EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

DEC 0 7 2017

GL 34-17-1302
Speaker Benjamin J.F. Cruz

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2017 DEC -7 PM 4:37

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 157-34 (COR), **" AN ACT TO *REPEAL* AND *REENACT* ARTICLE 2 OF CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ISSUE REVENUE BONDS AND OTHER INDEBTEDNESS FOR THE PURPOSE OF FINANCING OR REFINANCING IMPROVEMENTS AND/OR WORKING CAPITAL RELATING TO THE JOSE D. LEON GUERRERO COMMERCIAL PORT AND OTHER RELATED FACILITIES AND OPERATIONS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT; AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE FOR SUCH PURPOSES"** which was signed on December 7, 2017, as **Public Law 34-70.**

2017 DEC -7 PM 4:37

Senseramente,

RAY TENORIO
I Maga'låhen Guåhan, para pa'go
Acting Governor of Guam

1302

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 157-34 (COR), "AN ACT TO *REPEAL* AND *REENACT* ARTICLE 2 OF CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ISSUE REVENUE BONDS AND OTHER INDEBTEDNESS FOR THE PURPOSE OF FINANCING OR REFINANCING IMPROVEMENTS AND/OR WORKING CAPITAL RELATING TO THE JOSE D. LEON GUERRERO COMMERCIAL PORT AND OTHER RELATED FACILITIES AND OPERATIONS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT; AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE FOR SUCH PURPOSES,"** was on the 5th day of December 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Thomas C. Ada
Acting Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 7th day of DEC, 2017, at 12:13 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

RAYMOND S. TENORIO
Acting Governor of Guam

Date:

Public Law No. 34-70

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 157-34 (COR)
As amended by the Committee on
Appropriations and Adjudication;
and further amended in the Committee of the Whole.

Introduced by: FRANK B. AGUON JR.
Joe S. San Agustin
James V. Espaldon
William M. Castro
Thomas C. Ada
B. J.F. Cruz
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *REPEAL* AND *REENACT* ARTICLE 2 OF CHAPTER 10, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE JOSE D. LEON GUERRERO COMMERCIAL PORT TO ISSUE REVENUE BONDS AND OTHER INDEBTEDNESS FOR THE PURPOSE OF FINANCING OR REFINANCING IMPROVEMENTS AND/OR WORKING CAPITAL RELATING TO THE JOSE D. LEON GUERRERO COMMERCIAL PORT AND OTHER RELATED FACILITIES AND OPERATIONS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT; AND APPROVING THE TERMS AND CONDITIONS OF THE ISSUANCE OF ONE OR MORE SERIES OF SUCH BONDS PURSUANT TO SUCH ARTICLE FOR SUCH PURPOSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that with the enactment of Public Law 29-125, the Jose D. Leon Guerrero

Commercial Port (Port) received approval of its Master Plan Update 2007 Report, which serves as the road map for the modernization of the Jose D. Leon Guerrero Commercial Port. It is the Port's vision to transform its facility into a world-class terminal for Guam and the Western Pacific Region. The Port must increase capacity, execute infrastructure development, and undertake Port expansion to meet the community's needs.

Furthermore, *I Liheslaturan Guåhan* finds that Public Law 32-155 approved and adopted the Capital Improvement Projects (CIP) Schedule in the Jose D. Leon Guerrero Commercial Port Authority of Guam Master Plan Update 2013 Report.

It is, therefore, the intent of *I Liheslaturan Guåhan* to authorize the issuance of system revenue bonds (1) to provide funding for Capital Improvement Projects, which include the rehabilitation of "H" Wharf and Access Road, the replacement of the Administration Building, the relocation of waterlines, the repair of the Equipment Maintenance & Repair Building (EQMR) and Warehouse 1, and the repair of Golf Pier; and (2) to refinance all or portions of outstanding loans of the Authority.

Section 2. Article 2 of Chapter 10, Title 12, Guam Code Annotated is hereby *repealed* and *reenacted* to read:

ARTICLE 2

JOSE D. LEON GUERRERO COMMERCIAL PORT REVENUE BONDS AND OTHER INDEBTEDNESS

§ 10201. Short Title.
§ 10202. Definitions.
§ 10203. Powers of Board; Incurring Indebtedness.
§ 10204. Amounts of Rates and Charges; Refunds.

§ 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.
§ 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.
§ 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.
§ 10208. Indenture Providing Terms and Conditions of Bonds.
§ 10209. Issues of Bonds.
§ 10210. Covenants and Agreements That May Be Contained in Indenture.
§ 10211. Trustee for Authority and Holders of Bonds.
§ 10212. Duties and Powers of Trustee.
§ 10213. Issuance and Interchange of Coupon and Registered Bonds.
§ 10214. Redemption of Bonds Prior to Maturity.
§ 10215. Places of Payment.
§ 10216. Execution and Authentication of Bonds.
§ 10217. Dates and Maturities of Bonds.
§ 10218. Sale of Bonds.
§ 10219. Payment of Bonds From Sources Other Than Revenues.
§ 10220. Payments Which May be Made Out of Proceeds of Sale of Bonds.
§ 10221. Bonds Shall be Secured by Revenues of System.
§ 10222. Temporary Bonds.
§ 10223. Replacement of Bonds or Coupons.
§ 10224. Tax Exemptions.

§ 10225. Bonds as Legal Investments and as Security For Performance of Any Act.
§ 10226. Refunding Bonds.
§ 10227. Use of Other Funds for System.
§ 10228. Insurance.
§ 10229. Pledge by the Government of Guam.
§ 10230. Limitations as to Competitive Systems.
§ 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.
§ 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.
§ 10233. Investment of Money in Funds.
§ 10234. Use of Balances of Funds and of Surplus Money in Funds.
§ 10235. Appropriation of Money in Funds.
§ 10236. Payment Agreements.
§ 10237. Credit Enhancement.
§ 10238. No Personal Liability.
§ 10239. Waiver of Immunity.
§ 10240. Construction of Article.

§ 10201. Short Title.

This Article may be cited as the "Jose D. Leon Guerrero Commercial Port Revenue Bond Act."

§ 10202. Definitions.

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

(a) *Authority* means the Jose D. Leon Guerrero Commercial Port, formerly known as/also known as the Port Authority of Guam.

(b) *Board* has the meaning given in 12 GCA § 10101(b).

(c) *Bonds* means bonds, notes or other evidences of indebtedness, including, but not limited to, direct loans and payment obligations of the Authority under payment agreements and credit provider reimbursement agreements.

(d) *Bondholder* or *holder of bonds* or any similar term means any person who *shall* be:

(1) the bearer of any outstanding bond or bond registered to bearer or not registered; or

(2) the registered owner of any such outstanding bond or bond which shall at the time be registered other than to bearer; or

(3) the direct holder of any bond.

(e) *Credit provider* means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any credit support arrangements for some or all of the bonds.

(f) *Credit provider reimbursement agreement* means any agreement providing for the Authority to repay, from revenues, amounts advanced by a credit provider as credit support for bonds.

(g) *Credit support* means a policy of insurance, a letter of credit, a stand-by purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a credit provider provides credit or liquidity support with respect to the payment of interest, principal or the purchase price of any bonds.

(h) *Jose D. Leon Guerrero Commercial Port Act* means Article 2 of Chapter 10, Title 12, Guam Code Annotated.

(i) *Indenture* means an agreement pursuant to which bonds are issued or incurred by the Authority, regardless of whether such agreement is expressed in the form of a resolution of the Board or by other instrument and including, without limitation, indentures of trust, trust agreements, payment agreements and Credit provider reimbursement agreements.

(j) *Organic Act* means the Organic Act of Guam, as amended, and in effect on the effective date of this Article (48 U.S.C.A. § 1421 *et seq.*)

(k) *Payment agreement* has the meaning given such term in 12 GCA § 10236.

(l) *Person* includes any individual, firm, corporation, association, partnership, trust, business trust or receiver or trustee or conservator for any thereof, and also includes the United States, Guam or any public corporation, political subdivision, city, county or district or any agency or instrumentality of the United States or of Guam.

(m) *Revenue* 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 or the supplying and furnishing of services and commodities thereof, including all rates, rentals, tolls, fees and charges assessable and chargeable by the Authority in respect to dockage, wharfage, demurrage and rates appertaining to the system or derived from the rental of all or part of the system or from the sale or rental of any commodities or goods in connection with the system, all amounts received by the Authority pursuant to any payment agreement, 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 Jose D. Leon Guerrero Commercial Port Revenue Fund.

(n) *System* means all works, property and facilities now owned, operated or leased by the Authority, and used by and useful to the Authority for providing a deep water commercial port known as the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, comprising all harbor works and facilities of the Authority, including all channels, waterways, basins seawalls, docks, piers, land areas, utilities, warehouses, cargo handling machinery and equipment, tugboats, barges, fire boats and other works, properties, structures or other facilities in or upon or pertaining to the lands, improvements and waters of the Authority used or useful for, or necessary for or incidental to, the development and operation of the Jose D. Leon Guerrero Commercial Port, as well as the Civil Port, small boat marinas, and all related facilities of Guam located on Cabras Island, Apra Harbor, *Agaña* Boat Basin, and all other Government of Guam small boat marinas, together with all improvements to such works, property and facilities or any part thereof hereafter acquired or constructed by the Authority, now or hereafter existing, owned and/or operated by the Authority or its contractors, agents or subcontractors.

(o) *System operation and maintenance costs* 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, and which shall not include depreciation:

(1) legal and overhead expenses of the Authority directly related and reasonably allocable to the administration of the system;

(2) 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;

(3) contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the system;

(4) the costs incurred in the collection of all or any part of the Revenues; and

(5) any costs of utility services furnished to the system by the Authority or otherwise.

(p) *United States* means the United States of America.

§ 10203. Powers of Board; Incurring Indebtedness.

Pursuant to 12 GCA § 50103(k), the Board, through the Guam Economic Development Authority (GEDA), has the power and is hereby authorized, in addition to and in amplification of all other powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act or any other provision of this Chapter or by any law of Guam or of the United States, but subject to the requirements of 12 GCA § 12116, to exercise any or all of the powers granted to the Board by this Article. The Board, through the agency of GEDA, with the approval of *I Liheslaturan Guåhan* in addition to this Article, may at any time or from time to time authorize the Authority to incur indebtedness:

(a) pursuant to 12 GCA § 10235; or

(b) by the issuance of bonds to raise funds for the purpose of acquiring, constructing, improving, equipping, maintaining, repairing, renewing, replacing, reconstructing or insuring the system, or any part thereof,

or for the purpose of refunding any such bonds or any other prior obligations of the Authority, for any purpose authorized by law, or for any combination of such purposes for which bonds may be issued or incurred and secured as provided in this Article.

The sale of the bonds *shall* be approved by the Board of Directors of GEDA as provided by Chapter 50 of Title 12, Guam Code Annotated, and the terms and conditions of the issuance of the bonds *shall* be approved by the PUC as provided by Chapter 12 of Title 12, Guam Code Annotated.

It is hereby declared that the system is and *shall* be a public improvement or undertaking as that term is used in Section 11 of the Organic Act of Guam (48 U.S.C.A. § 1423a). All indebtedness issued or entered into by the Authority pursuant to this Section *shall* be repayable only from funds of the Authority available therefor or solely from revenues of the system and, therefore, will not be and *shall not* be deemed to be public indebtedness of Guam as that term is used in Section 11 of the Organic Act of Guam.

§ 10204. Amounts of Rates and Charges; Refunds.

Except to the extent otherwise permitted or required by an indenture or any contract relating to indebtedness issued or incurred by the Authority, the Authority *shall* set rates and charges that *shall* at all times be fixed to yield annual revenues at least equal to:

(a) the annual principal payments and interest charges and reserve fund requirements on all bonds at any time issued and outstanding hereunder;

(b) the annual system operation and maintenance costs; and

(c) the annual principal payments and interest charges on all other outstanding indebtedness issued by the Authority. An indenture or contract of indebtedness may provide for payment from revenues of refunds of rates and charges that are collected in error and that are refundable by the Authority.

§ 10205. Validity of Authorization and Issuance of Bonds and Incurring of Other Indebtedness.

The validity of the authorization and issuance of or incurrence by the Authority of any bonds is not dependent on nor affected in any way by:

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

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

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

§ 10206. Board to Determine Issuance of Bonds and Incurring of Other Indebtedness; Guam Not Liable for Indebtedness; Authority Only Liable as Provided by Indenture or Contract.

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

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

§ 10207. Board to Declare Purpose and Maximum Amount of Bonds to be Issued.

Before issuing any bond or bonds, the Board *shall* declare the purpose for which the proceeds of the bonds proposed to be issued *shall* be expended

and *shall* specify the maximum amount of bonds to be issued or sold for such purpose. Bonds *shall not* be issued or sold for such purpose in an amount exceeding such specified maximum.

§ 10208. Indenture Providing Terms and Conditions of Bonds.

The Authority, subject to the approval of *I Liheslaturan Guåhan* in addition to this Article, may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rates or methods for determination thereof, denominations, form, registration, transfer and exchange of any bonds and coupons issued pursuant to this Article and the terms and conditions on which the same *shall* be executed, issued, secured, sold, paid, redeemed, funded and refunded. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all the provisions of the indenture and of this Article and is bound thereby.

§ 10209. Issues of Bonds.

An indenture may provide for one or several issues of bonds and that bonds may be issued in series or that any issue may be divided into one or more divisions with different maturities or dates of issue, different rates of interest or methods for determining such rates, or different terms and conditions for the bonds of the several series or divisions. It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof *shall* in each case be as set forth in such indenture that has been authorized by the Board.

§ 10210. Covenants and Agreements That May Be Contained in Indenture.

An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the Authority as the Board deems necessary or advisable, including without limiting the generality of the foregoing, any one or more of the following:

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

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

(2) for reserve or sinking funds for the further security of bonds.

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

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

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

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

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

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

(g) A provision which limits, restricts or prohibits any right, power or privilege of the Authority to mortgage or otherwise encumber, sell, lease or dispose of the system or any part thereof, or to enter into any lease or agreement which impairs or impedes the operation of the system or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the right of the holders of bonds with respect to such revenues.

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

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

(2) sufficient to pay the annual system operation and maintenance costs; and

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

(i) A provision that no service relating the system shall be furnished free of charge to any person, except to the extent permitted by the indenture.

(j) A provision requiring the Authority to hold or cause to be held in trust the revenues or any part of revenues pledged to the payment of such bonds and the interest thereon, or to any fund or account created by any indenture relating to such bonds for the further security or protection of such bonds and to apply such revenues or any part of revenues or cause them to be applied only as provided in the indenture and to invest all or any part of such revenues pending such application in such securities and subject to such limitations as are specified in the indenture.

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

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

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

(n) A provision specifying the events of default and the terms and conditions upon which any or all of the bonds of the Authority then or thereafter issued may become or be declared due and payable prior to

maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

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

(p) A provision prescribing a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the Authority and the vote or written consent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding, including provisions for meetings of bondholders and for the manner in which the consent of the bondholders may be given and specifically stating the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom. With respect to any provision relating to the modification or amendment of an indenture, the Authority may agree that bonds held by the Authority, Guam, the United States or any instrumentality of either thereof (including every public corporation, political subdivision, city, county, district, board, agency or instrumentality of any kind of class) *shall not* be counted as outstanding bonds, or be entitled to vote or assent, but *shall*, nevertheless, be subject to any such modification or amendment.

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

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

(s) A provision for any working capital fund or account or contingency fund or operating reserve account relating to the system.

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

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

§ 10211. Trustee for Authority and Holders of Bonds.

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

(b) The Authority may provide in an indenture:

(1) for the deposit of all or any portion of the revenues with the Authority and for the holding thereof by the Authority in one or more separate funds or accounts in the Jose D. Leon Guerrero Commercial Port Revenue Fund; and

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

§ 10212. Duties and Powers of Trustee.

The Authority *shall* prescribe in any indenture the duties and powers of the trustee with respect to the issuance, authentication, sale and delivery of

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

§ 10213. Issuance and Interchange of Coupon and Registered Bonds.

An indenture may provide that bonds may be issued as coupon bonds or as registered bonds and for the interchange of coupon bonds for registered bonds and registered bonds for coupon bonds, and may provide that bonds *shall* be registered as to principal only or as to both principal and interest or otherwise as the Authority may determine.

§ 10214. Redemption of Bonds Prior to Maturity.

An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.

§ 10215. Places of Payment.

An indenture may provide for the payment of the principal and interest of bonds at any one or more places in Guam or in the United States and in any specified coin or currency of the United States.

§ 10216. Execution and Authentication of Bonds.

An indenture may provide for the execution and authentication of bonds by the manual or facsimile signature of any one or more officers of the Authority and by additional authentication by endorsement by the manual signature or a signature stamp of any one or more officers of the Authority or of any agent designated by the Authority as trustee. If any officer or agent whose signature, countersignature or endorsement appears upon the bonds or

coupons ceases to be an officer or agent before the delivery of the bonds or coupons, his signature, countersignature or endorsement is nevertheless valid and of the same force and effect as if he had remained such officer or agent until the delivery of the bonds and coupons.

§ 10217. Dates and Maturities of Bonds.

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

§ 10218. Sale of Bonds.

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

§ 10219. Payment of Bonds from Sources Other Than Revenues.

The Authority may use and expend all or any part of any funds other than revenues or proceeds of any property owned by it other than the system, whether received by gift, appropriation or otherwise (if not restricted as to the use of such funds or proceeds of property by the terms of gift or trust or provision of law) for the payment of bonds issued pursuant to the provisions of this Article and of interest due thereon.

§ 10220. Payments Which May Be Made Out of Proceeds of Sale of Bonds.

The proceeds of sale of any bonds may be expended for any one or more of the following purposes, all as provided in the indenture relating to such bonds:

(a) for payment of any costs or expenses of the acquisition, construction or improvement of the system or any part thereof or any costs or expenses incidental thereto, including payment to the United States or any other public body for the portion to be borne by the Authority of the cost of any work done by the United States or such public body for or jointly or in conjunction with the Board;

(b) for payment of any engineering, inspection, legal, consultants', bond trustees', escrow agents' or paying agents' fees relating or incidental to:

(1) the acquisition, construction or improvement of the system or any part thereof; or

(2) the authorization, issue or sale of bonds;

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

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

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

(f) for deposit in any reserve or sinking fund;

(g) for payment of the principal of and interest on any indebtedness incurred pursuant to 12 GCA § 10235 that is by its terms repayable from the proceeds of sale of bonds;

(h) for payment of any prior bonds or other obligations of the Authority; or

(i) The Authority is prohibited from using bond proceeds for any purpose not provided for in this Section without legislative approval in the form of duly enacted legislation.

§ 10221. Bonds Shall Be Secured by Revenues of System.

All bonds authorized by this Article *shall* be secured by a statutory lien on revenues of the system. This lien *shall* arise automatically without the need for any action or authorization by *I Maga'låhen Guåhan*, the government of Guam, the Authority or any other person or entity. Such lien *shall* be valid and binding from the time bonds are issued. The revenues of the system *shall* immediately be subject to such lien, and the lien *shall* automatically attach to the revenues of the system and be effective, binding, and enforceable against the Authority, its successors, assignees, and creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. Revenues of the system that are not required to make payments on the bonds *shall* automatically, and without the need for any further action, be released from such lien and *shall* be available for appropriation for any other lawful purpose of the government. The statutory lien described in this Section *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute. In addition to the statutory lien provided for in this Section, an indenture may provide that payment of the bonds and the interest thereon *shall* be secured by a pledge of and lien upon all or a portion of the revenues of the system. Any such pledge and lien *shall* be valid and binding from the time the pledge is made without any further act. The revenues pledged and thereafter received by the Authority or by any trustee, depository or custodian

shall be deposited in the Jose D. Leon Guerrero Commercial Port Revenue Fund and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The pledge *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute. The indenture by which such pledge is created need not be recorded.

§ 10222. Temporary Bonds.

An indenture may provide that pending the actual issuance or delivery of definitive bonds, the Authority may issue temporary or interim bonds, certificates or receipts or any denomination whatsoever and with or without coupons, to be exchanged for definitive bonds when ready for delivery.

§ 10223. Replacement of Bonds or Coupons.

The Authority may provide for the replacement of lost, destroyed or mutilated bonds or coupons.

§ 10224. Tax Exemptions.

Bonds issued pursuant to the provisions of this Article and the interest or income therefrom are exempt from taxation to the extent permitted by the provisions of Section 11 of the Organic Act of Guam.

§ 10225. Bonds as Legal Investments and as Security for Performance of Any Act.

Notwithstanding any other provision of law, all bonds issued pursuant to the provisions of this Article are legal investments for all trust funds and for the funds of all banks, both commercial and savings and may be deposited as security for the performance of any act whenever any evidence of

indebtedness of Guam may be so deposited and may also be used as security for the deposit of public moneys in banks in Guam.

§ 10226. Refunding Bonds.

The Authority may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds issued under the provisions of this Article or any other prior obligations of the Authority. All provisions of this Article applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

§ 10227. Use of Other Funds for System.

In addition to the proceeds of any bonds issued and sold pursuant to this Article, the Authority may use for the payment of the costs of acquisition, construction or improvement of the system or any part thereof any available money or funds of the Authority and any money or funds made available to the Authority by any person or provided from any source which may be expended for the accomplishing of the purposes set forth in this Article or in the Jose D. Leon Guerrero Commercial Port Act.

§ 10228. Insurance.

The Authority may insure against loss of revenues from any cause whatsoever. The Authority may insure against public liability or property damage from any cause. An indenture may provide for the carrying of such insurance or any other insurance in such amount and of such character as shall be specified in such indenture, for the payment of the premiums thereon and for the disposition of all proceeds received from any such insurance. At the option of the Board, or as provided in any indenture, any insurance may be provided by funded reserves or any other means.

§ 10229. Pledge by the Government of Guam.

The government of Guam is fully committed to ensuring that the Authority has the ability to implement the capital improvements authorized to be financed by this legislation. The government also is fully committed to ensuring that bondholders are protected to ensure full and timely repayments of their bonds. The government of Guam hereby pledges that while any bonds of the Authority issued under this Article 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 any agreements made with bondholders in accordance with this Article;

(b) to maintain the rights and remedies of bondholders provided in this Article and any indenture;

(c) to protect the exclusive right of the Authority to operate or maintain within Guam any 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 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 the laws of Guam; and with the exception that the Authority *shall* collaborate fully, including, but not limited to, with the Guam Customs and Quarantine Agency and other local law enforcement and regulatory agencies to facilitate the inspection and prevention of illegal

entry into Guam of potentially unlawful immigrants or items or invasive species, by or through any works, property, and facilities owned, operated, or leased by the Authority, and to facilitate the protection of coral, wildlife and biodiversity in Apra Harbor.

§ 10230. Limitations as to Competitive Systems.

An indenture may include such limitations as to acquisition, ownership or operation by the government of Guam of enterprises which may compete with the system as may be deemed necessary or desirable for the security of bonds issued pursuant to this Article.

§ 10231. Jose D. Leon Guerrero Commercial Port Construction Fund.

The proceeds from the sale of all bonds authorized by this Article *shall* be deposited to the credit of a fund to be designated as the Jose D. Leon Guerrero Commercial Port Construction Fund, which fund is hereby created. The money in said Construction Fund *shall* be expended in the manner provided by law for any of the purposes authorized by this Article, including any or all of the purposes specified by 12 GCA § 10220, and for such other purposes, subject to the restrictions provided by law or by such indenture, as may be authorized by such indenture.

§ 10232. Jose D. Leon Guerrero Commercial Port Revenue Fund.

All revenues received from the operation of the system *shall* be deposited to the credit of the Jose D. Leon Guerrero Commercial Port Revenue Fund, which fund is hereby created. Moneys in the Jose D. Leon Guerrero Commercial Port Revenue Fund may be used for any of the following purposes in the order of priority set forth in any indenture as provided in 12 GCA § 10210(j):

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

(b) to pay principal or interest on any bonds;

(c) to replenish any debt service reserve funds related to bonds;

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

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

§ 10233. Investment of Money in Funds.

Moneys in the Jose D. Leon Guerrero Commercial Port Construction Fund and Revenue Fund may be invested by the Authority and any revenues in any other fund or account held by or on behalf of the Authority or its agent may be invested by the Authority or its agent, as the case may be, in any investment authorized by any indenture providing for the issuance of bonds. All interest or other earnings received pursuant to such investments *shall* be collected by the Authority or its agent, as the case may be, and *shall* be deposited to the credit of the fund or account from which such interest or other earnings are derived, unless otherwise provided in an indenture.

§ 10234. Use of Balances of Funds and of Surplus Money in Funds.

Any balance remaining in any of the funds or accounts created by this Article or any indenture after payment of all costs, expenses and charges required or authorized to be expended therefrom, may be allocated and used for such other purposes relating to the acquisition, construction, improvement, operation and maintenance of the system or to the Authority, as the Board may determine, subject to the limitations and restrictions in any indenture. After all bonds *shall* have been fully paid and discharged or provision for their payment and discharge irrevocably made, any surplus moneys in any fund or account created by this Article or any indenture *shall* be transferred to the Authority and *shall* be and remain available for the acquisition, construction,

improvement, maintenance or operation of the system or for any other purposes of the Authority herein or hereafter authorized by law.

§ 10235. Appropriation of Money in Funds.

All money in the funds and accounts created by this Article or any indenture is hereby appropriated for expenditure in carrying out the purposes herein and therein provided.

§ 10236. Payment Agreements.

In addition to and in amplification of the powers conferred upon the Board by the Jose D. Leon Guerrero Commercial Port Act, this Article or any other law of Guam or of the United States, the Board has power and is hereby authorized to cause the Authority to enter into any contracts in connection with, or incidental to, the issuance of bonds or other indebtedness, or the carrying of any investment or program of investment or entering into or maintaining any agreement which secures bonds or other indebtedness (each, a "payment agreement"), which the Board determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or such indebtedness, 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 Board in furtherance of the purposes of this Chapter, 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 with the parties, selected by the means, and containing the payment, security, default, remedy, and other terms and conditions, authorized by the Board, after giving due

consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate; provided, that any amounts received by the Authority pursuant to any payment agreement *shall* constitute revenues and that any obligation of the Authority under any payment agreement *shall* be payable solely from, and secured solely by a pledge of, revenues in accordance with 12 GCA § 10237. Any payment agreement may include a provision that any obligation of the Authority under any such payment agreement *shall* be secured by all or by part of revenues; provided that, at the time of execution and delivery of each payment agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to the bonds.

§ 10237. Credit Enhancement.

The Board has the power and is hereby authorized to cause the Authority to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as it determines are necessary or desirable to improve the security and marketability of the bonds or the security of the government's obligations under any contract or agreement entered into under 12 GCA § 10236. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance; provided, that any obligation of the Authority under any reimbursement agreement *shall* be payable solely from revenues. Any reimbursement agreement may include a provision that the obligations of the Authority under the agreement *shall* be secured by all

or by part of revenues; provided, that at the time of execution and delivery of each such agreement, any such provision *shall* be in compliance with and *shall not* violate or breach any provision of any indenture then in effect with respect to bonds.

§ 10238. No Personal Liability.

No member of the Board, employee of the Authority, or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

§ 10239. Waiver of Immunity.

Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the Authority *shall not* be entitled to immunity from any suit or action in contract on the indebtedness authorized by this Article. For the purposes of this Act only, immunity is waived as to the award of attorney's fees in connection with any suit brought to enforce any right or obligation given under this Act or in connection with the enforcement of the terms of any agreement or indenture that arises directly from the issuance of bonds. *I Liheslatura* (the Legislature) does not waive immunity for costs, pre-judgment interest and post-judgment interest.

§ 10240. Construction of Article.

This Article *shall* be liberally construed to carry out the objects and purposes and the declared policy of Guam as in this Article set forth. Nothing contained in this Article shall be construed directly or by implication to be in any way in derogation or limitation of powers conferred upon or existing in

the Authority or the Board by virtue of any provisions of the Organic Act or laws of Guam.

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

Section 4. Approval of Jose D. Leon Guerrero Commercial Port Revenue Bonds. *I Liheslaturan Guåhan* (the Guam Legislature), pursuant to 12 GCA § 50103(k), hereby approves the issuance and sale by the Authority of revenue bonds pursuant to Article 2, Chapter 10, Title 12, Guam Code Annotated, in one or more series or issues of tax-exempt and/or taxable bonds for the following:

(a) to finance certain Authority capital improvements, including, but not limited to:

(1) local match for the Transportation Investment Generating Economic Recovery (TIGER) grant program funding for rehabilitation of "H" Wharf and access road in the approximate amount of $14,200,000;

(2) replacement of the Administration Building in the approximate amount of $17,500,000;

(3) replacement and relocation of waterline(s) in the approximate amount of $6,000,000;

(4) repair and expansion of Equipment Maintenance & Repair Building (EQMR) in the approximate amount of $3,628,800; and

(5) repair of Warehouse 1 in the approximate amount of $2,000,000, and;

(6) repair of Golf Pier in the approximate amount of $2,000,000;

(b) to refinance all or a portion of the following outstanding loans of the Authority:

(1) a loan in the original principal amount of $12,000,000 from ANZ Guam, Inc., made in December 2012;

(2) a loan in the original principal amount of $10,000,000 from Bank of Guam made in April 2014;

(3) a loan in the original principal amount of $2,000,000 from the United States Department of Agriculture made in July 2015 (collectively, the "Prior Loans");

(c) to fund capitalized interest with respect to the bonds;

(d) to pay any costs or expenses relating to the authorization, issuance, or sale of bonds in an amount not to exceed two percent (2%) of issuance, in a manner consistent with 12 GCA § 50103(f), as amended by Public Law 34-57; and

(e) to fund a deposit to a debt service reserve fund in an amount not to exceed Six Million Dollars ($6,000,000) with respect to the bonds; provided, that the issuance, terms and conditions of the bonds *shall* have been approved by the Guam Public Utilities Commission; and further provided that such bonds *shall* have a principal amount not to exceed Seventy-two Million Six Hundred Thousand Dollars ($72,600,000), *shall* have a final maturity not later than 2048, *shall* bear interest at such rate or rates, and *shall* be sold for such price or prices as *shall* result in a yield to the bondholders not exceeding six and one half percent (6.5%) per annum (treating payments and receipts under any interest rate hedging contracts as if they were payments to and receipts from the bondholders), and so long as that the present value of debt

service on the bonds applied to refinance any or all of the Prior Loans in the aggregate shall be at least two percent (2%) less than the present value of debt service on the refinanced Prior Loans in the aggregate, using the yield on the refunding bonds as the discount rate, and shall be issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in Article 2 of Chapter 10, Title 12, Guam Code Annotated.

The Authority is prohibited from using bond proceeds for any purpose not provided for in this Section without legislative approval in the form of duly enacted legislation.

If such present value of debt service on the bonds applied to refinance any or all of the Prior Loans in aggregate is not at least two percent (2%) or less than the present value of the debt service on the refinanced Prior Loans in the aggregate, using the yield on the refunding bonds as the discount rate, the principal amount authorized in this Subsection (e) *shall* be decreased by the principal amount of the Prior Loans which did not yield such requirement.

Section 5. Validity. An indenture providing for the issuance or incurrence of bonds hereunder may provide that the bonds are issued or incurred pursuant to Article 2 of Chapter 10, Title 12, Guam Code Annotated, which recital shall be conclusive evidence of their validity and regularity of their issuance or incurrence.

Section 6. Reports. Quarterly written reports *shall* be submitted to the Speaker of *I Liheslaturan Guåhan* on the status of capital improvement projects, to include, but not be limited to, CIP timelines, change orders, and costs.

Section 7. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.