner

Rowena E Perez-Camacho

Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GWA Docket 25-08
GUAM WATERWORKS AUTHORITY'S)
SERIES 2025 WATER AND)
WASTEWATER SYSTEM REVENUE)
BONDS	j ,
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ORDER APPROVING LONG-TERM DEBT

On October 27, 2005, this Commission adopted an Order in Docket No. 05-10 (the "2005 Order") approving certain aspects of the proposal of the Guam Waterworks Authority ("GWA") to issue and sell long-term debt in the form of revenue bonds (the "Bonds") pursuant to Article 2 of Chapter 14 of Title 12 of the Guam Code Annotated (the "Act") for the purposes of financing certain additions and improvements to the water and wastewater systems of GWA (the "System").

The proposed form of an indenture pursuant to which the Bonds were proposed to be issued (the "General Indenture") was presented to the Commission at that time. In accordance with the Act, the terms and conditions pursuant to which the Bonds were to be issued, and included in the General Indenture, were approved by the Commission pursuant to the 2005 Order.

GWA executed and delivered the General Indenture, dated as of December 1, 2005, and issued one series of Bonds on December 7, 2005, having the terms and issued for the purposes authorized and approved by Orders of the Commission heretofore adopted (the "2005 Bonds").

On October 29, 2010, this Commission approved an Order in Docket No. 10-03 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System. GWA issued one series of Bonds on November 23, 2010, having the terms and issued for the purposes authorized and approved by Orders of the Commission heretofore adopted (the "2010 Bonds").

On November 18, 2013, the Commission approved an Order in Docket No. 14-01 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System. GWA issued one series of Bonds on December 12, 2013, in the aggregate principal amount of \$172,630,000, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted (the "2013 Bonds").

On June 26, 2014, the Commission approved an Order in Docket No. 14-05 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of redeeming or retiring all or a portion of the outstanding 2005 Bonds and 2010 Bonds. GWA issued two series of Bonds on August 7, 2014, in the principal amount of \$70,000,000 (tax-exempt Bonds) and \$15,600,000 (taxable Bonds), respectively, having the terms and issued for the

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Request by the Guam Waterworks Authority for Approval of the Issuance of Water and Wastewater System Revenue Bonds
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purposes authorized and approved by Orders of the Commission theretofore adopted ("2014 Bonds").

On December 10, 2015, the Commission approved an Order in Docket No. 15-10 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of financing certain additions and improvements to the System. GWA issued one series of Bonds on February 24, 2016, in the aggregate principal amount of \$143,310,000, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted ("2016 Bonds").

On September 12, 2017, the Commission approved an Order in Docket No. 17-10 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purposes of redeeming or retiring all or a portion of the outstanding 2010 Bonds. GWA issued one series of Bonds on December 20, 2017 in the aggregate principal amount of \$107,660,000, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted ("2017 Bonds").

On March 26, 2020, the Commission approved an Order in Docket No. 20-03 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purpose of redeeming or retiring a portion of the outstanding 2013 Bonds. GWA issued one series of Bonds on August 26, 2020 in the aggregate principal amount of \$166,075,000, having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted ("2020 Bonds").

On January 25, 2024, the Commission approved an Order in Docket No. 24-03 approving the issuance and sale by GWA of long-term debt in the form of Bonds pursuant to the Act for the purpose of redeeming or retiring a portion of the outstanding 2013 Bonds, 2014 Bonds, 2016 Bonds, 2017 Bonds and/or 2020 Bonds. GWA issued one series of Bonds on March 14, 2024 in the aggregate principal amount of \$133,575,000, and one series of Bonds on April 2, 2024 in the aggregate principal amount of \$51,275,000, in each case having the terms and issued for the purposes authorized and approved by Orders of the Commission theretofore adopted ("2024 Bonds").

GWA has now applied to the Commission for approval of the issuance of one or more additional series of Bonds in an aggregate principal amount not to exceed \$350,000,000 (the "Additional Bonds") for the purpose of financing certain additions and improvements described in Exhibit A to this Order (the "Projects"), subject to the limitations of Public Law 37-103 (the "Public Law") and of the terms and conditions pursuant to which such Additional Bonds are to be issued.

The proposed form of supplemental indenture pursuant to which the Bonds are proposed to be issued (the "Supplemental Indenture") and the proposed form of supplemental indenture pursuant to which the General Indenture is proposed to be amended (the "Amending Supplement")

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have been presented to the Commission (together with certain financial and other relevant information) and are attached hereto, as <u>Exhibit B</u>.

The Commission, having duly considered the application of GWA and the information presented on GWA's behalf and having determined that the issuance of the Additional Bonds for such purposes is just and reasonable, orders as follows:

- 1. The issuance of the Additional Bonds and the terms and conditions pursuant to which the Additional Bonds are to be issued and included in Exhibit B are hereby approved; provided, however, that any material modification of the Supplemental Indenture shall be subject to the Commission's prior review and approval. GWA shall have the responsibility of bringing any such material modification or amendment to the Commission's attention.
- 2. The terms and conditions pursuant to which the General Indenture is to be amended by the Amending Supplement as included in Exhibit B are hereby approved.
- 3. For the purpose of financing the Projects, GWA is authorized to borrow funds under the terms and conditions described in Exhibit B. The principal amount of Additional Bonds that may be issued may not exceed \$350,000,000, and shall be the amount projected to be necessary to implement the Projects, and provide for original issue discount (if any), a credit enhancement fee (if applicable), underwriters' discount, other costs of issuance, a debt service reserve fund deposit and capitalized interest (if any). As provided in the Public Law and the Act, the Additional Bonds shall bear interest at such rate or rates and shall be sold for such price or prices as shall result in a net yield to the bondholders not exceeding seven percent (7.0%) per annum. Original issue discount and credit enhancement each shall not be used unless it results in a lower yield on such Bonds, as evidenced by a certificate of GWA. Underwriters' discount (not including original issue discount) shall not exceed one percent (1.0%) of the original principal amount of such Bonds. Other costs of issuance (including, but not limited to, fees and disbursements of bond counsel, printing fees, rating agency fees, initial trustee's fees, consulting engineer fees and the fee of the Guam Economic Development Authority) shall not exceed two percent (2.0%) of the original principal amount of such Bonds. The Additional Bonds shall have a final maturity not later than 40 years from their date of issuance.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Dated this 26th day of June 2025.

Peter Montinola Vice-Chairman

Doris Flores Brooks

Commissioner

Joseph M. McDonald

Commissioner

Michael A. Pangelinan Commissioner

Rowena E. Perez-Camacho

Commissioner

EXHIBIT A

Projects List

[to be attached]

FY 2025 - FY 2026 Capital Projects, Nominal Dollars

	• •	FY 2025		FY 2026
Water Production				
Well Rehabilitation		500,000		-
Well Equipment Overhaul		500,000		5,099,020
Capacity Enhancement - Well Development		14,890,248		14,277,255
Wellhead Protection		500,000		3,747,908
Well Repair		3,500,000		-
Ugum SWTP River Intake Cleaning Project		1,500,000		-
Ugum SWTP Intake Modifications		-		3,569,314
Santa Rita Spring Impoundment Expansion		1,000,000		15,297,059
Subtotal	\$	22,390,248	\$	41,990,554
Water Treatment				
Emerging Contaminants, Water Treatment		9,363,857		35,693,137
Ugum SWTP 7-Year Improvement Project				5,099,020
Subtotal	\$	9,363,857	\$	40,792,156
Water Distribution- System				
Piping Rehabilitation and Replacement		19,794,165		15,780,121
2-Inch Pipe Replacement		12,608,498		15,760,121
Asbestos Cement Pipe Replacement		22,435,000		-
PRV Rehab and Replacement				-
		4,214,086		•
Valve Exercise, Repair, and Replacement Subtotal	S	1,250,000	\$	45 700 424
Subtotal	-	60,301,749	4	15,780,121
Water Distribution- Booster Stations				
Rehabilitate and Replace BPSs		4,180,649		15,297,059
Brigade Booster Pump Improvement		8,900,000		
Nimitz Hill Upper BPS		252,000		
Subtotal	\$	13,332,649	\$	15,297,059
Water Storage				
Recurring Tank Inspections		12,000,000		_
Water System Reservoirs		1370		11,778,735
Subtotal	\$	12,000,000	\$	11,778,735
Wastewater Collection				
Gravity Pipe Rehabilitation/Reptacement		17,019,532		
Force Main Rehabilitation/Replacement				3,960,952
Hagatña WWTP Force Main Rehabi		1,000,000		6,118,823
Lift Station Rehabilitation/Replacement		4,921,839		9,688,137
Tumon Basin - Fujita Lift Station		.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		6,832,686
Tier 1 Pump Station Improvements		7,000,000		5,608,921
Subtotal	\$	29,941,371	\$	32,209,520

Wastewater Treatment

Subtotal	\$ 14,487,500	\$ 29,106,091
Miscellaneous Wastewater Improvements	•	12,237,647
Leak Detection Assistance	950,000	-
OneGuam	500,000	-
Hydrant Condition Assessment and Maintenance	2,500,000	•
District Meter Area Implementation	-	6,689,883
Master Meter Implementation and Ongoing Meter Rep	2,000,000	-
South Guarn Water Supply Study	550,000	
WRMP Update (Interim Update)	220,000	•
GWA Engineering Systems Planning		4,997,039
Wastewater Light Mobile Replacement Program	1,600,000	
Mobile Equipment Replacement	3,000,000	
GWA Customer Service, Warehouse, Test Bench	3,167,500	5,181,522
General Plant Improvements		
Subtotal	\$ 1,826,711	\$ 5,099,020
Control: Surveying and Property Delineation	1,000,000	-
Electrical: SCADA Control Center Improvements	826,711	-
Electrical: SCADA Implementation Phase B	1	5,099,020
Electrical, Monitoring & Control		
Subtotal	\$ 2,000,000	\$ 30,594,117
Hagatña WWTP Secondary Treatment Evaluation	2,000,000	 -
Hagåtña WWTP Primary Treatment Repair/Rehab	-	30,594,117

EXHIBIT B

[Attach Forms of Supplemental Indenture (Eleventh Supplemental Indenture) and Amending Supplement (Twelfth Supplemental Indenture)]

GUAM WATERWORKS AUTHORITY

and

BANK OF GUAM, as Trustee,

and

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

ELEVENTH SUPPLEMENTAL INDENTURE

Dated as of [July] 1, 2025

Relating to

\$[PAR AMOUNT]
Guam Waterworks Authority
Water and Wastewater System Revenue Bonds
Series 2025A

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EXHIBIT A FORM OF	BOND

THIS ELEVENTH SUPPLEMENTAL INDENTURE, made and entered into and dated as of [July] 1, 2025, by and among 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 COMPANY, 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, pursuant to Article 2, Chapter 14 of Title 12 of the Guam Code Annotated (the "Act"), the Authority is authorized to issue and sell revenue bonds to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the System (as defined in the Indenture), or any part thereof, or for the purpose of refunding any such bonds or any other prior obligations of the Authority, 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 entered into that certain Indenture, dated as of December 1, 2005 (the "Indenture"), between the Authority and the Trustee, to secure the payment of the principal thereof and the interest and premium, if any, thereon, and the observance of the covenants and conditions therein contained;

WHEREAS, revenue bonds may be issued pursuant to the Indenture and one or more indentures supplemental thereto ("Supplemental Indentures"), from time to time, in an aggregate principal amount not limited except as therein provided, and said revenue bonds are to be designated as the "Guam Waterworks Authority Water and Wastewater System Revenue Bonds" (the "Bonds");

WHEREAS, the Authority, the Trustee and the Co-Trustee have heretofore entered into a Supplemental Indenture, dated as of December 1, 2005, pursuant to which \$101,175,000 aggregate principal amount of Bonds further designated as "Series 2005 Bonds" were issued, a Supplemental Indenture, dated as of November 1, 2010, pursuant to which \$118,825,000 of Bonds further designated as "Series 2010 Bonds" were issued, a Third Supplemental Indenture, dated as of December I, 2013, pursuant to which \$172,630,000 of Bonds further designated as "Series 2013 Bonds" were issued, a Fourth Supplemental Indenture, dated as of August 1, 2014, pursuant to which \$85,600,000 of Bonds further designated as "Series 2014 Bonds" were issued, a Fifth Supplemental Indenture, dated as of February 1, 2016, pursuant to which \$143,310,000 aggregate principal amount of Bonds further designated as "Series 2016 Bonds" were issued, a Sixth Supplemental Indenture, dated as of December 1, 2017, pursuant to which \$107,660,000 aggregate principal amount of Bonds further designated as "Series 2017 Bonds" were issued, a Seventh Supplemental Indenture, dated as of June 1, 2020, pursuant to which \$134,000,000 aggregate principal amount of Bonds further designated as "Series 2020A Bonds" were issued, an Eighth Supplemental Indenture, dated as of August 1, 2020, pursuant to which \$166,075,000 aggregate principal amount of Bonds further designated as "Series 2020B Bonds" were issued, a Ninth Supplemental Indenture, dated as of March 1, 2024, pursuant to which \$133,575,000 aggregate principal amount of Bonds further designated as "Series 2024A Bonds" were issued, and a Tenth Supplemental Indenture, dated as of March 1, 2024, pursuant to which \$51,275,000 aggregate principal amount of Bonds further designated as "Series 2024B Bonds" were issued;

WHEREAS, it is now desirable and necessary and in the best interests of the Authority to authorize the issuance of \$[PAR AMOUNT] aggregate principal amount of Bonds further designated as "Series 2025A Bonds" (the "Series 2025A Bonds") to raise funds for the purposes of financing the

Series 2025A Project (as defined herein), funding capitalized interest on the Series 2025A Bonds, making a deposit into the Bond Reserve Fund, and paying costs of issuance;

WHEREAS, pursuant to and subject to the terms and conditions set forth in Public Law No. 37-103, the Legislature of Guam, as required by the GEDA Law (as defined herein) approved the terms and conditions of the issuance of the Series 2025A Bonds, so long as the Series 2025A Bonds meet the requirements set forth in the Act;

WHEREAS, the Guam Economic Development Authority has approved the issuance and sale of the Series 2025A Bonds as required by the GEDA Law;

WHEREAS, all acts, conditions and things required by the laws of the United States of America and the laws of Guam to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Series 2025A Bonds exist, have happened, and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to issue said Bonds for the purpose, in the manner and upon the terms herein provided;

WHEREAS, no Event of Default (as defined in the Indenture) has occurred or is now occurring;

NOW, THEREFORE, THIS ELEVENTH SUPPLEMENTAL INDENTURE WITNESSETH, in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Series 2025A Bonds by the owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee and the Co-Trustee as follows:

ARTICLE LIII

DEFINITIONS

SECTION 53.01 <u>Definitions</u>. Unless the context otherwise requires, the terms defined in the Indenture shall, for all purposes of this Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings specified in the Indenture.

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

"Bond Year" means, with respect to the Series 2025A Bonds, the period of twelve consecutive months ending on [CLOSING DATE ANNIVERSARY] of each year if Series 2025A Bonds are or will be Outstanding in such twelve-month period; <u>provided</u> that the first Bond Year shall commence on the date of delivery of the Series 2025A Bonds and end on [CLOSING DATE ANNIVERSARY], 2026.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"GEDA Law" means Section 50103(k) of Title 12, Guam Code Annotated, as in effect as of the dated date hereof and as may be amended from time to time.

"Series 2025 A Bonds" means the \$[PAR AMOUNT] aggregate principal amount of Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2025 A.

"Series 2025A Capitalized Interest Account" means the account by such name as established by Section 55.03(b) hereof.

"Series 2025 A Construction Account" means the account by such name as established by Section 55.03(a) hereof.

"Series 2025A Costs of Issuance Account" means the account by such name as established by Section 55.03(a) hereof.

"Series 2025A Project" means, with respect to the Series 2025A Bonds, the acquisition, construction, improvement, equipping, maintenance, repair, renewal, replacement and reconstruction of those certain parts of the System to be funded with proceeds of the Series 2025A Bonds.

"Series 2025A Rebate Account" means the account by such name as established by Section 56.01 hereof.

"Series 2025A Serial Bonds" means the Series 2025A Bonds designated as Serial Bonds by Section 54.02, and for which no Mandatory Sinking Account Payments are provided.

"Series 2025A Term Bonds" means the Series 2025A Bonds designated as Term Bonds by Section 54.02, and for which Mandatory Sinking Account Payments are provided.

"Twelfth Supplemental Indenture" means the Twelfth Supplemental Indenture, dated as of [July 1], 2025, among the Authority, the Trustee and the Co-Trustee, which Twelfth Supplemental Indenture amends [and restates] the Indenture from and after the Transition Date.

"Transition Date" means the date designated in a Certificate of the Authority delivered to the Trustee and the Co-Trustee to the effect that the Owners of at least sixty percent (60%) in Accreted Value of the Bonds then Outstanding (calculated in accordance with Section 9.01 of the Indenture) have consented to the terms of the Twelfth Supplemental Indenture, and from and after such date, the amendments to the Indenture made by the Twelfth Supplemental Indenture shall be effective subject to and in accordance with the terms thereof.

ARTICLE LIV

AUTHORIZATION AND TERMS OF THE SERIES 2020A BONDS

SECTION 54.01 <u>Authorization of Series 2025A Bonds</u>. One Series of Bonds further designated as the "Guam Waterworks Authority Water and Wastewater System Revenue Bonds Series 2025A" is hereby authorized and created under the Act to raise funds for the Project Costs of the Series 2025A Project, including to fund capitalized interest on the Series 2025A Bonds, to pay the Costs of Issuance of the Series 2025A Bonds, and to make a deposit into the Bond Reserve Fund. The aggregate principal amount of Series 2025A Bonds which may be issued and Outstanding under this Supplemental Indenture shall not exceed \$[PAR AMOUNT]. The Series 2025A Bonds shall be treated as a single Series under the Indenture.

SECTION 54.02 <u>Terms of Series 2025A Bonds: Appointments: Designations.</u>

- (a) The Series 2025A Bonds shall be issued as fully registered Bonds without coupons in the denominations of \$5,000 or any integral multiple thereof. The Series 2025A Bonds shall be dated their date of delivery, and interest thereon (based on a 360-day year of twelve thirty-day months) shall be payable on January 1 and July 1 of each year, commencing [January 1, 2026] (each, an "Interest Payment Date" for the Series 2025A Bonds).
- (b) The Series 2025A Bonds shall mature on the date and in the amount and shall bear interest at the rate per annum specified in the following table:

Maturity Date	Principal	Interest
(July 1)	Amount	Rate
•		

- (c) [The Series 2025A Bond maturing on _____ is a Term Bond.]
- (d) The Principal Payment Period for the Series 2025A Bonds shall be the twelve calendar months next preceding each maturity date or Mandatory Sinking Account Payment date for such Bonds.
- (e) The Record Date for all scheduled payments of principal of and interest on the Series 2025A Bonds shall be the 15th day of the calendar month next preceding the date each such payment is due, whether or not such 15th day is a Business Day.
- (f) The Co-Trustee is hereby appointed Paying Agent for the Series 2025A Bonds and Registrar for the Series 2025A Bonds, and the Co-Trustee's corporate trust office in Los Angeles, California, is hereby designated as the Principal Office of the Co-Trustee. The Trustee is hereby appointed Depositary for the Series 2025A Construction Account, the Series 2025A Costs of Issuance Account and the Series 2025A Capitalized Interest Account.
- The principal of and premium, if any, on each Series 2025A Bond shall be payable in lawful money of the United States of America to the Owner of such Bond, upon the surrender of such Bond at the Principal Office of any Paying Agent for such Bond. The interest on each Series 2025A Bond shall be payable in like lawful money to the person whose name appears on the bond registration books of the Registrar for such Bond as the Owner of such Bond as of the close of business on the Record Date for such Bond preceding the Interest Payment Date, whether or not such Record Date is a Business Day, such interest to be paid by check or mailed by first class mail to such Owner at such address as appears on such registration books or at such address as such Owner may have filed with the Registrar for that purpose. Upon the written request of a registered owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Series 2025A Bonds, payment of interest on and principal (including Redemption Price) of such Bonds shall be made by wire transfer from the Paying Agent to the registered owner of such Bonds. Any such principal payment by wire transfer shall nevertheless be subject to prior surrender of the Series 2025A Bonds with respect to which such payment is made. Each payment of interest or principal on Series 2025A Bonds, whether by check, draft or wire transfer, shall be accompanied by information specifying for each maturity of such Bonds with respect to which such payment is being made, the amount and the CUSIP number (if available).

- (h) Each Series 2025A Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless it is authenticated as of a day during the period from the Record Date preceding any Interest Payment Date to the Interest Payment Date, inclusive, in which event it shall bear interest from such Interest Payment Date, or unless it is authenticated on or before [June 15, 2025], in which event it shall bear interest from its date of delivery; provided, however, that if, at the time of authentication of any Series 2025A Bond, interest is in default on Outstanding Bonds of such Series, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds of such Series.
- (i) The Series 2025A Bonds shall be subject to redemption as provided in Section 54.03.
- (j) The Registrar for the Series 2025A Bonds shall assign each Series 2025A Bond authenticated and registered by it a distinctive letter, or number, or letter and number, and shall maintain a record thereof which shall be available to the Authority for inspection.
- (k) The Series 2025A Bonds, the Registrar's certificate of authentication and registration and the form of assignment to appear thereon shall be in substantially the forms set forth in Exhibit A hereto, with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture.

SECTION 54.03 Terms of Redemption of the Series 2025A Bonds.

- (a) Extraordinary Optional Redemption. The Series 2025A Bonds are subject to redemption on any date prior to their stated maturity, as a whole, or in part so that the reduction in Annual Debt Service for the Series 2025A Bonds for each Bond Year after such redemption shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in the Indenture, at the greater of par or Amortized Value, plus accrued interest to the date fixed for redemption, without premium. "Amortized Value" means on any interest payment date, the then current value of the bond amortizing the original issue premium over the period ending on the first call date using the constant yield method.
- (b) Optional Redemption. The Series 2025A Bonds are subject to redemption prior to their stated maturity, at the option of the Authority, from any source of available moneys, on any date on or after July 1, 20__, as a whole, or in part by such maturities or portions of maturities as shall be determined by the Authority (or by lot within such maturity in the absence of such a determination), at a redemption price equal to the principal amount of each Series 2025A Bond called for redemption plus interest accrued to the date fixed for redemption, without premium.
- (c) <u>Mandatory Sinking Account Redemption</u>. The Series 2025A Bonds [maturing on ____] are subject to redemption prior to their stated maturity in part, by lot, from Mandatory Sinking Account Payments, commencing July 1, 20__, at a redemption price equal to their principal amount, plus accrued interest thereon to the date fixed for redemption, without premium, on the dates and in the amounts, as set forth below:

Date

Amount

† Final maturity.

SECTION 54.04 Special Covenants as to Book-Entry Only System for Series 2025A Bonds.

- (a) Except as otherwise provided in subsections (b) and (c) of this Section 54.04, all of the Series 2025A Bonds initially issued shall be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), or such other nominee as DTC shall request pursuant to the Representation Letter. Payment of the interest on any Series 2025A Bond registered in the name of Cede & Co. shall be made on each interest payment date for such Series 2025A Bonds to the account, in the manner and at the address indicated in or pursuant to the Representation Letter.
- The Series 2025A Bonds initially shall be issued in the form of a single **(b)** authenticated fully registered bond, representing the aggregate principal amount of the Series 2025A Bonds. Upon initial issuance, the ownership of the Series 2025A Bonds shall be registered in the registration records maintained by the Registrar pursuant to Section 2.05 hereof in the name of Cede & Co., as nominee of DTC, or such other nominee as DTC shall request pursuant to the Representation Letter. The Trustee, the Co-Trustee, the Registrar, the Authority and any paying agent may treat DTC (or its nominee) as the sole and exclusive owner of the Series 2025A Bonds registered in its name for the purposes of payment of the principal or redemption price of and interest on such Series 2025A Bonds, selecting the Series 2025A Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondowners hereunder, registering the transfer of Series 2025A Bonds, obtaining any consent or other action to be taken by Bondowners of the Series 2025A Bonds and for all other purposes whatsoever; and the Trustee, the Co-Trustee, the Registrar, the Authority and any paying agent shall not be affected by any notice to the contrary. Neither the Trustee, the Co-Trustee, the Authority nor any paying agent shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this Section 54.04, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Series 2025A Bonds under or through DTC or any Participant, or any other person which is not shown on the registration records as being a Bondowner, with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any Participant of any amount in respect of the principal or redemption price of or interest on the Series 2025A Bonds, (iii) any notice which is permitted or required to be given to Holders of Series 2025A Bonds hereunder, (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Series 2025A Bonds, or (v) any consent given or other action taken by DTC as Holder of Series 2025A Bonds. The Paying Agent shall pay all principal of and premium, if any, and interest on the Series 2025A Bonds only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter, and all such payments shall be valid and effective to satisfy fully and discharge the Authority's obligations with respect to the principal of and premium, if any, and interest on the Series 2025A Bonds to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee and Co-Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the Series 2025A Bonds will be transferable to such new nominee in accordance with subsection (f) of this Section 54.04.

- In the event that the Authority elects to discontinue the book-entry system for any Series 2025A Bonds, the Trustee shall, upon the written instruction of the Authority, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of bond certificates. In such event, such Series 2025A Bonds will be transferable in accordance with subsection (f) of this Section 54.04. DTC may determine to discontinue providing its services with respect to the Series 2025A Bonds at any time by giving written notice of such discontinuance to the Authority or the Trustee and Co-Trustee and discharging its responsibilities with respect thereto under applicable law. In such event, the Series 2025A Bonds will be transferable in accordance with subsection (f) of this Section 54.04. Whenever DTC requests the Authority, the Trustee and the Co-Trustee to do so, the Trustee, the Co-Trustee and the Authority will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all certificates evidencing the Series 2025A Bonds then Outstanding. In such event, the Series 2025A Bonds will be transferable to such securities depository in accordance with subsection (f) of this Section 54.04, and thereafter, all references in this Supplemental Indenture to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.
- (d) Notwithstanding any other provision of this Supplemental Indenture to the contrary, so long as all Series 2025A Bonds Outstanding are registered in the name of any nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on each such Series 2025A Bond and all notices with respect to each such Series 2025A Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.
- (e) The Co-Trustee is hereby authorized and requested to execute and deliver the Representation Letter and, in connection with any successor nominee for DTC or any successor depository, enter into comparable arrangements, and shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Supplemental Indenture.
- (f) In the event that any transfer or exchange of Series 2025A Bonds is authorized under subsection (b) or (c) of this Section 54.04, such transfer or exchange shall be accomplished upon receipt by the Registrar from the registered owner thereof of the Series 2025A Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Sections 2.03 and 2.04 of the Indenture. In the event Series 2025A Bond certificates are issued to Holders other than Cede & Co., its successor as nominee for DTC as holder of all the Series 2025A Bonds, another securities depository as holder of all the Series 2025A Bonds, or the nominee of such successor securities depository, the provisions of Sections 2.03 and 2.04 of the Indenture shall also apply to, among other things, the registration, exchange and transfer of the Series 2025A Bonds and the method of payment of principal of, premium, if any, and interest on the Series 2025A Bonds.

SECTION 54.05 <u>Waiver of Brokerage Confirmations</u>. The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or another applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Co-Trustee shall furnish the Authority and the Trustee periodic cash transaction statements which shall include detail for all investment transactions made by the Co-Trustee.

ARTICLE LV

ISSUANCE OF SERIES 2025A BONDS; APPLICATION OF PROCEEDS; FUNDS AND ACCOUNTS

1350ANCE OF SERIES 2023A BONDS, AFFEICATION OF PROCEEDS, FUNDS AND ACCOUNTS
SECTION 55.01 <u>Issuance of Series 2025A Bonds</u> . At any time after the execution and delivery of this Eleventh Supplemental Indenture, the Authority may sell and execute and the Registrar for the Series 2025A Bonds shall authenticate and, upon the Order of the Authority, deliver the Series 2025A Bonds in an aggregate principal amount not to exceed \$[PAR AMOUNT].
SECTION 55.02 <u>Application of Proceeds of Series 2025A Bonds and Other Moneys.</u> The net proceeds received by the Authority from the sale of the Series 2025A Bonds in the amount of \$ shall be deposited with the Trustee, who shall forthwith transfer or apply such proceeds in the following manner, as directed by a Request of the Authority:
(a) The Trustee shall deposit in the Series 2025A Construction Account the amount of \$;
(b) the Trustee shall deposit in the Series 2025A Costs of Issuance Account the amount of \$;
(c) the Trustee shall deposit in the Series 2025A Capitalized Interest Account the amount of \$; and
(d) the Trustee shall transfer to the Co-Trustee, for deposit in the Bond Reserve Fund, the amount of \$, which shall bring the total amount on deposit therein to \$, which shall be at least equal to the Bond Reserve Requirement.
SECTION 55.03 Establishment of Funds and Accounts for Series 2025A Bonds. Debt Service Fund; Bond Reserve Fund.
(a) Series 2025A Construction Account; Series 2025A Costs of Issuance Account.
(i) To ensure the proper application of such portion of proceeds from the sale of the Series 2025A Bonds to be applied to pay Project Costs of the Series 2025A Project, there is hereby established within the Construction Fund the "Series 2025A Construction Account" which shall be held by the Trustee as Depositary therefor. The monies set aside and placed in the Series 2025A Construction Account to be applied to the Project Costs of the Series 2025A Project shall be expended for the purposes of the Series 2025A Project and shall not be used for any other purpose whatsoever.
(ii) To ensure the proper application of such portion of proceeds from the sale of the Series 2020A Bonds to be applied to pay Costs of Issuance of the Series 2025A Bonds, there is hereby established within the Series 2025A Construction Account the "Series 2025A Costs of Issuance Account" which shall be held by the Trustee as Depositary therefor. Any funds that remain on deposit in the Series 2025A Costs of Issuance Account 180 days after the Closing Date shall be transferred and deposited or otherwise allocated to the Series 2025A Construction Account and applied to Project Costs of the Series 2025A Project, and thereafter the Series 2025A Costs of Issuance Account shall be closed.
(iii) Except as otherwise provided herein, before any payment from the Series 2025A Construction Account or the Series 2025A Costs of Issuance Account therein shall be made by the Depositary, the Authority shall file or cause to be filed with the Depositary a requisition of the Authority (each a "Requisition"), such Requisition to be signed by the Chairperson or the General Manager or by any other officer of the Authority duly authorized by resolution of the Board for that

purpose and to include (1) the item number of such payment; (2) the name and address of the person to whom each such payment is due, which may be the Authority in the case of reimbursement for costs theretofore paid by the Authority; (3) the respective amounts to be paid; (4) the purpose by general classification for which each obligation to be paid was incurred; and (5) that obligations in the stated amounts have been incurred by the Authority and are presently due and payable and that each item thereof is a proper charge against the Series 2025A Construction Account or the Series 2025A Costs of Issuance Account, as specified, and has not been previously paid from said Account.

(iv) When the Authority determines that the Series 2025A Project has been completed, a Certificate of the Authority shall be delivered to the Depositary by the Authority stating: (1) the fact and date of such completion; (2) that all of the Project Costs of the Series 2025A Project have been determined and paid (or that all of such costs have been paid less specified claims that are subject to dispute and for which a retention in the Series 2025A Construction Account is to be maintained in the full amount of such claims until such dispute is resolved); and (3) that the Depositary is to transfer the remaining balance in the Series 2025A Construction Account, less the amount of any such retention, to the Co-Trustee for deposit to the Bond Reserve Fund, to the extent of any deficiency therein, and then to the Debt Service Fund.

(b) Series 2025A Capitalized Interest Account.

(i) To ensure the proper application of such proceeds from the sale of the Series 2025A Bonds to be applied to pay Capitalized Interest on the Series 2025A Bonds, there is hereby established within the Series 2025A Construction Account the "Series 2025A Capitalized Interest Account" which shall be held by the Trustee as Depositary therefor.

(ii) In accordance with the following schedule, and without need of a Requisition, the Depositary is hereby directed to transfer all money in the Series 2025A Capitalized Interest Account to the Co-Trustee, and the Co-Trustee shall apply such money to pay interest due on the Series 2025A Bonds (which amount in respect of proceeds of the Series 2025A Bonds initially deposited therein shall not exceed the amount sufficient to pay interest on the Series 2025A Bonds to and including ________1, 20___). Any amounts remaining in the Series 2025A Capitalized Interest Account after the final transfer shall be transferred to the Co-Trustee for deposit in the Debt Service Fund and the Depositary shall close the Series 2025A Capitalized Interest Account:

Series 2025A Capitalized Interest Schedule

Date	Capitalized Interest Transfer Amount
[January/July 1, 20]	\$
[January/July 1, 20]	
[January/July 1, 20]	
[January/July 1, 20]	
[January/July 1, 20]	Balance

^{*} Final transfer.

(c) <u>Debt Service Fund; Bond Reserve Fund</u>. As provided in Section 5.05 of the Indenture, the Series 2025A Bonds shall be payable from the Debt Service Fund, and, in accordance with Section 5.06 of the Indenture, the Series 2025A Bonds shall be secured by the Bond Reserve Fund. Pursuant to Section 5.06 of the Indenture, to the extent that moneys in the Bond Reserve Fund exceed the Bond Reserve Fund Requirement, income derived from the investment of the proceeds of

the Series 2025A Bonds in the Bond Reserve Fund prior to the completion of the Series 2025A Project shall be deposited in the Series 2025A Construction Account; otherwise such income shall be transferred and deposited in the Revenue Fund.

(d) The Series 2025A Rebate Account shall be established as provided in Section 56.01 hereof.

ARTICLE LVI

TAX COVENANTS

SECTION 56.01 Series 2025A Rebate Account.

(A) The Trustee, as Depositary for the Revenue Fund, shall establish and maintain within the Rebate Fund a separate subaccount designated as the "Series 2025A Rebate Account." There shall be deposited in the Series 2025A Rebate Account from amounts in the Operation and Maintenance Fund or other lawfully available moneys such amounts as are required to be deposited therein pursuant to the Tax Certificate delivered by the Authority in connection with the issuance of the Series 2025A Bonds. All money at any time deposited in the Series 2025A Rebate Account shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement for the Series 2025A Bonds (as defined in such Tax Certificate), for payment to the United States of America, and the United States of America is hereby granted a first lien on such money until such payment. All amounts required to be deposited into or on deposit in the Series 2025A Rebate Account shall be governed exclusively by this Section and by such Tax Certificate (which is incorporated herein by reference).

In the event that the amount in the Series 2025A Rebate Account exceeds the Rebate Requirement for the Series 2025A Bonds, upon the Request of the Authority, the Trustee shall transfer the excess from the Series 2025A Rebate Account to the Revenue Fund.

- (B) Notwithstanding any provisions of this Section, if the Authority shall provide to the Trustee an opinion of Bond Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on any Series of Bonds, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding Article IX of the Indenture, the covenants hereunder shall be deemed to be modified to that extent.
- SECTION 56.02 <u>Tax Covenants for Series 2025A Bonds</u>. (A) The Authority intends that interest on the Series 2025A Bonds be excluded from gross income for federal income tax purposes, that the Series 2025A Bonds and the interest thereon be exempt from taxation by any state or political subdivision or the District of Columbia and that interest on the Series 2025A Bonds not be treated as a specific preference item for purposes of the federal individual and corporate alternative minimum taxes. The Authority reserves the right to determine the desired tax status of any additional Series of Bonds.
- (B) The Authority shall not use or permit the use of any proceeds of the Series 2025A Bonds or any other funds of the Authority, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the Authority in any manner, and shall not take or permit to be taken any other action or actions, which would cause any such Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(C) The Authority shall at all times do and perform all acts and things permitted by law and this Indenture which are necessary or desirable in order to assure that interest paid on the Series 2025A Bonds (or on any of them) shall be excluded from gross income for federal income tax purposes and that interest paid on the Series 2025A Bonds shall not be treated as a specific preference item for purposes of the federal individual and corporate alternative minimum taxes.

SECTION 56.03 Continuing Disclosure. The Authority hereby covenants and agrees to comply with the Series 2025A Continuing Disclosure Agreement, by and between the Authority and the Co-Trustee (the "Series 2025A Continuing Disclosure Agreement"), as it may from time to time hereafter be amended or supplemented. Notwithstanding any other provision of the Indenture, failure of the Authority to comply with the requirements of the Series 2025A Continuing Disclosure Agreement shall not be considered an Event of Default and the Co-Trustee shall have no right to accelerate amounts due under the Indenture as a result thereof; provided, however, that the Trustee and the Owners of not less than 25% in principal amount of the Outstanding Series 2025A Bonds may take such action as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Authority to comply with its obligations in this Section with respect to the Series 2025A Continuing Disclosure Agreement.

. The initial Owners of Series 2025A Bonds by their purchase of the Series 2025A Bonds agree and give their consent that from and after the Transition Date (as defined in the Twelfth Supplemental Indenture): (1) the Twelfth Supplemental Indenture shall constitute a full amendment [and complete restatement] of the Indenture; and (2) subject to the limitations of [Section 11.16] of the Twelfth Supplemental Indenture, from and after the Transition Date, in the case of any inconsistency or contradiction between the Indenture and the Twelfth Supplemental Indenture, the language of the Twelfth Supplemental Indenture shall control; and (3) notwithstanding Section 9.01 of the Indenture, no notice of the proposed execution of the Twelfth Supplemental Indenture need be mailed or otherwise provided to such Owner.

IN WITNESS WHEREOF, the GUAM WATERWORKS AUTHORITY has caused this Eleventh Supplemental Indenture to be signed in its name by its duly authorized officers; and BANK OF GUAM and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, in token of their acceptance of the respective trusts created hereunder, and being hereby appointed by the GUAM WATERWORKS AUTHORITY to such trusts, have caused this Eleventh Supplemental Indenture to be signed in their respective corporate names by one of their authorized officers, all as of the day and year first above written.

Ву		
<i>Dy</i>	Chairperson of the Board	
Ву		
	General Manager	

GUAM WATERWORKS AUTHORITY

Eleventh Supplemental Indenture - Guam Waterworks Authority

BAN	K OF GUAM, as Trustee
Ву	
	Authorized Officer

Eleventh Supplemental Indenture - Guam Waterworks Authority

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

Ву		
•	Authorized Officer	

Eleventh Supplemental Indenture - Guam Waterworks Authority

The undersigned U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, hereby accepts and agrees to perform the duties and obligations of Registrar and Paying Agent under this Eleventh Supplemental Indenture.

	ANK TRUST COMPANY, NATIONAL CIATION, as Registrar and Paying Agent
Ву	Authorized Officer

Eleventh Supplemental Indenture - Guam Waterworks Authority

The undersigned BANK OF GUAM, hereby accepts and agrees to perform the duties and obligations of Depositary for the Series 2025A Construction Account, the Series 2025A Costs of Issuance Account and for the Series 2025A Capitalized Interest Account under this Eleventh Supplemental Indenture.

BANI	K OF GUAM, as Depositary	
Ву		
,	Authorized Officer	

Eleventh Supplemental Indenture - Guain Waterworks Authority

EXHIBIT A

FORM OF BOND

No. R-

\$[PAR AMOUNT]

GUAM WATERWORKS AUTHORITY WATER AND WASTEWATER SYSTEM REVENUE BOND SERIES 2025A

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP	
%	1,20	[July] 1, 2025	40065F	
Registered Owner: CED	E & CO.			
Principal Sum:			_ DOLLARS	

The GUAM WATERWORKS AUTHORITY, a duly organized public corporation of the government of Guam (herein called the "Authority"), for value received, hereby promises to pay (but only out of the Revenues pledged therefor as hereinafter mentioned) to the registered owner identified above or registered assigns, on the maturity date specified above (subject to any right of prior redemption hereinafter mentioned), the principal sum specified above in lawful money of the United States of America; and to pay interest thereon, in like lawful money and solely from said Revenues, from the Interest Payment Date next preceding the date of authentication of this Bond unless this Bond is authenticated as of a day during the period from the Record Date preceding any Interest Payment Date to the Interest Payment Date, inclusive, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or before [June 15, 2025], in which event it shall bear interest from its date of delivery, until payment of such principal sum shall be discharged as provided in the indenture hereinafter mentioned, at the interest rate specified above per annum, payable on January 1 and July 1 in each year, commencing [July 1, 2025]; provided, however, that if, at the time of authentication of this Bond, interest is in default hereon, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment. The principal (or redemption price) hereof is payable upon surrender hereof at the Principal Office of U.S. Bank Trust Company, National Association (herein called the "Paying Agent") in [Los Angeles, California] (or such other office as may be subsequently designated), and the interest hereon is payable by check or draft mailed by first class mail to the person in whose name this Bond is registered at the close of business on the fifteenth day of the month immediately preceding an interest payment date, at such person's address as it appears on the bond registration books of U.S. Bank Trust Company, National Association (herein called the "Registrar"). Upon the written request of a registered owner of \$1,000,000 or more in aggregate principal amount of Series 2025A Bonds, payment of interest on and principal (including redemption price) of such Bonds will be made by wire transfer as provided in the Indenture; provided that any such principal payment shall nevertheless be subject to prior surrender of the Series 2025A Bonds with respect to which such payment is made.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Guam Waterworks Authority Water and Wastewater System Revenue Bonds" (herein called the "Bonds"), unlimited in aggregate principal amount, except as otherwise provided in the laws of the United States of America and the government of Guam and in the Indenture hereinafter mentioned, which issue of Bonds consists or may consist of one or more Series of varying dates, maturities, interest rates, and redemption and other provisions, all issued or to be issued pursuant to Article 2, Chapter 14 of

Title 12 of the Guam Code Annotated, as amended, and that certain Indenture, dated as of December 1, 2005 (as heretofore and hereafter supplemented and amended, the "Indenture"), by and between the Authority, Bank of Guam, as trustee (herein called the "Trustee") and U.S. Bank Trust Company, National Association, as co-trustee (herein called the "Co-Trustee"). This Bond is also one of a duly authorized series of Bonds additionally designated "Series 2025A" (herein called the "Series 2025A Bonds"), in the aggregate principal amount of Dollars (\$[PAR AMOUNT]), all issued under the provisions of the Indenture and the Eleventh Supplemental Indenture, dated as of [July] 1, 2025, by and among the Authority, the Trustee and the Co-Trustee. Reference is hereby made to the Indenture (a copy of which is on file at said office of the Trustee), including all indentures supplemental thereto, for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security and provisions for payment of the Bonds, of the rights, duties and immunities of the Trustee and other fiduciaries and of the rights and obligations of the Authority thereunder, to all the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees. Any capitalized term used but not separately defined in this Bond shall have the meaning given such term in the Indenture.

The Bonds and the interest thereon (to the extent set forth in the Indenture) are payable solely from Revenues (as that term is defined in the Indenture) pledged as provided in the Indenture. Subject only to the provisions of the Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth therein, said Revenues are pledged under the Indenture to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of the Indenture and the payment of Credit Agreement Payments and Parity Payment Agreement Payments in accordance with their terms.

The Series 2025A Bonds are subject to redemption on any date prior to their stated maturity, as a whole, or in part so that the reduction in Annual Debt Service for the Series 2025A Bonds for each Bond Year after such redemption shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in the Indenture, at the greater of par or Amortized Value, plus accrued interest to the date fixed for redemption, without premium. "Amortized Value" means on any interest payment date, the then current value of the bond amortizing the original issue premium over the period ending on the first call date using the constant yield method.

The Series 2025A Bonds are subject to redemption prior to their stated maturity, at the option of the Authority, from any source of available moneys, on any date on or after [July 1, 20], as a whole, or in part by such maturities or portions of maturities as shall be determined by the Authority (or by lot within such maturity in the absence of such a determination), at a redemption price equal to the principal amount of each Series 2025A Bond called for redemption plus interest accrued to the date fixed for redemption, without premium.

The Series 2025A Bonds are subject to redemption prior to their stated maturity in part, by lot, from Mandatory Sinking Account Payments, commencing [July 1, 20_], on the dates and at a redemption price equal to the Mandatory Sinking Account Payment amount for such date set forth in the Indenture, plus accrued interest thereon to the date fixed for redemption, without premium.

Notice of any redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by the Registrar not less than 30 nor more than 60 days before the date fixed for redemption by first class mail to each of the registered owners of Bonds designated for redemption at their addresses appearing on the bond registration books of the Registrar on the date the Bonds to be redeemed are

selected. Receipt of such notice by such registered owners shall not be a condition precedent to such redemption.

If this Bond is called for redemption and payment is duly provided herefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

The Series 2025A Bonds are issuable only in fully registered form in denominations of \$5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, this Bond may be exchanged, at the Principal Office of the Registrar, in St. Paul, Minnesota, or such other office as the Registrar shall designate, for a new fully registered Bond or Bonds, of the same Series, maturity and tenor and of any authorized denomination or denominations and for the aggregate principal amount of this Bond then remaining outstanding.

This Bond is transferable by the registered owner hereof, in person or by its attorney duly authorized in writing, at said office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of the same Series and maturity and of any authorized denomination or denominations and for the same aggregate principal amount of this Bond then remaining outstanding, will be issued to the transferee in exchange therefor. The Registrar shall not be required to register the transfer of this Bond during the period established by the Trustee for the selection of Bonds for redemption or at any time after selection of this Bond for redemption.

The Authority, the Trustee, the Paying Agent and the Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and neither the Authority, the Paying Agent nor the Registrar shall be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority, the registered owners of the Bonds, the Trustee, the Registrar and other fiduciaries may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, provided that no such modification or amendment shall (a) extend the fixed maturities of the Bonds, or extend the time for making any Mandatory Sinking Account Payments, or reduce the rate of interest thereon, or extend the time of payment of interest, or reduce the amount of principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Owner of each Bond so affected, (b) reduce the aforesaid percentage of Owners of Bonds whose consent is required for the execution of any amendment or modification of this Indenture or permit the creation of any lien on the Revenues prior to or on a parity with the lien created by this Indenture or deprive the Owners of the Bonds of the lien created by this Indenture upon such Revenues, without in each case the consent of the Owners of all of the Bonds then Outstanding.

The Bonds are limited obligations of the Authority, payable solely from and secured by a pledge of the Revenues as provided in the Indenture. The Bonds are not a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues pledged to the payment thereof as provided in the Indenture.

Neither the Government of Guam nor any political subdivision thereof is obligated to pay the principal of, Redemption Price, if applicable, or interest on the Bonds, except from Revenues, and neither the Authority, the Government of Guam nor any political subdivision thereof has pledged its faith or credit to the payment of the principal of, redemption price, if applicable, or interest on the Bonds.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Registrar.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by the laws of the United States of America and the government of Guam, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by such laws, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

[The initial Owners of Series 2025A Bonds by their purchase of the Series 2025A Bonds agree and give their consent that from and after the Transition Date (as defined in the Twelfth Supplemental Indenture): (1) the Twelfth Supplemental Indenture shall constitute a full amendment [and complete restatement] of the Indenture; and (2) subject to the limitations of [Section 11.16] of the Twelfth Supplemental Indenture, from and after the Transition Date, in the case of any inconsistency or contradiction between the Indenture and the Twelfth Supplemental Indenture, the language of the Twelfth Supplemental Indenture shall control; and (3) notwithstanding Section 9.01 of the Indenture, no notice of the proposed execution of the Twelfth Supplemental Indenture need be mailed or otherwise provided to such Owner.]

IN WITNESS WHEREOF, the GUAM WATERWORKS AUTHORITY has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Chairman of the Consolidated Commission on Utilities and the Chief Financial Officer of the Authority, all as of the dated date first set forth above.

GUA	M WATERWORKS AUTHORITY
Ву_	Chairman of the Board of Directors
Ву	
18-0-	Chief Financial Officer

[FORM OF] CERTIFICATE OF AUTHENTICATION AND REGISTRATION

registered as of	his is one of the Bonds described in the within-mentioned Indenture, which has been
	U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Registrar
	By
	Authorized Officer

[FORM OF] ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) attorney, to transfer the same on the books of the Registrar with full power of substitution in the premises.

Dated:			

NOTICE: The signature on this Assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

Social Security Number, Taxpayer Identification Number or other Identifying Number of Assignee:

Notice: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Note: Transfer fees must be paid to the Registrar in order to transfer or exchange this bond as provided in the within-mentioned Indenture.

EXHIBIT B

OH&S Draft 5/31/25

GUAM WATERWORKS AUTHORITY

and

BANK OF GUAM, as Trustee,

and

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

TWELFTH SUPPLEMENTAL INDENTURE

(2025 Prospective General Indenture)

Dated as of [July] 1, 2025

Relating to

Guam Waterworks Authority Water and Wastewater System Revenue Bonds

GUAM WATERWORKS AUTHORITY

and

BANK OF GUAM, as Trustee,

and

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

TWELFTH SUPPLEMENTAL INDENTURE

(2025 Prospective General Indenture)

Dated as of August 1, 2025

Relating to

Guam Waterworks Authority Water and Wastewater System Revenue Bonds

[to be updated]

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THIS TWELFTH SUPPLEMENTAL INDENTURE, made and entered into as of August 1, 2025, 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 COMPANY, 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 <u>Definitions</u>. 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.

"2005 Indenture" means the Indenture, dated as of December 1, 2005, as amended and supplemented (other than by this Indenture), by and among the Authority, the Trustee and the Co-Trustee, providing for the issuance of Guam Waterworks Authority Water and Wastewater System Revenue Bonds.

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

"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" 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" 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" means, for any year, Annual Debt Service for such year on all Bonds.

"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 the principal amount of any Short-Term Bonds shall excluded, and provided, further, 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:

(A) 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;

- (B) 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;
- (C) 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;

In the event that all or any portion of any Series of the Bonds have been issued as or are proposed to be issued as Balloon Bonds, then in order to compute the principal amount of and interest on such Series of the Bonds for the purposes of determining (i) whether the Bonds, regardless of whether they are to be Balloon Bonds, may be issued in compliance with the requirements of this Indenture when any Balloon Bonds are outstanding, (ii) whether the Bonds that are Balloon Bonds may be issued in compliance with the requirements of this Indenture, and (iii) the amount of the any reserve fund or reserve account requirements attributable to such Balloon Bonds, the principal of and interest on such Bonds will be determined:

- (a) if such Balloon Bonds are not Capital Appreciation Bonds, by (1) assuming that such Balloon Bonds are to be amortized on the basis of level debt service over the Assumed Amortization Period and that such Bonds bear interest at the Assumed Interest Rate, or (2) if certified by the Financial Advisor to be appropriate given the then-current standing of the Public Finance industry, by assuming that such Balloon Bonds are to be amortized on a basis other than level annual debt service over the Assumed Amortization Period and that such Bonds bear interest at the Assumed Interest Rate; and
- (b) if such Balloon Bonds are Capital Appreciation Bonds, by assuming that the accreted principal amount of such Balloon Bonds at maturity is to be amortized on the basis of level principal payments over the Assumed Amortization Period.
- "Assumed Amortization Period" means the period of time specified in paragraph (a) or paragraph (b) below, as selected by the Chief Financial Officer:
 - (a) five years; or

(b) The period of time, exceeding five years, set forth in a written opinion of the Financial Advisor as not being longer than the maximum period of time over which indebtedness having comparable terms and security issued or incurred by similar issuers of comparable credit standing would, then if being offered, be marketable on reasonable and customary terms.

"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" 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.

"Balloon Bonds" means the aggregate principal amount of Bonds of a Series (including Capital Appreciation Bonds) that becomes due and payable, either at scheduled maturity, by Mandatory Sinking Fund Payment or by mandatory tender for purchase, in any Fiscal Year that constitutes 25% or more of the initial aggregate principal amount of such Series of Bonds.

"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" 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" means the fund by that name established pursuant to Section 5.01.

"Bond Reserve Fund Requirement" means, as of any particular date of calculation, an amount equal to fifty percent (50%) of 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 Transition Date" means the date the upon which provisions herein relating to the funding or lack thereof of any series reserve account, the Bond Reserve Fund Requirement and the Bond Reserve Fund are in effect as specified in a Certificate of the Authority delivered to the Trustee and the Co-Trustee, which date shall not occur until all the Bonds issued under the 2005 Indenture as of the date of issuance of the Series 2025A Bonds (including the Series 2025A Bonds) are no longer Outstanding within the meaning of the 2005 Indenture.

"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" 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" 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, as well other evidences of indebtedness for borrowed money issued from time to time by the Authority hereunder, including but not limited to bonds, notes, bond anticipation notes, commercial paper, lease or installment purchase agreements or certificates of participation therein, 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 Guam Waterworks Authority Water and Wastewater System Revenue Bonds referenced above.

"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 Appreciation Bonds" means any Bonds the interest on which is not scheduled to be paid until the maturity or prior redemption thereof, or the conversion thereof to Current Interest Bonds.

"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" means the fund by that name established pursuant to Section 5.01 for the purposes provided in Section 5.10.

"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" 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" 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" means the chairperson of the Board.

"Chief Financial Officer" means the Chief Financial Officer of the Authority.

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

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

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

"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" 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" means U.S. Bank Trust Company, 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" 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" means Credit Agreement Reimbursement Payments and Other Credit Agreement 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" 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" 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.

"Current Interest Bonds" means any Bonds, other than Capital Appreciation Bonds, which pay interest at least annually to the Owners thereof commencing within 18 months from the date of issuance thereof.

"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" means the fund by that name established pursuant to Section 5.01.

"Depositary" 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 Depositary 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" means an event of that name described in Section 7.01.

"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" means the Trustee, the Co-Trustee, each Depositary, each Registrar and each Paying Agent.

"Final Transition Date" means the date or dates designated in a Certificate of the Authority delivered to the Trustee and the Co-Trustee to the effect that all of the terms of this Indenture, on and after such date, constitute the amendment and restatement of the 2005 Indenture in accordance with Section 11.16 hereof and the 2005 Indenture, including without limitation Section 9.01 thereof, which Certificate of the Authority shall be accompanied by a written opinion of Bond Counsel to the effect that the Indenture constitutes a valid and binding amendment of the 2005 Indenture in accordance with Section 11.16 hereof and Section 9.01 of the 2005 Indenture.

"Financial Advisor" means in independent, certified and registered financial advisory firm selected by the Authority.

"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 Hågatña, Guam.

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

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

"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" 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" 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" 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.

"Interim Transition Date" shall be the date upon which consents of the Owners of at least sixty percent (60%) in Accreted Value of the Bonds then Outstanding under the 2005 Indenture to this Indenture have been obtained while Bonds remain outstanding under the 2005 Indenture. On or after the Interim Transition Date, the Authority shall file a Certificate of the Authority with the Co-Trustee and the Trustee indicating that all of the terms of this Indenture, other than those provisions herein relating to the funding or lack thereof of any series reserve account, the Bond Reserve Fund Requirement and the Bond Reserve Fund, are in effect.

"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):

(A) Federal Securities;

- (B) 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;
- (C) 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;
- (D) 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;
- (E) commercial paper rated at least the second highest rating category by each Rating Agency;
- (F) 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, Aal or Aa2;
- designated and are obligations described in clause (A) or (B) 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;
- (H) 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 (A) or (B) of this definition which have a market value (valued at least weekly) not less than 103% of the amount so invested; and
- (I) 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 (G) and (H) 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" 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" 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" 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" 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 27, 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" 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" 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:

- (1) Any allowance for depreciation;
- (2) Any costs of System capital renewals, replacements, major repairs, reconstruction, improvements, extensions or betterments;
- (3) Any accumulation of reserves for System capital renewals, replacements, major repairs or reconstruction;

- (4) Any reserves for operation, maintenance or repair of the System;
- (5) Any liabilities incurred in the acquisition or improvement of any properties comprising the System or any combination thereof;
 - (6) Any other legal liability not based on contract;
- (7) 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
- (8) 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" means the fund by that name established pursuant to Section 5.01.

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

"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 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" means any payment obligation of the Authority pursuant to a Credit Agreement designated as such in a Supplemental Indenture.

"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; <u>provided</u> 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" 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" means Payment Agreement Payments under a Parity Payment Agreement.

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

"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" 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" means, as of any date of calculation, (a) with respect to any Current Interest Bond, the principal amount thereof, and (b) with respect to any Capital Appreciation Bond, the Accreted Value thereof as of the date on which interest on such Capital Appreciation Bond is compounded next preceding such date of calculation (unless such date of calculation is a date on which such interest is compounded, in which case, as of such date).

"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" means, for any particular Bond, each period so designated by the Supplemental Indenture authorizing the issuance of such Bond.

"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" 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:

- (A) 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;
- (B) the cost of relocation and installation of utilities, environmental cleanup and noise abatement;
- (C) the cost of contract bonds and insurance of all kinds that may be required or necessary during the construction of the Project;
- (D) 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;
 - (E) relocation costs and any claims, awards or judgments relating to the Project;
 - (F) Capitalized Interest; and
- (G) 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" means the party, other than the Authority, to a Payment Agreement; <u>provided</u> 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" means the fund by that name established pursuant to Section 5.01.

"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" means the fund by that name established pursuant to Section 5.01.

"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" 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" means any registrar appointed pursuant to a Supplemental Indenture, and its successors and assigns as provided in Section 8.02.

"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" means the costs of System capital renewals, replacements, major repairs or reconstruction.

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

"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:

(A) 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),

- (B) proceeds from any securities issued by the Authority or proceeds from loans obtained by the Authority,
- (C) the proceeds of any court or arbitration award or settlement in lieu thereof received by the Authority,
- (D) amounts received by the Authority as gifts or as grants (except as hereinabove provided), whether restricted or unrestricted,
 - (E) amounts received by the Authority as revenues from the Navy/GPA Surcharge;
- (F) other amounts (except as hereinabove provided), the use of which is restricted by the donor or grantor.

"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.

"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" means the Certificates of Participation, Series 2005, evidencing an assignment of a proportionate interest in rights to receive certain Net Pledged Revenues pursuant to the Purchase Agreement between Guam Waterworks Facilities Corporation and the Authority.

"Series 2025A Bonds" means the Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2025A, issued under the 2005 Indenture.

"Short-Term Bonds" means Bonds having an original maturity less than or equal to sixty (60) months and not renewable at the option of the Authority for a term greater than one year from the date of original incurrence or issuance unless, by the terms of such Bonds, no Bonds is permitted to be outstanding thereunder for a period of at least thirty (30) consecutive days during each Fiscal Year.

"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" 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" means the fund by that name established pursuant to Section 5.01 for the purposes provided in Section 5.07.

"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 Depositary, 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" 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" 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.

"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.

"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.

"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.

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

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 and countersigned by the manual or facsimile signature of the Chief Financial Officer of the Authority. 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 <u>Exchange of Bonds</u>. 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 <u>Issuance of Bonds</u>. 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 <u>Application of Proceeds of Bonds</u>. 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 Depositary 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 Depositary 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 Depositary for each Construction Account for such Project or Projects a Certificate of the Authority describing such modification, together with a written report of a 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.

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.
- 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 to otherwise finance Project-related costs or working capital, 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 may specify whether such Series will be secured by the Bond Reserve Fund a separate Series reserve fund or any other such similar reserve fund.
- (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 <u>Proceedings for the Issuance of a Series of Bonds; Parity Payment Agreements</u>. 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) if applicable, the amount of the Bond Reserve Fund Requirement or a Series specific reserve account requirement upon the issuance of such Series;
- (4) if applicable, the amount to be deposited (or otherwise available) in the Bond Reserve Fund or a separate series reserve account 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) if applicable, 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) if applicable, 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;

- (13) the date or dates of maturity and Principal Payment Periods of Bonds of such Series and the manner of payment of principal of such Bonds;
- (14) the rate or rates of interest or the manner of determining such rate or rates borne by the Bonds of such Series and the Record Dates and Interest Payment Dates for such Bonds;
- (15) the Bonds of such Series which are Serial Bonds (if any) and the Bonds of such Series which are Term Bonds (if any);
 - (16) the terms of redemption, if any, of Bonds of such Series;
- (17) the date and amount of each Mandatory Sinking Account Payment (if any) required to be paid by the Authority for the retirement of Term Bonds of such Series;
- (18) the designation of any accounts to be established pursuant to this Indenture and any other accounts deemed advisable by the Authority;
- (19) any tax or other covenants which, in the judgment of the Authority, are designed to insure that interest on such Series of Bonds will be excludable from gross income for federal income tax purposes and which are not inconsistent with the provisions of this Indenture; provided, however, that the Authority may, in its sole and absolute discretion, determine in connection with the authorization of a Series of Bonds that it will not make any such covenants because interest on such Series is not intended to be excludable from gross income for federal income tax purposes; and
- (20) any other provisions deemed advisable by the Authority, not in conflict with or in substitution for the provisions of this Indenture (except as expressly permitted in this Indenture).
- (B) (1) Before any Series of Bonds other than the initial Series shall be issued and delivered and before any Parity Payment Agreements are entered into, the Authority shall file the following documents with the Trustee:
- (a) If and to the extent that an additional Series of Bonds is being issued, an Opinion of Counsel setting forth (i) that such counsel has examined the Supplemental Indenture; (ii) that the execution and delivery of the additional Series of Bonds have been duly authorized by the Authority; and (iii) that said additional Series of Bonds, when duly executed by the Authority and, if required, authenticated and delivered by the Registrar for such Bonds, will be valid and binding special obligations of the Authority, payable from Revenues as provided herein.
- (b) A Certificate of the Authority that the requirement of Section 3.04(A)(1) has been met.
- (c) (i) If and to the extent that an additional Series of Bonds is being issued for the purpose of providing moneys for deposit in a Construction Account, the following certificates: [to be reviewed/revised]
- (A) A certificate of a Consulting Engineer setting forth (I) the projected Date of Completion for the Project or Projects for which such Series of Bonds is being issued and for any other uncompleted Projects, and (II) an estimate of the cost of construction of such Projects;

- (B) A written report of a Consulting Engineer setting forth for each Fiscal Year from the then current Fiscal Year through the later of (I) the first Fiscal Year commencing at least five years after the date of original issuance of such additional Series, or (II) the first Fiscal Year commencing at least three years after the Date of Completion projected by the Consulting Engineer pursuant to subparagraph (A) above, estimates of Revenues, Operation and Maintenance Expenses and Net Revenues; and
- (C) A Certificate of the Authority (I) setting forth (a) the estimates of Revenues, Operation and Maintenance Expenses and Net Revenues, as set forth in the written report of a Consulting Engineer pursuant to subparagraph (B) above, for each of the Fiscal Years covered by such report, and (b) the Aggregate Annual Debt Service and Capitalized Interest for each of such Fiscal Years, including Annual Debt Service and Capitalized Interest on all future Series of Bonds, if any, which such Certificate of the Authority shall estimate (based on the estimate of the Consulting Engineer of the cost of construction of such Projects) are required to complete payment of the cost of construction of such Projects, and (II) demonstrating that for each of such Fiscal Years (a) Revenues are projected to be at least equal to the aggregate amount of all transfers required to be made pursuant to Section 5.02(A) through (E) and, to the extent applicable, otherwise required to provide for the payment of all obligations of the Authority to be paid from Revenues, and (b) Net Revenues are projected to be at least equal to 1.25 times Aggregate Annual Debt Service.
- (ii) In lieu of the certificates and reports required by subparagraphs (i)(A), (B) and (C) above, the Authority may deliver to the Trustee a Certificate of the Authority to the effect that for the last complete Fiscal Year or any period of 12 consecutive calendar months out of the 18 calendar months next preceding the original issuance of such Series of Bonds, Net Revenues for such Fiscal Year or 12-month period equaled at least 1.25 times the Maximum Annual Debt Service on all Bonds then Outstanding plus the Series of Bonds being issued.
- (iii) In addition, a Series of Bonds may be issued for the sole purpose of depositing in a Construction Account the amounts necessary to complete any one or more Projects without filing with the Trustee of the certificates and reports required by subparagraphs (i)(B) and (C), if such certificates and reports demonstrating compliance with such subparagraphs were filed in connection with the issuance of the prior Series of Bonds for each of such Projects and if the principal amount of such Bonds to be issued for completion purposes does not exceed ten percent (10%) of the principal amount of Bonds previously issued for and allocable to such Projects.
- (d) If and to the extent that an additional Series of Bonds is being issued for the purpose of refunding Bonds, either (i) a certificate of an Independent Certified Public Accountant that Aggregate Annual Debt Service for each Fiscal Year thereafter will be less than or equal to Aggregate Annual Debt Service for each such Fiscal Year in the absence of such refunding, or (ii) the certificates and reports required by subsection (B)(1)(c)(i)(A) (if any one or more of the Projects for which the Bonds being refunded is not then completed), (B) and (C) of this Section; provided that in lieu of the certificates and reports required by subparagraphs (A), (B) and (C) of said subsection (B)(1)(c)(i), the Authority may deliver to the Trustee the certificate required by subsection (B)(1)(c)(ii).
- (e) If and to the extent that a Parity Payment Agreement, other than a Parity Payment Agreement all payments pursuant to which have been taken into account for purposes of determining that the requirements of this subsection (B) have been satisfied with respect to the issuance of the Related Bonds, is being entered into, either (i) a certificate of an Independent Certified Public Accountant that Aggregate Annual Debt Service for each Fiscal Year thereafter will be less than or equal to Aggregate Annual Debt Service for each such Fiscal Year in the absence of such Parity Payment Agreement, or (ii) the certificates and reports required by subsection (B)(1)(c)(i)(B) and (C) of this

Section, in each case treating such Payment Agreement as in effect for purposes of any calculations; <u>provided</u> that in lieu of the certificates and reports required by subparagraphs (B) and (C) of said subsection (B)(1)(c)(i), the Authority may deliver to the Trustee the certificate required by subsection (B)(1)(c)(ii), treating such Payment Agreement as in effect for purposes of any calculations.

(2) In connection with the issuance of an additional Series of Bonds, upon the delivery to the Trustee of the foregoing instruments, the applicable Registrar shall authenticate and deliver said additional Series of Bonds, in the aggregate principal amount specified in such Supplemental Indenture, to, or upon the Order of, the Authority, when such additional Series of Bonds shall have been presented to it for that purpose.

SECTION 3.06 <u>Validity of Bonds</u>. The validity of the authorization and issuance of the Bonds shall not be dependent on or affected in any way by any proceedings taken by the Authority for the improvement of the System, or by any contracts made by the Authority in connection therewith, or the failure to construct the System or any part thereof. The recital contained in the Bonds that the same are regularly issued pursuant to the Act shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01 Terms of Redemption. Any Series of Bonds may be made subject to redemption prior to maturity, as a whole or in part, at such time or times, and upon payment of the principal amount thereof plus such premium or premiums, if any, as may be determined by the Authority at the time such Series is authorized and as shall be set forth in the Supplemental Indenture authorizing such Series; provided, however, that such Supplemental Indenture shall provide that the Authority shall have the right, on any date, to redeem the Bonds of any such Series, as a whole, or in part so that the reduction in Annual Debt Service for the Bonds of such Series for each Bond Year after such redemption shall be as nearly proportional as practicable, from and to the extent of proceeds received by the Authority due to a governmental taking of the System or portions thereof by eminent domain proceedings, if such amounts are not used for additions, improvements or extensions to the System, under the circumstances and upon the conditions and terms set forth in Section 6.11, at the principal amount thereof plus interest accrued thereon, without premium.

Selection of Bonds for Redemption. For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of portions equal to their respective minimum authorized denomination, and any such portion may be separately redeemed. The applicable Registrar shall promptly notify the Authority, the Trustee and the Co-Trustee in writing of the Bonds or portions thereof selected for redemption. In the event that less than all of the Bonds of any Series and maturity are to be redeemed, the Bonds (or portions thereof) to be redeemed shall be selected by the Authority or, in the absence of such a selection by the Authority, by the applicable Registrar by lot within such maturity in such manner as the Registrar may determine. The amount of each Series and maturity of the Bonds to be redeemed shall be determined by Section 4.01 or the applicable Supplemental Indenture or, if permitted, by Request of the Authority.

In addition, a Supplemental Indenture providing for the issuance of Additional Bonds may specify any other method or order of selection of such Additional Bonds for redemption, subject to Section 4.01.

SECTION 4.03 Notice of Redemption. Notice of redemption (except as provided below) shall be given, not less than thirty (30) nor more than sixty (60) days before the date fixed for redemption, by first class mail to each of the registered owners of Bonds designated for redemption at their addresses appearing on the Bond registration books of the applicable Registrar on the date the Bonds to be redeemed are selected. Each notice of redemption shall state the redemption date, the place or places of redemption, the Series and maturities to be redeemed, and, if less than all of any such maturity, the numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed, and shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered, with a written instrument of transfer duly executed by the registered owner thereof or by such registered owner's attorney duly authorized in writing. No defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of such Bonds. Each notice of redemption shall also state the CUSIP number, date of issue and interest rate on each Bond, or portion thereof, to be redeemed, and shall include the redemption agent name and address; provided, however, that failure to include any of such information in any redemption notice, or any inaccuracy in any such information, shall not affect the sufficiency of the proceedings for redemption of any Bonds.

A copy of any notice of redemption given pursuant to the foregoing paragraph shall also be sent by first class mail to each Owner of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed and to each of the Fiduciaries, each of the Credit Providers, the Securities Depositories (as defined below) and two or more Information Services (as defined below); provided, however, that failure to give notice pursuant to this sentence by certified mail to any Bondowners, to any Fiduciaries, to any Credit Providers or to any Securities Depositories or Information Services, or the insufficiency of any such notices, shall not affect the sufficiency of the proceedings for redemption of any Bonds. A second notice shall be sent by first class mail to the registered owner of any Bond which has been called for redemption in whole or in part, and is not surrendered for payment within sixty (60) days after the date fixed for redemption; provided, however, that failure to send any such second notice, or any deficiency of any such notice, shall not affect the sufficiency of the proceedings for redemption of any Bonds. As used in this paragraph, the term "Information Services" means Financial Information, Inc.'s "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services' "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's "Municipal and Government," 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; and Standard and Poor's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then-current guidelines of the Securities and Exchange Commission, and/or such other services providing information with respect to called bonds, or no such services, as the Authority may designate in a Certificate delivered to the Trustee; and the term "Securities Depositories" means: The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; and/or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no such depositories, as the Authority may designate in a Certificate delivered to the Trustee.

Notice of redemption of Bonds shall be given by the applicable Registrar for and on behalf of the Authority.

A Supplemental Indenture providing for the issuance of Bonds may provide that notice of the redemption of such Bonds shall be given at times and in a manner different from that specified above.

SECTION 4.04 <u>Partial Redemption</u>. Upon surrender of any Bond redeemed in part only, the Authority shall execute and the applicable Registrar shall authenticate and deliver to the registered owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations, and of the same Series, maturity and tenor, equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

SECTION 4.05 <u>Effect of Redemption</u>. Notice of redemption having been duly given as aforesaid, and moneys being held by the Trustee, the Co-Trustee or Paying Agents for payment of the Redemption Price of, and interest accrued to the redemption date on, the Bonds (or portions thereof) so called for redemption on the redemption date designated in such notice, such Bonds (or such portions) shall become due and payable at the Redemption Price specified in such notice plus interest accrued thereon to the date fixed for redemption, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest.

All Bonds purchased or redeemed pursuant to the provisions of this Indenture shall be cancelled upon surrender thereof and delivered to or upon the Order of the Authority.

SECTION 4.06 <u>Rescission of Notice of Redemption</u>. The Authority may, at its option and expense, prior to the date fixed for redemption in any notice of redemption rescind and cancel such notice of redemption.

ARTICLE V

REVENUES AND FUNDS

SECTION 5.01 Pledge and Assignment of Revenues; Revenue Fund. (A) There are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of this Indenture and the payment of Credit Agreement Payments and Parity Payment Agreement Payments in accordance with their terms, all of the Revenues. Said pledge shall constitute a lien on and security interest in such Revenues and shall attach, be perfected and be valid and binding from and after delivery by the applicable Registrar of the first Series of Bonds hereunder, without any physical delivery of such Revenues or further act.

- (B) The Depositary for the Revenue Fund shall maintain and hold in trust the Revenue Fund so long as any Bonds, Credit Agreement Payments, or Parity Payment Agreement Payments remain Outstanding. The Authority shall deposit all Revenues upon the receipt thereof in the Revenue Fund. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein and therein, the Trustee and the Depositary shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, the Co-Trustee and the Depositary for the Revenue Fund and shall forthwith be paid by the Authority to such Depositary.
- (C) (1) In addition to the Revenue Fund, the Depositary for the Revenue Fund shall establish within the Revenue Fund and maintain and hold in trust hereunder additional separate funds designated as follows:
 - (a) The "Operation and Maintenance Fund";

- (b) The "Subordinate Securities Fund" (which may be held by the applicable trustee or depositary for any Subordinate Securities);
- (c) the "Operation, Maintenance, Renewal and Replacement Reserve Fund";
- (d) the "Rate Stabilization Fund";
- (e) the "Capital Improvement Fund"; and
- (f) the "Rebate Fund".

The Operation, Maintenance, Renewal and Replacement Reserve Fund, the Rate Stabilization Fund and the Capital Improvement Fund may also be held by any one or more Depositaries other than the Depositary for the Revenue Fund.

- (2) The Co-Trustee shall establish, maintain and hold in trust the following additional fund and accounts:
 - (a) the Debt Service Fund (within the Revenue Fund); and
 - (b) the Bond Reserve Fund (within the Revenue Fund).
- (D) All moneys at any time deposited with the Trustee, the Co-Trustee or any Depositary, as the case may be, shall be held by the Trustee, the Co-Trustee or such Depositary, as the case may be, in trust for the benefit of the Owners at any time of the Bonds (and, to the extent any Credit Agreement Payment is due and payable, for the benefit of the applicable Credit Provider), and the Authority shall have no beneficial right or interest in any of such moneys, except as provided in this Indenture. All Revenues and other moneys so deposited shall be held, disbursed, allocated and applied only as provided in this Indenture.
- SECTION 5.02 Allocation of Revenues. On or before the fifth day of each calendar month, after providing for any amounts due under the Consent Decree described in Section 5.01 for which revenues from the Navy/GPA Surcharge are not available to pay, the Depositary for the Revenue Fund shall transfer from the Revenue Fund (to the Trustee as necessary) for deposit into one or more of the following respective separate funds, the following amounts in the following order of priority, the requirements of each such fund or account (including the making up of any deficiencies in any such fund or account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied, and the results of such satisfaction being taken into account, before any transfer is made to any fund subordinate in priority:
- (A) into the Operation and Maintenance Fund, an amount equal to the amount of Operation and Maintenance Expenses budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, to be paid from Revenues during the next succeeding calendar month (including any amount to be held as a reserve for transfer to the Rebate Fund) plus the amount of any Other Credit Agreement Payments then due and payable or to become due and payable during such month not otherwise included in such amount;
- (B) into the Debt Service Fund held by the Co-Trustee, an amount equal to the amount necessary to increase the amount in the Debt Service Fund to the aggregate amount for all Outstanding Bonds of all unpaid interest, principal and Mandatory Sinking Account Payments and for all

Outstanding Parity Payment Agreements of all Parity Payment Agreement Payments with respect thereto and for all Outstanding Credit Agreements of all Credit Agreement Reimbursement Payments due and payable to the extent not otherwise included in such amount which shall be required to have been transferred to the Debt Service Fund on the basis of the following transfer requirement rules (after taking into account amounts transferred and to be transferred from any Construction Account to pay Capitalized Interest):

- current uncompounded basis on any Interest Payment Date shall be transferred in equal monthly amounts over the Interest Accrual Period for such Bond ending on such Interest Payment Date (or in the case of Variable Rate Bonds 110% of the amount of interest accrued during the next preceding calendar month less any excess deposited for the next preceding calendar month); provided that to the extent that a Qualified Counterparty is obligated to make payments to the Authority on or prior to such Interest Payment Date pursuant to an Outstanding Payment Agreement Related to any Bonds, an amount equal to the amount of any such payment obligation shall be transferred from the Revenue Fund to the Debt Service Fund on the date such payment is due and the amount of each monthly transfer with respect to such Bonds required by this subparagraph (1) during the Interest Accrual Period (or portion thereof) over which such payment obligation accrues shall be reduced by an amount equal to the amount of such Qualified Counterparty's payment obligation accruing during the next preceding calendar month;
- (2) the amount of interest payable on each Bond on a deferred compounded basis on any Interest Payment Date shall be transferred in substantially equal monthly amounts over the period during which such interest accrues on such basis;
- (3) the amount of the principal of each Bond shall be transferred in equal monthly amounts over the Principal Payment Period for such Bond ending on the maturity date for such Bond;
- (4) the amount of each Mandatory Sinking Account Payment for Bonds shall be transferred in equal monthly amounts over the Principal Payment Period for such Bonds ending on the date such Mandatory Sinking Account Payment is due;
- Payment Agreement Payment Date shall be transferred (a) in the case of such payments calculated based on a fixed rate, in equal monthly installments over the Payment Agreement Payment Accrual Period for such Payment Agreement Payment ending on such Payment Agreement Payment Date and (b) in the case of such payments calculated based on a variable rate, in monthly installments equal to 110% of the amount of such obligation accrued during the next preceding calendar month less any excess deposited for the next preceding calendar month; and
- (6) to the extent not otherwise included in amounts described in subparagraphs (1) through (5) above, the amount of any Credit Agreement Reimbursement Payment due and payable shall be transferred.
- (C) only to the extent specified in a Supplemental Indenture for a Series of Bonds, (1) into the Bond Reserve Fund held by the Co-Trustee, the amount, if any, needed to increase the amount in the Bond Reserve Fund to the Bond Reserve Fund Requirement as of the date of such transfer, or (2) into a series reserve account held by the Co-Trustee, the amount, if any, needed to increase the amount in such series reserve account to the any applicable series reserve account requirement as of the date of such transfer;

- (D) into the Subordinate Securities Fund (and any accounts therein), the amount, if any, needed to increase the amount in such Fund and each such account to its requirement (including any requirements for reasonable debt service reserves and requirements related to Payment Agreements that constitute Subordinate Securities (including Termination Payments)) established by each resolution, indenture or other instrument pursuant to which Subordinate Securities are issued and outstanding;
- (E) into the Operation, Maintenance, Renewal and Replacement Reserve Fund, the amount, if any, needed to increase the amount in the Operation, Maintenance, Renewal and Replacement Reserve Fund to a requirement equal to one-fourth (1/4) of the sum of the amounts of Operation and Maintenance Expenses and Renewal and Replacement Costs budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, for the then current Fiscal Year; provided, however, that prior to the Fiscal Year beginning October 1, 2010, the deposit into such fund each month shall not be required to be greater than one-sixtieth (1/60) of such requirement for the then current Fiscal Year:
- (F) into the Rate Stabilization Fund, the amount specified for such month in a Certificate of the Authority which also certifies that such amount is consistent with the annual budget established by the Authority pursuant to Section 6.08; and
- (G) into the Capital Improvement Fund, the balance remaining in the Revenue Fund after the foregoing deposits.

SECTION 5.03 Application of Operation and Maintenance Fund. All amounts in the Operation and Maintenance Fund shall be used and withdrawn by the Authority upon Requisition solely for the purpose of paying Operation and Maintenance Expenses; provided that any amounts deposited in the Operation and Maintenance Fund for the purpose of paying Other Credit Agreement Payments shall be used and withdrawn only for the purpose for which they were deposited. For purposes of this Section, any check, draft, warrant or purchase order of the Authority executed by an officer or employee of the Authority duly authorized by resolution of the Board of Directors of the Authority to execute such instruments shall be treated as a Requisition.

SECTION 5.04 Rebate Fund.

- (A) If and to the extent required by the Supplemental Indenture providing for the issuance of a Series of Bonds, the Trustee shall establish and maintain within the Rebate Fund a separate Rebate Account for such Series. There shall be deposited in such Rebate Account from amounts in the Operation and Maintenance Fund or other lawfully available moneys such amounts as are required to be deposited therein pursuant to the Tax Certificate with respect to such Series of Bonds. All money at any time deposited in a Rebate Account shall be held by the Trustee in trust, and shall be governed exclusively by this Section and by the Tax Certificate with respect to such Series of Bonds.
- (B) Notwithstanding any provisions of this Section, if the Authority shall provide to the Trustee an opinion of Bond Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion, if any, from gross income for federal income tax purposes of interest on any Series of Bonds, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding Article IX of this Indenture, the covenants hereunder shall be deemed to be modified to that extent.

SECTION 5.05 <u>Application of Debt Service Fund</u>. (A) Subject to subsection (C) of this Section, all amounts in the Debt Service Fund shall be used and withdrawn by the Co-Trustee

solely for the purpose of (1) paying interest on Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), (2) paying the principal of Serial Bonds when due and payable, (3) purchasing or redeeming or paying at maturity Term Bonds as provided in this Section, (4) paying Parity Payment Agreement Payments due and payable, and (5) paying Credit Agreement Reimbursement Payments due and payable.

- (B) Subject to subsection (C) of this Section, on each Mandatory Sinking Account Payment date, the Co-Trustee shall apply the Mandatory Sinking Account Payment or Payments required on that date to the redemption (or payment at maturity, as the case may be) of the applicable Term Bonds upon the notice and in the manner provided in Article IV. At any time prior to giving such notice of such redemption, the Co-Trustee, upon the Request of the Authority, shall apply moneys in the Debt Service Fund, in an amount not in excess of such Mandatory Sinking Account Payment, to the purchase of the applicable Term Bonds at public or private sale, as and when and at such prices (including brokerage and other charges) as are specified in such Request, except that the purchase price (excluding accrued interest) shall not exceed the price that would be payable for such Bonds upon redemption by application of such Mandatory Sinking Account Payment.
- (C) If (1) during the twelve-month period immediately preceding a Mandatory Sinking Account Payment date the Co-Trustee purchases the applicable Term Bonds with moneys in the Debt Service Fund, or (2) during said period and prior to giving notice of redemption the Authority otherwise deposits the applicable Term Bonds with the Co-Trustee (together with a Request of the Authority to apply such Bonds so deposited to the Mandatory Sinking Account Payment due on said date), the amount of Bonds so purchased or deposited shall be credited at the time of such purchase or deposit, to the extent of the full principal amount thereof, to reduce such Mandatory Sinking Account Payment. All Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Co-Trustee.
- (D) With respect to each series of Bonds for which proceeds of the sale thereof are required to be set aside to pay interest on the Bonds, the Co-Trustee (if so instructed by the Supplemental Indenture providing for the issuance of such series) shall transfer from the Construction Fund and deposit in the Debt Service Fund the amounts at the times specified in the Supplemental Indenture providing for the issuance of such Series.

Reserve Fund shall be used and withdrawn by the Co-Trustee solely for the purpose of paying debt service on Bonds (including Payment Agreement Payments to the extent provided in any Supplemental Indenture) in the event of a deficiency in the Debt Service Fund, in the manner and to the extent set forth in Section 5.12. So long as the Authority is not in default hereunder, any amount in the Bond Reserve Fund in excess of the Bond Reserve Fund Requirement shall be transferred to the Revenue Fund. A Supplemental Indenture providing for the issuance of a Series of Bonds may provide that income derived from the investment of the proceeds of such Series in the Bond Reserve Fund prior to the completion of each Project for which such Bonds were issued shall be deposited in the Construction Account for such Project. Otherwise, such income shall be deposited in the Revenue Fund.

If and to the extent provided by Supplemental Indenture, the Bond Reserve Fund Requirement may be wholly or partially satisfied by a Credit Facility. Notwithstanding anything to the contrary contained hereinbefore in this Section or in Article IV, such Supplemental Indenture may also provide that a draw on such Credit Facility shall be made only after all cash in the Bond Reserve Fund has been withdrawn, and that if a drawing or other claim on such Credit Facility is honored, amounts available under Section 5.02(C) for deposit in the Bond Reserve Fund shall be applied by the Co-Trustee to reimburse, as soon as practicable, the amount of each payment honoring such drawing or other claim,

and the Trustee shall give any notice of such reimbursement required by the applicable Credit Agreement. No such Credit Facility shall be given any priority over any other such Credit Facility as to draws or repayments.

Notwithstanding anything to the contrary contained herein, the Authority may, at its discretion provide that a Series of Bonds will be secured by the Bond Reserve Fund, a separate series specific reserve account or neither the Bond Reserve Fund nor a separate series specific reserve account. If the Authority, at its discretion, provides that a Series of Bonds will be secured by a series specific reserve account, then the Supplemental Indenture pursuant to which such Series of Bonds are issued shall provide the funding and mechanics of such series specific reserve account.

SECTION 5.07 <u>Application of Subordinate Securities Fund</u>. All amounts in the Subordinate Securities Fund may be used and withdrawn, as directed by a Request of the Authority, for the purpose of paying debt service due on Subordinate Securities, amounts due pursuant to Payment Agreements (including Termination Payments), funding or replenishing reasonable reserves and meeting other requirements of the instrument pursuant to which such Subordinate Securities are issued.

Replacement Reserve Fund. All amounts in the Operation, Maintenance, Renewal and Replacement Reserve Fund shall be used and withdrawn upon Requisition of the Authority solely for the purposes of (A) paying Operation and Maintenance Expenses if and to the extent that amounts on deposit in the Operation and Maintenance Fund are insufficient for such purpose, (B) paying Renewal and Replacement Costs budgeted by the Authority, pursuant to the budget, as revised, filed in accordance with Section 6.08, for the then current Fiscal Year, and (C) paying the costs of repair or replacement of loss or damage caused by or resulting from fire or from action of the elements (including loss from typhoons, earthquakes, floods and tidal waves), whether or not such costs are Operation and Maintenance Expenses or Renewal and Replacement Costs. For purposes of this Section, any check, draft, warrant or purchase order of the Authority executed by an officer or employee of the Authority duly authorized by resolution of the Board of Directors of the Authority to execute such instruments shall be treated as a Requisition.

SECTION 5.09 <u>Application of Rate Stabilization Fund</u>. All amounts in the Rate Stabilization Fund shall be transferred by the Authority from time to time to the Revenue Fund in the amounts specified by a Certificate of the Authority which also certifies that such amount is consistent with the annual budget established by the Authority pursuant to Section 6.08.

SECTION 5.10 Application of Capital Improvement Fund. Except as may be otherwise set forth in a Supplemental Indenture, all amounts in the Capital Improvement Fund may be used and withdrawn by the Authority for any lawful purpose of the Authority or may be transferred to the Revenue Fund, in each case upon Request of the Authority. The Authority may direct the appropriate Depositary to establish accounts within the Capital Improvement Fund for appropriate purposes, and may restrict the purposes for which amounts in any such account may be used and withdrawn so long as such purposes are lawful purposes.

SECTION 5.11 Deficiencies in Funds or Accounts. In the event that the amount in any Fund or Account is insufficient for the purposes for which such Fund or Account was established, the Co-Trustee, or the Trustee or the Depositary upon the direction of the Co-Trustee, shall transfer to such Fund or Account the amount of such deficiency by withdrawing said amount from subordinate Funds and Accounts in reverse order of the priority set forth in Section 5.02 and prior to any other claims upon such Funds and Accounts, subject only to the limitation that amounts in the Bond Reserve Fund shall only be used as provided in Section 5.06. If after making all such transfers, the amount in the Debt

Service Fund is insufficient, the Co-Trustee shall promptly notify each Credit Provider of the amount of such insufficiency.

SECTION 5.12 <u>Investment of Moneys in Funds</u>. All Investment Securities and any other investments acquired with moneys held hereunder shall be acquired subject to the limitations of any covenant relating to the exclusion of interest on Bonds from gross income for federal income tax purposes, to the limitations as to maturities hereinafter in this Section set forth and to such additional limitations or requirements consistent with the foregoing as may be established by Request of the Authority. No Investment Security which is subject to redemption at the option of the issuer may be purchased at a premium above the amount of the premium payable upon any such redemption.

Moneys in the Construction Accounts, the Rebate Fund, the Debt Service Fund and the Bond Reserve Fund shall be invested solely in Investment Securities to maximize investment income, with proper regard for the preservation of principal, pursuant to a Request of the Authority as to such investment. In the absence of any different instruction, such moneys shall be invested in Investment Securities described in clause (F) of the definition thereof.

Moneys in the Revenue Fund, the Operation and Maintenance Fund, the Subordinate Securities Fund, the Operation, Maintenance, Renewal and Replacement Reserve Fund and the Capital Improvement Fund may be invested in any investment designated by Request of the Authority.

Notwithstanding any other provision hereof, moneys in the Revenue Fund and the Bond Reserve Fund shall be invested only in Investment Securities having at least an investment grade rating from the Rating Agency.

Subject to the provisions of any Supplemental Indenture, moneys in all Funds and Accounts established under this Indenture shall be invested in investments paying interest and maturing not later than the dates on which it is estimated that such moneys will be required by the Trustee, the Co-Trustee, the applicable Depositary or the Authority.

All interest and other profit derived from such investments shall be deposited in the Revenue Fund when received, except that interest and other profit derived from the investment of moneys in the Construction Accounts, the Capital Improvement Fund and the Rebate Fund shall be retained in such respective Fund or Account, and except that interest and other profit derived from the investment of moneys in the Bond Reserve Fund shall be deposited as provided in Section 5.06. Investments acquired as an investment of moneys in any Fund or Account established under this Indenture shall be credited to such Fund or Account.

Subject to the provisions of any Supplemental Indenture, for the purpose of determining the amount in any Fund or Account, except the Rebate Fund, the amount of any obligation allocable to such Fund or Account shall be equal to the purchase price of such obligation (not including accrued interest, if any, paid on the purchase of such obligation) plus the amount of any discount below par accounting for any such discount ratably each year over the term of such obligation (i.e., by dividing the amount of such discount by the number of interest payments remaining to maturity and by multiplying the amount so calculated by the number of interest payment dates having passed since the date of purchase) (in this Section called "amortized value"); provided, however, that the amount of any accrued interest on any obligation may be credited to the Revenue Fund or to any Fund or Account to which such amount or any portion thereof may have been transferred from the Revenue Fund.

The Trustee, the Co-Trustee or the applicable Depositary may sell at the best price obtainable, or present for redemption, any security purchased hereunder whenever it shall be necessary in

order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Fund or Account to which such security is credited, and the Trustee, the Co-Trustee and such Depositary shall not be liable or responsible for any loss resulting from such investment.

ARTICLE VI

CERTAIN COVENANTS

SECTION 6.01 Payment of Principal and Interest. The Authority will punctually pay or cause to be paid the principal and interest (and premium, if any) to become due in respect of every Bond issued hereunder at the times and places and in the manner provided herein and in the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, but solely from Revenues and other moneys held in trust hereunder, as provided herein.

SECTION 6.02 <u>Against Encumbrances</u>. Subject to any rights of the United States of America or as otherwise set forth herein, the Authority will not mortgage or otherwise encumber, pledge or place any charge upon the System or any part thereof, or upon any of the Revenues, prior to or on a parity with the Bonds, the Parity Payment Agreements and Credit Agreement Payments.

So long as any Bonds are Outstanding, the Authority will not issue any bonds or obligations payable from Revenues or secured by a pledge, lien or charge upon Revenues prior to or on a parity with the Bonds, the Parity Payment Agreements and the Credit Agreement Payments, other than the Bonds, the Parity Payment Agreements and the Credit Agreement Payments.

Except as may be otherwise set forth in a Supplemental Indenture, nothing in this Indenture, and particularly nothing in the preceding two paragraphs, shall prevent the Authority from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness which as to principal or interest, or both, (1) are payable from Revenues after and subordinate to the payment from Revenues of the principal of and interest on the Bonds, the Parity Payment Agreement Payments and Credit Agreement Payments, or (2) are payable from moneys which are not Revenues as such term is defined in this Indenture.

SECTION 6.03 Sale or Other Disposition of Property. (A) The Authority and the Government will not sell or otherwise dispose of the System or any part thereof, or permit others to sell or otherwise dispose of the System or any part thereof, essential to the proper operation of the System or to the collection of Revenues sufficient to pay debt service on the Bonds, Parity Payment Agreement Payments and Credit Agreement Payments and otherwise comply with Section 6.12. The Authority will not enter into any agreement which impairs the operation of the System or impedes the collection of Revenues sufficient to pay debt service on the Bonds, Parity Payment Agreement Payments and Credit Agreement Payments and otherwise comply with Section 6.12.

(B) Any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the System, or any material or equipment which has worn out, may be sold at a price not less than the fair market value thereof if such sale will not reduce Net Revenues and if the net proceeds of such sale are deposited in the Revenue Fund.

SECTION 6.04 Operation and Maintenance of the System. The Authority will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with prudent management and standards customarily followed in the industry for systems of like size and character. The Authority will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so

that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost. The Authority will operate the System in an efficient and economical manner, consistent with the protection of the Owners of the Bonds and so as to assure that the System shall be financially self-sufficient and self-sustaining. The Authority shall not commit or allow any waste with respect to the System. Nothing herein shall prohibit the Authority from subcontracting any part of the maintenance and operation of the System.

America, the Authority shall keep the System and all parts thereof free from judgments, from mechanics' and materialmen's liens and from all liens and claims of whatsoever nature or character, to the end that the security provided pursuant to this Indenture may at all times be maintained and preserved, and the Authority shall keep the System and the Revenues free from any liability which might hamper the Authority in conducting its business or operating the System. The Trustee or and Co-Trustee at its option (after first giving the Authority ten days written notice to comply therewith and failure of the Authority to so comply within said ten-day period) may defend against any and all actions or proceedings in which the validity of this Indenture is or might be questioned, or may pay or compromise any claim or demand asserted in any such actions or proceedings; provided, however, that, in defending against such actions or proceedings or in paying or compromising such claims or demands, the Trustee or the Co-Trustee shall not in any event be deemed to have waived or released the Authority from liability for or on account of any of its covenants and warranties contained herein, or from its liability hereunder to defend the validity of this Indenture and the pledge herein made and to perform such covenants and warranties.

SECTION 6.06 <u>Insurance</u>.

(A) The Authority will maintain or cause to be maintained insurance on the System with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually maintained by prudent operators of systems similar and similarly situated to the System and which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners so long as such insurance is available to the Authority on the open market from responsible insurers at reasonable cost. In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of the System; and the Authority shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the Authority shall deposit such excess in the Capital Improvement Fund. Notwithstanding the foregoing, if the proceeds of such insurance, together with other moneys available for such purpose, are sufficient to enable the Authority to retire all Outstanding Bonds, whether at maturity or on redemption prior to maturity or any combination thereof, and to pay the Parity Payment Agreement Payments and any Termination Amount payable by the Authority pursuant to Parity Payment Agreements in connection with a termination thereof, and to pay any Credit Agreement Payments then due and payable the Authority may elect not to repair, reconstruct or replace the damaged or destroyed portion of the System, and thereupon, the proceeds of such insurance shall be applied by the Authority and the Trustee to the payment when due of the interest to become due on all Outstanding Bonds on and prior to the maturity date or redemption date thereof, as the case may be, to the payment of the principal of and redemption premiums, if any, on all Outstanding Bonds at maturity or on redemption prior to maturity, as the case may be, and to the payment of such Parity Payment Agreement Payments and any such Termination Amounts, as the case may be, when due and to pay any Credit Agreement Payments then due and payable.

- (B) The Authority will maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Bondowners, which insurance shall afford protection in such amounts and against such risks as are usually maintained by prudent operators of systems similar to the System.
- (C) Any insurance required under this Section may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner customarily maintained by prudent operators of systems similar to the System. The Authority shall, every third year, engage an insurance consultant to review the Authority's self-insurance program and to make recommendations for any necessary modifications, including, but not limited to, any modifications necessary to comply with this Section. Each such report shall be filed with the Trustee.
- SECTION 6.07 <u>Books and Accounts; Financial Statements.</u> (A) The Authority will keep proper books of record and accounts, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Trustee, the Co-Trustee or any Owner of Bonds then Outstanding or their representatives authorized in writing, at reasonable hours and under reasonable conditions.
- (B) The Authority will prepare and file with the Trustee and the Co-Trustee annually within nine months after the close of each Fiscal Year so long as any of the Bonds are Outstanding --
- (1) financial statements for the preceding Fiscal Year, prepared in accordance with (i) the accounting requirements of this Indenture and (ii) generally accepted accounting principles applied on a consistent basis from year to year, including a balance sheet, statement of income, statement of retained earnings, and statement of changes in financial position (including a statement of revenue, expenditures and fund balances for each of the Funds and Accounts established pursuant to this Indenture), and including a reconciliation between the bases of accounting required under clauses (i) and (ii) above, which financial statements shall be examined by and include the certificate or opinion of an Independent Certified Public Accountant, such certificate or opinion to include a statement as to the manner and extent to which the Authority has complied with the provisions of this Indenture as it relates to said financial statements; and
- (2) a statement as to all insurance carried by the Authority as of the end of such Fiscal Year, including a brief description of the amount and coverage of each insurance policy and the name of the insuring company.

The Authority will furnish a copy of the aforesaid statements to any Credit Provider and to any Bondowner upon request, and will furnish to the Trustee such reasonable number of copies thereof (not exceeding 100 copies) as may be required by the Trustee for distribution to investment bankers, securities dealers and others interested in the Bonds and to the Owners of Bonds requesting copies thereof. The Trustee shall not be required to incur any nonreimbursable expenses in making such distribution.

SECTION 6.08 <u>Authority Budgets</u>. Prior to the commencement of each Fiscal Year, the Authority shall prepare and adopt an annual budget for such Fiscal Year. Such budget shall set forth in reasonable detail the Revenues anticipated to be derived in such Fiscal Year and the expenditures anticipated to be paid or provided for therefrom in such Fiscal Year including, without limitation, the amounts required to provide for the payment of the principal of, interest and redemption premium, if any, on the Bonds during such Fiscal Year, to pay or provide for Operation and Maintenance Expenses for such Fiscal Year, to pay or provide for Renewal and Replacement Costs for such Fiscal Year, to make up

any deficiencies in any Fund or Account anticipated for the then current Fiscal Year, to transfer to or from the Rate Stabilization Fund each month, and to pay or provide for the payment of all other claims or obligations required to be paid from Revenues in such Fiscal Year, and shall show that Net Revenues shall be at least adequate to satisfy the requirements of Section 6.12. The Authority shall supply to the Trustee, the Co-Trustee, the Revenue Fund Depositary, any Credit Provider and any Bondowners who shall so request in writing a copy of the annual budget for the then current Fiscal Year. Such budget shall also be open for inspection by any Owner during normal business hours. The Authority may at any time adopt a revised annual budget and shall supply copies as aforesaid.

SECTION 6.09 Payment of Taxes, Etc. The Authority will pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Authority on account of the System or any portion thereof or upon any Revenues and which, if unpaid, might impair the security of the Bonds, when the same shall become due, but nothing herein contained shall require the Authority to pay any such tax, assessment or charge so long as it shall in good faith contest the validity thereof. The Authority will duly observe and conform with all valid requirements of any governmental authority having jurisdiction over the Authority or the System or any part thereof.

SECTION 6.10 <u>Acquisition and Construction of Improvements</u>. The Authority will commence and will continue to completion the acquisition and construction of the improvements to the System proposed to be financed from any Series of Bonds, and said improvements will be acquired, constructed and completed in a sound and economical manner and in conformity with law.

SECTION 6.11 Eminent Domain Proceeds. If all or any part of the System shall be taken by or under threat of eminent domain proceedings, the net proceeds realized by the Authority therefrom (excluding any portion thereof payable to the United States of America or required by the United States of America to be deposited in a restricted fund) shall be deposited by the Chief Financial Officer in a special fund in trust and applied and disbursed by the Chief Financial Officer subject to the following conditions:

- (A) If such proceeds are sufficient to provide for the payment of the entire amount of principal due or to become due upon all of the Bonds, together with all of the interest due or to become due thereon and any redemption premiums, and all amounts payable under Parity Payment Agreements (including Termination Amounts) and all Credit Agreement Payments then due and payable so as to enable the Authority to retire all of the Bonds, either by redemption at the then current redemption prices or by payment at maturity or partly by redemption prior to maturity and partly by payment at maturity, and terminate such Parity Payment Agreements and discharge such obligations with respect to such Credit Agreement Payments, the Chief Financial Officer shall transfer such moneys to the Trustee who shall apply such moneys to such retirement and to the payment of such amounts. The balance of such moneys, if any, shall be transferred back to the Authority and shall be deposited in the Capital Improvement Fund.
- (B) If such proceeds are insufficient to provide the moneys required for the purposes set forth in the foregoing subsection (A), the Authority shall by resolution determine to apply such proceeds for one of the following purposes, subject to the conditions hereinafter in this subsection (B) set forth:
- (1) The Authority may determine to apply such proceeds to the purchase or redemption of Bonds then Outstanding and to the payment of Credit Agreement Payments then due and payable. In that event, the Chief Financial Officer shall transfer such proceeds to the Trustee, who shall apply such proceeds pro rata to the redemption or purchase of Bonds of each Series then Outstanding in

the proportion which the principal amount of outstanding Bonds of each Series bears to the aggregate principal amount of all Bonds then Outstanding.

(2) The Authority may determine to apply such proceeds to the cost of additions or improvements to or extensions of the System if the Authority first secures and files with the Trustee a report of an Independent Consulting Engineer (a) showing (i) the loss in annual Revenues, if any, suffered or to be suffered, by the Authority by reason of such eminent domain proceedings, (ii) a general description of the additions, improvements or extensions then proposed to be acquired by the Authority from such proceeds, and (iii) an estimate of the additional Revenues to be derived from such additions, improvements or extensions; and (b) determining that such eminent domain proceedings will not substantially impair the ability of the Authority to meet its obligations under Section 6.12. The Authority shall then promptly proceed with the construction of the additions, improvements or extensions substantially in accordance with such report. Payments for such construction shall be made by the Authority from such proceeds. Any balance of such proceeds not required by the Authority for the purposes aforesaid shall be deposited in the Capital Improvement Fund.

SECTION 6.12 Rate Covenant.

(A) The Authority shall at all times fix, prescribe and collect rates, fees and charges in connection with the services furnished by the System which will be sufficient to yield the sum of Net Revenues during each Fiscal Year equal to at least 1.25 times the Aggregate Annual Debt Service for such Fiscal Year and to yield Revenues during each Fiscal Year equal to at least the aggregate amount of all transfers required by Section 5.02(A) through (E) for such Fiscal Year.

The debt service coverage ratio specified in this Section shall be the debt service coverage ratio used by the PUC, together with other appropriate factors, in setting rates.

If the financial statements prepared pursuant to Section 6.07(B)(1) reflect that (or if the Authority's other books and records at the time such statements are due hereunder reflect that) at the end of a Fiscal Year the sum of Net Revenues shall have been less than 1.25 times Aggregate Annual Debt Service for such Fiscal Year, or if Revenues shall have been less than the aggregate amount of all transfers required by Sections 5.02(A) through (E) for such Fiscal Year, the Authority shall promptly employ a Consulting Engineer to make recommendations as to a revision of such rates, fees and charges or the methods of operation of the System. The Authority shall, promptly upon its receipt of such recommendations, subject to applicable requirements or restrictions imposed by law and subject to a good faith determination of the Board that such recommendations, in whole or in part, are in the best interests of the Authority, the Owners and each Credit Provider, revise such rates, fees and charges or methods of operation and will take such other actions as shall be in conformity with such recommendations.

If the Authority complies in all material respects with the reasonable recommendations of the Consulting Engineer with respect to said rates, fees, charges and methods of operation or collection, or makes a good faith determination that such recommendations are not in the best interests of the Authority, the Authority will be deemed to have complied with this Section for such Fiscal Year; provided, that Net Revenues shall in no event have been less than Aggregate Annual Debt Service for such Fiscal Year.

(B) The Authority may make adjustments from time to time in its rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce such rates, fees and charges below those then in effect unless the Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

SECTION 6.13 <u>Compliance with Indenture</u>. The Authority (and the Government as to Section 6.17) will faithfully observe and perform all the covenants, conditions and requirements of this Indenture, and will not suffer or permit any default to occur hereunder, or do or permit to be done, in, upon or about the System, or any part thereof, anything that might in any way weaken, diminish or impair the security intended to be given pursuant to this Indenture.

SECTION 6.14 Observance of Laws and Regulations. The Authority shall comply promptly, fully and faithfully with and abide by any contract relating to or affecting the availability of any grant or other similar assistance and any statute, law, ordinance, order, rule, regulation, judgment, decree, direction or requirement now in force or hereafter enacted, adopted or entered by any competent governmental authority or agency applicable or with respect to or affecting the acquisition, construction or reconstruction of the System or any part thereof or applicable or with respect to or affecting the operation, manner, use or condition of the System or any part or parcel thereof or adjoining public ways or relating to the imposition of charges or collection of Revenues; provided that the Authority need not comply with any such contract, statute, law, ordinance, rule, regulation, judgment, decree, direction or requirement if and so long as the Authority in good faith shall be contesting or permitting or causing to be contested the applicability or validity thereof by appropriate proceedings diligently prosecuted, even though such contest may result in the imposition of a lien or charge against the System or the Revenues, if (1) the Authority shall effectively prevent foreclosure or enforcement of any such lien or charge and (2) the foreclosure or enforcement of any such lien or charge shall be stayed, and if said stay thereafter expires, the Authority shall forthwith discharge such lien or charge or cause the same to be discharged, so that pending such proceedings the System and the Revenues thereof shall not be affected thereby, and the security of the Bonds shall not be impaired.

SECTION 6.15 Prosecution and Defense of Suits. The Authority shall promptly from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the System hereafter developing, and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purposes and, to the extent permitted by law, shall indemnify and save the Trustee and every Bondowner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

The Authority shall defend against every suit, action or proceeding at any time brought against the Trustee or any Bondowner upon any claim arising out of the receipt, application or disbursement of any of the Revenues or involving the rights of the Trustee or any Bondowner under this Indenture; provided, that the Trustee or any Bondowner at its or his election may appear in and defend any such suit, action or proceeding. To the extent permitted by law, the Authority shall indemnify and hold harmless the Trustee and the Bondowners against any and all liability claimed or asserted by any person arising out of such receipt, application or disbursement, and shall indemnify and hold harmless the Bondowners against any attorneys' fees or other expenses which any of them may incur in connection with any litigation to which any of them may become a defendant by reason of its ownership of Bonds. To the extent permitted by law, the Authority shall promptly reimburse any Bondowner in the full amount of any attorneys' fees or other expenses which such Bondowner may incur in litigation or otherwise in order to enforce its rights under this Indenture or the Bonds, if such litigation is concluded favorably to such Bondowner's contentions therein. Notwithstanding any contrary provision hereof, this Section shall remain in full force and effect, even though all indebtedness and obligations issued hereunder may have been fully paid and satisfied, until the Authority shall have been dissolved.

SECTION 6.16 Further Assurances. Whenever and so often as requested so to do by the Trustee or any Bondowner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do

or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bondowners all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture.

SECTION 6.17 Pledge of the Government. The Government hereby pledges to the holders of all Bonds the following: while any Bonds remain outstanding and not fully performed or discharged (A) to maintain the rights, powers and duties of the Board and the Guam Public Utilities Commission, or their respective successors in accordance with law, to fulfill the terms of Bonds and this Indenture, (B) to maintain the rights and remedies of Bondholders provided in the Act and this Indenture, (C) to protect the exclusive right of the Authority to operate or maintain within Guam any water or wastewater system operated by the government or its designees by preventing the acquisition, operation, maintenance or permitting of any instrumentality of the Government or any other public or private agency, entity or person to operate a separate and competitive water and/or wastewater system, and (D) not to transfer any additional non-system operating responsibilities or other unfunded mandates to the Authority without providing for the payment of the costs of such additional responsibilities, with the exception of annual supplemental annuity and COLA contributions paid by the Authority on behalf of retired employees of the Authority (or its lawful predecessors) as may be required by other laws of Guam. The Authority includes this pledge and agreement of the Government in this Indenture as authorized by Section 14229 of the Act.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF BONDOWNERS

SECTION 7.01 <u>Events of Default; Remedies</u>. (A) Any one or more of the following events shall be an "Event of Default" hereunder:

- (1) if default shall be made in the due and punctual payment of the principal of, or the premium (if any) on, any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, or otherwise, or if default shall be made in the redemption or payment at maturity from any Sinking Account of any Term Bonds in the amounts and at the times provided therefor;
- (2) if default shall be made in the due and punctual payment of any installment of interest on any Bond or any Parity Payment Agreement Payment when and as such interest installment or Parity Payment Agreement Payment shall become due and payable;
- (3) if default shall be made by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained or by the Government in the observance of its covenant in Section 6.17, and such default shall have continued for a period of thirty (30) days after notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Trustee, the Co-Trustee or a Credit Provider, or to the Authority, the Trustee and the Co-Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds at the time Outstanding; or
- (4) if the Authority shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors,

any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

- (B) In each and every case during the continuance of an Event of Default, the Trustee in its own name and as Trustee of an express trust, on behalf and for the benefit and protection of the Bondowners, after notice to the Authority, and upon the request of the Owners of a majority in Accreted Value of the Bonds then Outstanding, shall proceed to protect and enforce any rights of the Trustee and, to the full extent that the Bondowners themselves might do, the rights of such Bondowners under this Indenture and under the laws of the Government by such of the following remedies as such majority shall deem most effectual to protect and enforce such rights:
- (1) by mandamus or other suit, action or proceeding at law or in equity, to enforce all rights of the Bondowners, including the right to require the Authority to charge, prescribe and collect Revenues adequate to comply with the covenants and agreements made herein, and to require the Authority to carry out any other covenant or agreement with the Bondowners and to perform its duties under the Act;
 - (2) by bringing suit upon the Bonds;
- (3) by action or suit in equity, to require the Authority to account as if it were the trustee of an expressed trust for the Bondowners;
- (4) by realizing or causing to be realized through sale or otherwise upon the moneys, securities and other assets pledged hereunder;
- (5) by action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the Bondowners;
- (6) by requiring the Authority to endorse all checks and other negotiable instruments representing Revenues to the order of the Trustee immediately upon the receipt thereof and to deliver such endorsed instruments daily to the Trustee;
- (7) by notifying any or all account debtors of the Authority to pay any amounts representing Revenues, when due, directly to the Trustee as Trustee; and
- (8) by commencing proceedings for the appointment of a receiver or receivers of the System and of the Revenues, with such powers as the court making such appointment confers.
- SECTION 7.02 Application of Funds Upon Default. All of the Revenues, all amounts in all of the Funds and Accounts provided for in Sections 3.02 (except any escrow fund established for the payment of any refunded obligations), 3.03, 5.01 and 5.02 upon the date of the declaration of an Event of Default as provided in Section 7.01 and all Revenues thereafter received by the Authority, the Trustee, the Co-Trustee or any Depositary hereunder, shall be transmitted to the Trustee and be applied by the Trustee as and in the order of priority provided in Sections 5.01, 5.02 and 5.06; provided, however, that (A) if amounts in the Debt Service Fund are insufficient to pay, when due, all interest on, principal of, and Mandatory Sinking Account Payments on all Bonds then Outstanding, all Parity Payment Agreement Payments pursuant to Parity Payment Agreements then Outstanding and all Credit Agreement Reimbursement Payments due and payable pursuant to Credit Agreements then Outstanding, then such amounts in the Debt Service Fund shall be used first to pay all installments of interest then due and owing without preference or priority of any such installment of interest over any

other installment of interest, then to pay installments of principal and Mandatory Sinking Account Payments then due and owing, without preference or priority of any installment of principal or Mandatory Sinking Account Payments over any other such installment, then to pay all Credit Agreement Reimbursement Payments then due and payable, and then to pay Parity Payment Agreement Payments then due and owing, without preference or priority of any Parity Payment Agreement Payment over any other such Parity Payment Agreement Payment; and (B) amounts in Construction Accounts may be used for the purposes for which such Construction Accounts were created and funded if the Trustee determines, in accordance with Section 8.03(A), that such use is in the best interests of the Bondholders and the Credit Providers.

If any installment of interest, principal or Redemption Price is only partially paid, such payment shall occur only upon presentation of the several Bonds and the recording thereon of a record of such partial payment.

SECTION 7.03 Representation of Bondowners by Trustee. In case one or more of the Events of Default shall happen, then and in every such case the Owner of any Bond at the time Outstanding shall be entitled to proceed to protect and enforce the rights vested in such Owner by this Indenture by such appropriate judicial proceeding as such Owner shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Owners of Bonds by this Indenture or by law; provided, however, that no such Bondowner shall have the right to institute any such judicial proceeding pursuant to this Section unless (A) such Owner shall have previously given to the Trustee notice of the occurrence of an Event of Default hereunder; (B) the Owners of at least a majority in Accreted Value of the Bonds then Outstanding shall have made request to the Trustee to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; (C) such Owner or said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (D) the Trustee shall have refused or omitted to comply with such request for a period of sixty days after such request shall have been received by, and said tender of indemnity shall have been made to, the Trustee. The provisions of this Indenture shall constitute a contract with the Owners of the Bonds, and such contract and duties of the Authority and of the Authority members, officers and employees thereof shall be enforceable by any Bondowner by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

Nothing in this Section shall affect or impair the right of any Owner to enforce the payment of principal of and interest on such Owner's Bonds or the obligation of the Authority to pay the principal of and interest on each such Bond at the time and place specified in such Bond.

SECTION 7.04 Nonwaiver. Nothing in this Article or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and the interest (and premium, if any) on the Bonds to the respective Owners of the Bonds at the respective dates of maturity, or upon call for redemption, as herein provided, but only out of the Revenues herein pledged for such payments, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default or breach of duty or contract by any Bondowner shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on the subsequent default or breach. No delay or omission of the Trustee or of any Owner of any of the Bonds to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and

every power and remedy given by the Act or this Article to the Trustee or to the Owners of Bonds or any Credit Provider may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owners of Bonds or any such Credit Provider.

If a suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Bondowners, the Authority, the Trustee and the Bondowners and each Credit Provider shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 7.05 Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated (notwithstanding any conditions upon the bringing of any such action, suit or proceeding set forth in Section 7.03) and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action, or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

Except as may be set forth in a Supplemental Indenture in accordance with Section 11.15, anything in this Indenture to the contrary notwithstanding, the Owners of a majority in Accreted Value of the Bonds at any time Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder, provided that such direction shall be in accordance with law and the provisions of this Indenture.

SECTION 7.06 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners of Bonds or to any Credit Provider is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Act or any other law.

ARTICLE VIII

THE FIDUCIARIES

SECTION 8.01 <u>Appointment of Trustee</u>. Bank of Guam is hereby appointed as Trustee under this Indenture.

SECTION 8.02 <u>Appointment of Co-Trustee</u>. U.S. Bank Trust Company, National Association is hereby appointed as Co-Trustee under this Indenture.

SECTION 8.03 <u>Duties, Immunities and Liabilities of Fiduciaries.</u> (A) The Trustee and the Co-Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture for each to perform. The Trustee and the Co-Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in them by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The Authority, the Trustee,

the Co-Trustee and each Depositary shall establish such accounting, notice and other relationships as are necessary to provide for the operation of the accounts created under or pursuant to Article V, and the handling of the Revenues credited thereto in accordance herewith.

- (B) Each Depositary, Registrar and Paying Agent shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture, and shall, during the existence of any Event of Default (which has not been cured), follow the directions of the Trustee with respect to any of the Funds and Accounts held under this Indenture.
- shall have occurred and then be continuing, and shall remove a Fiduciary if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in Accreted Value of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time such Fiduciary shall cease to be eligible in accordance with subsection (F) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of such Fiduciary or its property shall be appointed, or any public officer shall take control or charge of such Fiduciary or its property or affairs for the purpose of rehabilitation, conservation or liquidation; in each case by giving notice of such removal to such Fiduciary and thereupon shall appoint a successor Trustee, Co-Trustee, Depositary, Registrar or Paying Agent, as the case may be, by an instrument in writing. Any Supplemental Indenture or Credit Agreement entered into in connection with Bonds may provide that the Credit Provider with respect thereto has the right to direct the Authority to remove any Fiduciary and appoint a successor under the circumstances specified therein.
- (D) Any Fiduciary may at any time resign by giving notice of such resignation to the Authority, the other Fiduciaries and each Credit Provider. Subject to the provisions of any Supplemental Indenture or Credit Agreement, upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee, Co-Trustee, Depositary, Registrar or Paying Agent, as the case may be, by an instrument in writing.
- Any such removal or resignation and appointment of a successor Fiduciary shall become effective upon acceptance of appointment by the successor. Promptly upon such acceptance, the Authority shall give notice thereof to each Fiduciary, to each affected Credit Provider and to the affected Bondowners by mail in the manner provided by Section 4.03. If no successor shall have been appointed and have accepted appointment within forty-five (45) days after giving notice of removal or notice of resignation as aforesaid, the resigning Fiduciary or any Bondowner (on behalf of such Bondowner and all other Bondowners) or any Credit Provider may petition any court of competent jurisdiction for the appointment of a successor, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor. Any such successor appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor a written acceptance thereof (which may be a Supplemental Indenture), and thereupon such successor, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor, with like effect as if originally named herein; but, nevertheless, at the Request of the Authority or the request of the successor, such predecessor shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor all the right, title and interest of such predecessor in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly

vesting in and confirming to such successor all such moneys, estates, properties, rights, powers, trusts, duties and obligations.

- The Trustee and the Co-Trustee appointed under the provisions of this (1) (F) Section shall meet the requirements of any Supplemental Indenture and any Credit Agreement and shall each be a trust company or bank having the powers of a trust company doing business and having a corporate trust office in any State or territory and having a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal, state or territorial authority. The Co-Trustee shall have a corporate trust office in one of the contiguous 48 States and have a combined capital and surplus of at least One Hundred Million Dollars (\$100,000,000). Either the Trustee or the Co-Trustee shall have a corporate trust office in Guam. Any bank or trust company that meets the requirements of both of the preceding two sentences may serve as both Trustee and Co-Trustee. If a bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee or the Co-Trustee shall cease to be eligible in accordance with the provisions of this subsection (F)(1), it shall resign immediately in the manner and with the effect specified in this Section. The Trustee and Co-Trustee may be appointed and act as a Depositary, Registrar or Paving Agent hereunder.
- (2) Each Registrar and Paying Agent appointed under the provisions of this Section shall meet the requirements of any Supplemental Indenture and any Credit Agreement and shall be a trust company or bank having trust powers doing business and having a corporate trust office in any State of the United States and subject to supervision or examination by federal or state authority. In case at any time any Registrar or any Paying Agent shall cease to be eligible in accordance with the provisions of this subsection (F)(2), it shall resign immediately in the manner and with the effect specified in this Section.
- trust company or commercial bank having the powers of a trust company doing business and having a trust office on Guam, having a combined capital and surplus of at least Ten Million Dollars (\$10,000,000), and subject to supervision or examination by federal or territorial authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Depositary shall cease to be eligible in accordance with the provisions of this subsection (F)(3), the Depositary shall resign immediately in the manner and with the effect specified in this Section.
- (G) Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which such Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (F) of this Section, shall be the successor to such Fiduciary without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. Any such successor shall give notice of such merger, conversion or consolidation to each other Fiduciary and to the Authority.
- SECTION 8.04 <u>Compensation</u>. Subject to the terms of separate contracts with Fiduciaries, the Authority shall pay to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, fees of counsel,

accountants and consultants and other disbursements, including those of their attorneys, agents and employees, incurred in good faith in and about the performance of their powers and duties under this Indenture. The Authority further agrees, to the extent permitted by law, to indemnify and save each Fiduciary harmless against any losses, costs, expenses, claims and liabilities (including without limitation those of its attorneys, agents and receivers) which they may incur in the exercise and performance of their respective powers, functions and duties under this Indenture, which are not due to their own respective gross negligence or willful misconduct. Such indemnity shall survive the resignation or removal of each Fiduciary.

SECTION 8.05 Liability of Fiduciaries. The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and no Fiduciary assumes any responsibility or liability for the correctness of the same, or makes any representations as to the validity or sufficiency of this Indenture, of the Bonds, of any Credit Facility or of the pledge and assignment of Revenues herein or any information or statements in any offering memorandum or other disclosure material prepared or distributed in connection with the issuance of Bonds or shall incur any responsibility or liability in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon them, respectively. Each Registrar shall, however, be responsible for its representations contained in its certificate of authentication and registration on the Bonds. No Fiduciary shall be liable in connection with the performance of its respective duties hereunder, except for its own respective gross negligence or willful misconduct. Any Fiduciary may become the owner of the Bonds with the same rights it would have if it were not a Fiduciary, and, to the extent permitted by law, may act as depositary for and permit any of their officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondowners, whether or not such committee shall represent the Owners of a majority in Accreted Value of the Bonds then Outstanding. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid to any other Fiduciary or the acts or omissions of any other Fiduciary. No Fiduciary shall be under any obligation or duty to perform any act which would require it to expend or risk its own moneys or otherwise incur any liability or to institute or defend any action or suit in respect of this Indenture or the Bonds, unless it is in its judgment adequately indemnified. No Fiduciary shall be deemed to have knowledge of an Event of Default hereunder unless it has received actual knowledge thereof at its Principal Office, except, in the case of the Trustee, default in the payment of any amounts due on the Bonds on the due date therefor.

SECTION 8.06 Right of Fiduciaries to Rely on Documents. Any Fiduciary shall be protected in acting upon any notice, resolution, request, consent, order, certificate, requisition, statement, report, opinion, bond or other paper or document believed to be genuine and to have been signed or presented by the proper party or parties. Any Fiduciary may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Indenture a Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Authority, and such Certificate shall be full warrant to such Fiduciary for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion such Fiduciary may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

SECTION 8.07 <u>Preservation and Inspection of Documents</u>. All documents received by any Fiduciary under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and any Bondowner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

ARTICLE IX

MODIFICATION OR AMENDMENT OF THE INDENTURE

SECTION 9.01 Amendments Permitted. (A)(1) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee and Co-Trustee may be modified or amended at any time by a Supplemental Indenture which shall become binding when the consents of the Owners of at least sixty percent (60%) in Accreted Value of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 9.03 hereof; provided that if such modification or amendment will, by its terms, not take effect so long as any bonds of any particular maturity or Series remain Outstanding, the consent of the Owners of Bonds of such maturity or Series shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section; and provided further that the consent of a Credit Provider for any Bond shall be deemed to be the consent of the Owner of such Bond if specified in the Supplemental Indenture pursuant to which such Credit Provider is designated as providing a Credit Facility for such Bond.

- (2) No such modification or amendment shall (a) extend the fixed maturities of the Bonds, or extend the time for making any Mandatory Sinking Account Payments, or reduce the rate of interest thereon, or extend the time of payment of interest, or reduce the amount of principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Owner of each Bond so affected, (b) reduce the aforesaid percentage of Owners of Bonds whose consent is required for the execution of any amendment or modification of this Indenture or permit the creation of any lien on the Revenues prior to or on a parity with the lien created by this Indenture or deprive the Owners of the Bonds of the lien created by this Indenture upon such Revenues, without in each case the consent of the Owners of all of the Bonds then Outstanding.
- (3) No such modification or amendment shall modify any of the rights or obligations of any Fiduciary without its consent thereto.
- (B) This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without the consent of any Bondowners, but only to the extent permitted by law and only for any one or more of the following purposes:
- (1) to add to the covenants and agreements of the Authority in this Indenture contained other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Authority;
- (2) to cure, correct or supplement any ambiguous or defective provision contained in this Indenture or in regard to questions arising under this Indenture, as the Authority may deem necessary or desirable and not inconsistent with this Indenture, and which shall not materially adversely affect the interests of the Owners of the Bonds or any Credit Provider;

- (3) to provide for the issuance of Additional Bonds, and to provide the terms and conditions under which such Additional Bonds may be issued, subject to and in accordance with the provisions of Article III;
- (4) to provide for any other matters for which a Supplemental Indenture is expressly permitted or required hereunder;
- (5) to make any other amendment or modification which shall not materially adversely affect the interests of the Owners of the Bonds or any Credit Provider;
- (6) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners or the Trustee that are not contrary to or inconsistent with this Indenture as then in effect or to subject to the pledge and lien of this Indenture additional revenues, properties or collateral;
- (7) to modify, alter, supplement or amend this Trust Indenture in such manner as shall permit the qualification of this Trust Indenture, if required, under the Trust Indenture Act of 1939 or, the Securities Act of 1933, as from time to time amended, or any similar federal statute hereafter in effect; or
- (8) to amend, modify, alter or replace the Letter of Representations as provided in Section 2.08 or other provisions relating to Book Entry Bonds.
- (C) Any Supplemental Indenture providing for the issuance of a Series of Bonds may require, in addition to or in lieu of any consents required by the foregoing provisions of this Section 9.01, the consent of any Credit Provider for such Bonds in order for any amendment hereto affecting such Bonds to be effective, and may set forth appropriate procedures for obtaining and evidencing such consent.
- SECTION 9.02 Procedure for Amendment with Consent of Bondowners. The Authority may at any time adopt a Supplemental Indenture amending the provisions of the Bonds or of this Indenture or any Supplemental Indenture, to the extent that such amendment is permitted by Section 9.01(A)(1), to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Bondowners for their consent thereto, shall be mailed by the Authority to each Owner of Bonds, but failure to receive any such copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the consents of the Owners of sixty percent (60%) in Accreted Value of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 9.03) and a notice shall have been published as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 11.08. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been published.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Authority shall mail a notice to the Bondowners in the manner

hereinbefore provided in this Section for the mailing of the Supplemental Indenture and publication of the notice of adoption thereof, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to receive copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved.

In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bondowners upon such notice and in accordance with such rules and regulations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 9.03 <u>Disqualified Bonds</u>. Bonds owned or held by or for the account of the Authority (but excluding Bonds held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided for in this Article or Indenture, and shall not be entitled to consent to or take any other action provided for in this Article or Indenture.

The Authority may adopt appropriate regulations to require each Bondowner, before his consent provided for in this Article shall be deemed effective, to reveal if the Bonds as to which such consent is given are disqualified as provided in this Section.

SECTION 9.04 <u>Effect of Supplemental Indenture</u>. From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee, the Co-Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Amendments. The Authority may determine that Bonds issued and delivered before the effective date of any action taken as provided in this Article shall bear a notation, by endorsement or otherwise, in form approved by the Authority, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the office of the Authority or at such other office as the Authority may select and designate for that purpose, a suitable notation shall be made on such Bond. The Authority may determine that new Bonds, so modified as in the opinion of the Authority is necessary to conform to such action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the applicable Registrar, without cost to such Owner, for Bonds of the same character then Outstanding, upon surrender of such Bonds.

SECTION 9.06 <u>Amendatory Endorsement of Bonds</u>. The provisions of this Article shall not prevent any Bondowner from accepting any amendment as to the particular Bonds held by such Bondholder, provided that due notification thereof is made on such Bonds.

SECTION 9.07 <u>Credit Provider Consent</u>. Nothing in this Article or in this Indenture shall affect any provision of any Credit Agreement or Supplemental Indenture requiring the Authority to obtain the consent of the Credit Provider or to satisfy any other conditions before amending or supplementing this Indenture or any Bond.

ARTICLE X

DEFEASANCE

SECTION 10.01 <u>Discharge of Indenture</u>. If the Authority shall pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways—

- (A) by well and truly paying or causing to be paid the principal of (including redemption premiums, if any) and interest on all Bonds Outstanding, as and when the same become due and payable (but this clause shall not include Bonds the principal of or interest on which has been paid by a Credit Provider until said principal and interest shall have been paid by the Authority); or
- (B) by depositing with the Co-Trustee, in trust, at or before maturity, money which, together with the amounts then on deposit in the Debt Service Fund and the Bond Reserve Fund, is fully sufficient to pay or redeem all Bonds Outstanding, including all principal, interest and redemption premiums, if any; or
 - (C) by delivering to the Co-Trustee, for cancellation by it, all Bonds Outstanding; or
- (D) by depositing with the Co-Trustee, in trust, non-callable Federal Securities in such amount which, in the determination of an Independent Certified Public Accountant, who shall certify such determination to the Co-Trustee and, if so provided in a Supplemental Indenture, any Credit Provider, shall, together with the income or increment to accrue thereon and any other moneys of the Authority made available for such purpose, be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums, if any) at or before their respective maturity dates;

and if the Authority shall also pay or cause to be paid all other sums payable hereunder by the Authority (including all Parity Payment Agreement Payments and any Termination Payments payable in connection with a termination of a Parity Payment Agreement and any Credit Agreement Payments then due and payable) and deliver or have delivered to the Trustee, the Co-Trustee and each Credit Provider an Opinion of Counsel to the effect that upon satisfaction of the other requirements of this Section 10.01 and any Supplemental Indenture all obligations of the Authority under this Indenture have ceased, terminated and been completely discharged, then and in that case, at the election of the Authority (evidenced by a Certificate of the Authority signifying its intention to pay and discharge all such indebtedness and that this Indenture and all other obligations of the Authority under this Indenture shall cease and terminate. which shall be filed with the Trustee and the Co-Trustee), and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture and all other obligations of the Authority under this Indenture shall cease, terminate and be completely discharged, and the Owners of the Bonds not so surrendered and paid shall thereafter be entitled to payment only out of the money or Federal Securities deposited with the Co-Trustee as aforesaid for their payment; subject, however, to the provisions of Section 10.03. The discharge of the obligations of the Authority under this Indenture shall be without prejudice to the rights of the Co-Trustee to charge for and be reimbursed by the Authority for any expenditures which it may thereafter incur in connection herewith.

The Authority may at any time surrender to the Co-Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.02 <u>Discharge of Liability on Bonds</u>. Upon the deposit with the Co-Trustee, in trust, at or before maturity, of money or Federal Securities in the necessary amount to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the 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 Co-Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, determine and be completely discharged and the Owners thereof shall thereafter be entitled only to payment out of the money or Federal Securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.03.

SECTION 10.03 Payment of Bonds after Discharge of Indenture.

Notwithstanding any provisions of this Indenture, any moneys deposited with the Co-Trustee in trust for the payment of the principal of, or interest or premium on, any Bonds and remaining unclaimed for two years after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or upon call for redemption or by declaration as provided in this Indenture) shall then be repaid to the Authority upon its Request, and the Owners of such Bonds shall thereafter be entitled to look only to the Authority for payment thereof, and all liability of the Co-Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Co-Trustee may (at the cost of the Authority) first publish at least once in a Financial Newspaper or Journal and in a newspaper of general circulation in Guam a notice, in such form as may be deemed appropriate by the Co-Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof. In the event of the repayment of any such moneys to the Authority as aforesaid, the Owners of the Bonds in respect of which such moneys were deposited shall thereafter be deemed to be general creditors of the Authority for amounts equivalent to the respective amounts deposited for the payment of such Bonds and so repaid to the Authority (without interest thereon).

ARTICLE XI

MISCELLANEOUS

SECTION 11.01 <u>Liability of Authority Limited to Revenues</u>. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues, for the payment of the principal of or interest on the Bonds, Payment Agreement Payments, Termination Payments and Credit Agreement Payments, for the operation and maintenance of the System, for the performance of any covenants herein contained or for the payment of any obligations hereunder, including indemnification. The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be limited obligations of the Authority, payable solely from and secured by a pledge of the Revenues as provided in this Indenture. The Bonds shall not be a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues pledged to the payment thereof as provided in this Indenture.

Neither the Government of Guam (the "Government") nor any political subdivision thereof is obligated to pay the principal of, Redemption Price, if applicable, or interest on the Bonds, except from Revenues, and neither the Authority, the Government nor any political subdivision thereof has pledged its faith or credit to the payment of the principal of, redemption price, if applicable, or interest on the Bonds.

SECTION 11.02 <u>Successor Is Deemed Included in All References to Predecessor.</u>
Whenever in this Indenture either the Authority or any Fiduciary is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or any Fiduciary shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.03 <u>Limitation of Rights to Parties and Bondowners</u>. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person, other than the Authority, the Fiduciaries and the Owners of the Bonds issued hereunder and to the extent set forth herein or in a Supplemental Indenture any Credit Provider, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Fiduciaries and the Owners of the Bonds issued hereunder and any such Credit Provider.

SECTION 11.04 <u>Waiver of Notice</u>. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.05 <u>Destruction of Bonds</u>. Whenever in this Indenture provision is made for the cancellation by the Co-Trustee and the delivery to the Authority of any Bonds, the Co-Trustee may destroy such Bonds (in the presence of an officer of the Authority, if the Authority shall so require), and deliver a certificate of such destruction to the Authority, unless the Authority shall, by Request of the Authority, request the Co-Trustee to instead cancel and deliver said Bonds to the Authority.

SECTION 11.06 Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee or the Co-Trustee or any successor Trustee or Co-Trustee is rendered unable to perform its duties hereunder, and if no successor Trustee or Co-Trustee be then appointed, all such duties and all of the rights and powers of the Trustee or the Co-Trustee hereunder, as applicable, shall be assumed by and vest in the Chief Financial Officer of the Authority in trust for the benefit of the Bondowners.

SECTION 11.07 Notice to Authority, Trustee and Co-Trustee. Any notice to or demand upon the Authority, the Trustee, the Co-Trustee, any Depositary or any Registrar shall be deemed to have been sufficiently given or served for all purposes by being deposited, postage prepaid, in a post office letter box, addressed to the applicable address set forth below, or at such other address as may have been specified by the Supplemental Indenture appointing such party or filed in writing by such party with each other party.

Any notice to or demand upon the Authority may be served or presented, and such demand may be made, at the office of the principal administrative office of the Authority, which at the

date of adoption of this Indenture is: Guam Waterworks Authority, 578 N. Marine Corps Drive, Tamuning, Guam 96913, Attention: Chief Financial Officer.

Any notice to or demand upon the Trustee or the Depositary may be served or presented, and such demand may be made, at the Principal Office of the Trustee, which at the date of adoption of this Indenture is: Bank of Guam, 111 Chalan Santo Papa, 2nd Floor, Agana, Guam 96910, Attention: Corporate Trust Department.

Any notice to or demand upon the Co-Trustee may be served or presented, and such demand may be made, at the Principal Office of the Co-Trustee, which at the date of adoption of this Indenture is: U.S. Bank Trust Company, National Association, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Attention: Corporate Trust Services; provided, however, that for purposes of payment, transfer, registration and exchange of Bonds, presentation shall be made at the Principal Office of the Co-Trustee located at 60 Livingston Avenue, St. Paul, MN 55107, Attention: Corporate Trust Operations.

SECTION 11.08 Evidence of Rights of Bondowners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bondowners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bondowners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee, the Co-Trustee and of the Authority if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved in any manner reasonably acceptable to the Trustee or the Co-Trustee, as applicable.

The ownership of Bonds shall be proved by the Bond registration books maintained pursuant to Section 2.06.

Any request, consent, vote or declaration of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee, the Co-Trustee or the Authority in pursuance of such request, consent, vote or declaration.

SECTION 11.09 <u>Article and Section Headings and References</u>. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 11.10 Funds and Accounts. Any fund required by this Indenture to be established and maintained by the Authority, the Trustee, the Co-Trustee or any Depositary may be established and maintained in the accounting records of the Authority, the Trustee, the Co-Trustee or the Depositary, as applicable, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an

account; but all such records with respect to all such funds shall at all times be maintained in accordance with generally accepted accounting practices (and as to the Trustee, the Co-Trustee and any Depositary, sound industry practice) and with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

- SECTION 11.11 Saturdays, Sundays and Legal Holidays. If any party hereto is required to perform, pursuant to a provision of this Indenture, any act on a date which falls on a Saturday, Sunday or legal holiday, the party required to perform such act shall be deemed to have performed it in a timely manner, and in conformance with such provision, if it shall perform such act on the next succeeding Business Day. Any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day.
- SECTION 11.12 <u>Waiver of Personal Liability</u>. No Board member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest on the Bonds; but nothing herein contained shall relieve any such Board member, officer, agent or employee from the performance of any official duty provided by law.
- SECTION 11.13 Governing Law. This Indenture and any Supplemental Indentures shall be construed and governed in accordance with the laws of the Government of Guam, provided, however, that the administration of the trusts imposed upon the Trustee and the Co-Trustee by the Indenture and the rights and duties of the Trustee and Co-Trustee hereunder shall be governed by, and construed in accordance with, the laws of the jurisdiction in which the Trustee or the Co-Trustee, as applicable, has its corporate trust office.
- SECTION 11.14 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority, the Trustee and the Co-Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.
- SECTION 11.15 <u>Credit Agreements and Credit Providers</u>. Anything herein to the contrary notwithstanding, a Supplemental Indenture providing for the issuance of a Series of Bonds for which a Credit Facility provides supplemental credit support may, so long as such Credit Facility shall be Outstanding or any Credit Agreement Payments are due and payable with respect thereto, provide additional terms, provisions and limitations not inconsistent with the provisions hereof for the protection and benefit of the related Credit Provider.
- SECTION 11.16 Indenture as Supplement to and Amendment of 2005 Indenture.

 (A) Twelfth Supplemental Indenture. In accordance with the 2005 Indenture and the resolution of the Board adopted on [June 3], 2025, upon the execution and delivery hereof and the issuance of the Series 2025A Bonds (as that term is defined in the Eleventh Supplemental Indenture, dated as of August 1, 2025, between the Authority, the Co-Trustee and the Trustee), this Indenture shall constitute the Twelfth Supplemental Indenture executed and delivered in accordance with the terms and conditions of the 2005 Indenture. The Series 2025A Bonds issued under the Eleventh Supplemental Indenture shall constitute an additional Series of Bonds, as those terms are defined in, and as authorized in accordance with the terms and conditions of, the 2005 Indenture, including without limitation Sections 3.04 and 3.05 of the 2005 Indenture. Until the Final Transition Date, the terms and conditions of the 2005 Indenture shall continue to control with respect to all Bonds issued under the 2005 Indenture and this Indenture.

For purposes of clarifying any ambiguity herein, the majority of the terms of this Indenture are identical to those set forth in the 2005 Indenture and, therefore, those provisions are not modified hereby. Those provisions are being incorporated herein for the convenience of the Authority.

This Indenture substantively amends provisions of the 2005 Indenture relating to the flexibility of the funding of the Bond Reserve Fund, the definition of "Bonds" (and related definitions and provisions), the definition of "Annual Debt Service" (and related definitions and provisions), and to provide more flexibility to the Authority in issuing additional Series of Bonds, including for working capital purposes.

- (B) Amendment and Restatement of 2005 Indenture. Upon the Final Transition Date, this Indenture shall constitute a full amendment and complete restatement of the 2005 Indenture and in the case of any inconsistency or contradiction between this Indenture and the 2005 Indenture, the terms of this Indenture shall control; provided, however, that in accordance with the 2005 Indenture under no circumstances shall this Indenture constitute an amendment or restatement of any of the following, namely, this Indenture, as it applies to any Bonds that were originally issued under the 2005 Indenture and are Outstanding on the date of execution and delivery of this Indenture, shall never:
- (1) extend the fixed maturities of the Bonds, or extend the time for making any Mandatory Sinking Account Payments, or reduce the rate of interest thereon, or extend the time of payment of interest, or reduce the amount of principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Owner of each Bond so affected,
- required for the execution of any amendment or modification of this Indenture or permit the creation of any lien on the Revenues prior to or on a parity with the lien created by this Indenture or deprive the Owners of the Bonds of the lien created by this Indenture upon such Revenues, without in each case the consent of the Owners of all of the Bonds then Outstanding; or
- (3) modify any of the rights or obligations of any Fiduciary without its consent thereto.
- (C) Consent to Amendment by Owners of 2005 Bonds and Additional Bonds. The initial Owners of Series 2025A Bonds and the initial Owners of any Additional Bonds (as defined in the 2005 Indenture) issued after [Closing Date], the date of issuance of the Series 2025A Bonds, as authorized in accordance with the terms and conditions of the 2005 Indenture, shall, as an express condition to the delivery and purchase of such Bonds, agree and give their consent that: (1) this Indenture shall constitute a full amendment and complete restatement of the 2005 Indenture; and (2) subject to the limitations of this Section 11.16, from and after the Final Transition Date, in the case of any inconsistency or contradiction between this Indenture and the 2005 Indenture, the language of this Indenture shall control; and (3) notwithstanding Section 9.01 of the 2005 Indenture, the notice of the proposed execution of this Indenture, including a brief statement of the nature of this Indenture, need not be mailed or otherwise provided to such Owners.
- (D) <u>Disposition of Certain Funds</u>. Subject to Section 11.16(e) hereof, upon the Final Transition Date, the amounts on deposit in the various funds and accounts established pursuant to the 2005 Indenture shall be transferred by the Trustee (or the Trustee shall cause the Board to transfer such amounts) as shall be set forth in a Certificate of the Authority delivered to the Trustee; provided, however, that on and after the Final Transition Date, the Trustee shall continue to maintain the Debt Service Reserve Fund established under the 2005 Indenture for the Bonds Outstanding under the 2005 Indenture as of the date of execution of this Indenture.

IN WITNESS WHEREOF, the GUAM WATERWORKS AUTHORITY has caused this Indenture to be signed in its name by its duly authorized officers; and BANK OF GUAM and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, in token of their acceptance of the respective trusts created hereunder, has caused this Indenture to be signed in their respective corporate names by one of their authorized officers, all as of the day and year first above written.

GUAM WATERWORKS AUTHORITY

By		
•	Chairperson of the Board	
Ву		
_,	General Manager	10
BANK	COF GUAM, as Trustee	
Ву	Title:	
D		
Ву	Title:	
	SANK TRUST COMPANY, NATIONAL	
ASSO	CIATION, as Co-Trustee	
By		
	Title:	- 1

The undersigned BANK OF GUAM, hereby accepts and agrees to perform the duties and obligations of Depositary for the Revenue Fund under this Indenture.				
	BAN	K OF GUAM, as Depositary for the Revenue Fund		
	Ву	Title:		

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GPA Docket 25-13	3
Guam Power Authority Levelized Energy Adjustment Clause (LEAC)) ORDER)	
	,))	



INTRODUCTION

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Power Authority ["GPA"] which requests that the PUC implement a two-step reduction in the LEAC factor: (1) from \$0.208802/kWh to \$0.188781/kWh for the period of August 1, 2025, through August 31, 2025 (a period of one month); and (2) from \$0.188781/kWh to \$0.135840 for the period of September 1, 2025, through January 31, 2026.¹

BACKGROUND

Effective February 1, 2025, the PUC reduced the LEAC factor from \$0.261995/kWh to \$0.208802 for meters read during the six-month period ending July 31, 2025.² The basis for the reduction was a 14% decrease in fuel prices.³ In GPA Resolution No. FY2025-17, dated May 27, 2025, the Guam Consolidated Commission on Utilities ["CCU"] authorized GPA Management to petition the PUC to reduce the current LEAC Factor in a two-step process over the next six-month period.⁴

¹ GPA Petition, In the Matter of: Guam Power Authority Levelized Energy Adjustment Clause (LEAC), GPA Docket 25-13, dated June 4, 2025.

² PUC Order, GPA Docket 25-05, dated January 30, 2025, at p. 7.

³ Id. at p. 4.

⁴ GPA Petition at Exhibit A, p. 2, Guam Consolidated Commission on Utilities, GPA Resolution No. FY2025-17, To Authorize the Management of the Guam Power Authority to Petition the Guam Public Utilities Commission to Reduce the Levelized Energy Adjustment Clause (LEAC) for the Period of August 1, 2025 through January 31, 2026, adopted and approved on May 27, 2025.

GPA's rationale for continuing to reduce the LEAC Factor for the next six-month period is that there have been further decreases in fuel prices: "The average market price of fuel presented for the current period was approved at \$100.01/bbl. for the period from February 1, 2025, through July 31, 2025. The projected average price of fuel for the period ending January 31, 2026, is expected to be \$89.93/bbl.⁵

A second reason offered by GPA for the requested decrease in the LEAC Factor is that the Ukudu Power Plant is expected to be operational in September 2025. The Ukudu Plant is "a highly efficient combined-cycle plant that significantly reduces the amount of fuel required."

On June 2, 2025, the Administrative Law Judge ("ALJ") requested the assistance of PUC Consultant Marianas Consulting Group ("MCG") to review the GPA LEAC Petition filing, and to make recommendations to the PUC. On June 17, 2025, MCG provided its Report in response to GPA's Petition to implement a two-step reduction of the LEAC Factors. Copies of the MCG Report have been provided to the Commissioners.

DETERMINATIONS

- I. THE LEAC FACTOR SHOULD BE SET BY THE PUC FOR THE ENTIRE NEXT SIX-MONTH PERIOD, RATHER THAN IN THE TWO-STEP PROCESS PROPOSED BY GPA.
 - A. MCG Recommendation for One LEAC Factor for the Entire Six-Month Period

⁵ GPA Petition at p. 2.

⁶ Id. at Exhibit A, p. 2: Guam Consolidated Commission on Utilities, GPA Resolution No. FY2025-17.

Marianas Consulting Group, Report in GPA Docket 25-13, dated June 17, 2025.

MCG submitted its Report in this docket to the PUC on June 17, 2025.8 MCG recommends that the PUC approve one LEAC Factor for the entire six-month period ending January 31, 2026, which would be an overall reduction of 25.53%, to \$0.155495/kWh.9 In its Report, MCG states its reasons for recommending a LEAC Factor applicable to the entire six-month LEAC period, as opposed to having two LEAC Factor reductions as requested by GPA:

- "1. A six-month rate reduction appears to be more in-line with the intent of the LEAC program and is also consistent with practice in prior LEAC rate adjustments. A one-month adjustment followed by another adjustment a month later will result in ratepayers having three different rates in three months. The overall impact of the six-month adjustment rate adjustment will have essentially the same impact on ratepayers as the two-step approach requested by GPA and should be easier to implement. See Exhibit 1 which compares the GPA and MCG LEAC calculations and rates for the six-month period ending January 31, 2026.
- 2. The MCG review of the two-step approach requested by GPA indicated that there were several errors in the calculations which generally pushed costs (and higher LEAC rates) into the August 2025 period and reduced costs (and proposed rates) into the September 2025-January 2026 period. This would likely result in an over recovery in August 2025 offset by an under recovery for the five months ending January 31, 2026."10

MCG has correctly characterized the history and purpose of the Levelized Energy Adjustment Clause:

"The Levelized Energy Adjustment Clause program was established in part to "levelize" the impact of anticipated significant future fluctuations in fuel costs and usage on GPA's ratepayers. The LEAC program requires rates to be reviewed every six months to allow ratepayers to absorb the impact of rate fluctuations over a six-month period (or in some cases even longer), reducing GPA's administrative costs of constantly changing rates,

Marianas Consulting Group, LLC, GPA Docket 25-13, Report submitted on June 17, 2025.

⁹ Id. at p. 2.

¹⁰Id.

while allowing it to recover fuel costs over time and stay in compliance with debt covenants and cash flow requirements. The LEAC was mainly implemented to deal with rising fuel costs but may also be applicable in times of falling costs."¹¹

B. Prior PUC Practice in Establishing the LEAC Factor

GPA's Rate Schedule "Z," the Levelized Energy Adjustment Clause (LEAC), contemplates that the PUC will set one factor for the entire six- month period. A true and correct copy of Schedule "Z" is attached to the ALJ Report as Exhibit "1". Schedule "Z" states that "[T]he Fuel Recovery Charge will be calculated semi-annually...." In addition, the projected fuel expense is required to be calculated for the next LEAC period. The LEAC Factor is calculated for the entire six-month period, not for lesser periods of time within the six-month period.

Schedule "Z" states: "The Fuel Recovery Charge will be recalculated semi-annually for a (6) six-month period and be subject to the approval of the Guam Public Utilities Commission." If GPA has a cumulative under or over recovery balance of more than \$2 million, or if the under or over recovery balance is projected to exceed \$2 million during the six-month levelized period, the Fuel Recovery Charge may be adjusted to recover such deficit, subject to PUC approval."

The PUC has on occasion addressed the LEAC Factor during a six-month period on multiple occasions. During the six-month LEAC period commencing February 1, 2020, the PUC addressed the LEAC factor on three occasions because of steep declines in fuel prices. During such period the PUC reduced the LEAC factor from \$0.154242/kWh to \$0.086800.12 However, for each reduction in the LEAC factor over the six-month period,

¹¹ Id. at p. 1.

¹² PUC Order, GPA Docket 20-13, dated July 30, 2020.

GPA had filed separate Petitions under Schedule "Z" to reduce the factor. A factor was initially set for the six-month period and then reduced because of the Petitions filed by GPA.

In GPA Docket 21-14, the PUC did adopt a three-step LEAC proposal submitted by GPA during a six-month period of rapidly increasing fuel prices. ¹³ There was an over 52.33% increase in the LEAC Factor over a six-month period. The PUC phased in three increases from \$0.130400/kWh to \$0.171458/kWh over a six-month period. The PUC approved the phase-in in response to the drastic increases in fuel prices and in the LEAC Factor and the impact upon ratepayers. The reasoning was that "Ratepayers will be able to accommodate such gradual increases more readily than one substantial increase which raises the LEAC Factor over 50% and the total Bill by over 30%." ¹⁴

No similar situation exists in the instant case. Here one factor can be set for the six-month period which properly benefits the ratepayers for the decreases in fuel prices over the six-month period. There is no detriment to the ratepayers from a single reduction in the LEAC Factor at the beginning of the six-month period. In fact, the ratepayers derive the benefit of the reduction more quickly. The ALJ recommends that the PUC adopt the MCG proposal for setting one LEAC Factor for the six-month period.

II. THE PUC SHALL SET THE LEAC FACTOR FOR THE SIX-MONTH PERIOD FROM AUGUST 1, 2025 THROUGH JANUARY 31, 2026, AT \$0.155495.

Based upon both the Petition of GPA, and the MCG Report, a reduction in the LEAC Factor for the next six-month period is justified. In its Report, MCG recommends that

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¹³ PUC Order, GPA Docket 21-14, dated July 29, 2021, at p. 7.

¹⁴ Id. at p. 5.

the PUC implement an overall 25.53% reduction of the LEAC Factor from the existing rate of \$0.208802 to \$0.155495 for the six-month period ending January 31, 2026.

Both GPA and MCG concur that there should be a reduction in the LEAC Factor due to the decrease in fuel prices and the pending operational availability of the Ukudu Power Plant in September 2025.

Attached to the ALJ Report as Exhibit "2" is a Summary prepared by MCG of GPA rates versus MCG, Proposed LEAC Rate. Based upon the initial fuel prices used in GPA's Petition, MCG calculated a rate for the entire six-month period of \$0.142959/kWh, which was slightly lower than GPA's equivalent rate of \$0.145164. MCG adjusted several calculations that GPA made, including average fuel prices, fuel usage, cost, fuel expenses, total LEAC expense and others.

As customary procedure, the PUC requests in each LEAC proceeding that GPA provide an update of fuel prices in the Morgan Stanley Asia Morning Call for a five-day period ten days before the date for the PUC meeting. On June 17, 2025, GPA, through Maripaz Perez, provided MCG with the updated MS Fuel Pricing for June 9-16, 2025. The updated MS Pricing demonstrates that the average price per bbl. RFO & ULSFO had increased from \$101.69 to \$110.40 since GPA filed its Petition. The average price per bbl. Diesel had increased from \$84.30 to \$90.84.16

The most recent Morgan Stanley Asia Morning Call Price Indication for June 20, 2025 is that Sing Gasoil 10ppm will range between \$89 and \$98 per bbl. through the first quarter of 2026. The prices appear to be 10% higher than when GPA filed its Petition.

¹⁵ Exhibit "2", Marianas Consulting Group, LLC, GPA Docket 25-13, Report submitted on June 17, 2025, at Exhibit "1".

¹⁶ See Exhibit "2".

MCG has identified the probable cause of the increase in fuel prices:

"The Israel attacks on Iran and Iran counterattacks starting Thursday June 12 which have continued through the date of this letter and shows no evidence of abating. These actions threaten to disrupt oil shipping in the Middle East and could very negatively impact GPA fuel prices. The impact of this conflict are now partially included in MCG projections based on the latest Morgan Stanley Pricing as shown on Exhibit 1 column C. MCG recommends close monitoring of the situation and its impacts on oil supplies and prices as GPA and the PUC evaluate the LEAC factors for six months beginning August 1, 2025."

The PUC must take these world events into account when setting the LEAC Factor for the next six months. Based upon the increased MS Fuel Pricing for June 9 through June 16, 2025, MCG recommends that the LEAC Factor for the next six months be set at \$0.155495/kWh. This is only roughly one cent per kWh more than GPA's equivalent factor would be for the six-month period.

There is a fail-safe mechanism even if GPA saves more money because of lower fuel costs and plant efficiency than anticipated in the LEAC Factor proposed by MCG. If GPA projects that an over recovery balance of more than \$2 million is likely to occur during the six-month levelized period, it can apply to the PUC under Tariff "Z" to reduce the LEAC Factor even further.

ORDERING PROVISIONS

After carefully reviewing the record in this proceeding, having considered the LEAC Petition of GPA, the Report of PUC Consultant Marianas Consulting Group, and the Administrative Law Judge Report, and after discussion at a duly noticed regular meeting held on June 26, 2025, for good cause shown and on motion duly made,

seconded and carried by affirmative vote of the undersigned Commissioners, the Guam Public Utilities Commission hereby **ORDERS** that:

- 1. The secondary Fuel Recovery Factor of \$0.155495/kWh shall be effective for meters read on or after August 1, 2025.
- 2. The current singular LEAC factors are hereby adjusted, effective August 1, 2025, as shown in the following table:

LEAC

Delivery Classification	\$ per kWh
Secondary -	\$0.155495
Primary – 13.8 KV	\$0.150814
Primary – 34.5 KV	\$0.150379
Transmission – 115 KV	\$0.148528

For the entire LEAC period, these changes represent a 25.53% decrease in the LEAC Factor for a residential customer utilizing an average of 1,000 kilowatt hours per month, and a 17.40% decrease in the total bill.

- GPA should file for a change in the LEAC factors to be effective February 1, 2026, on or before December 15, 2025.
- 4. GPA shall file updates with the PUC on actual costs to date versus the cost estimates included in its Petition in this docket for each of six months for the period from August 2025 through January 2026 as soon as such actual costs become available.

5. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Dated this 26th day of June 2025.

Jeffrey C. Johnson

Chairman

Joseph M. McDonald

Commissioner

Peter Montinola Commissioner Rowena E. Perez-Camacho

Commissioner

Michael A. Pangelinan

Commissioner

Doris Flores Brooks

Commissioner