

LOAN AGREEMENT

WITNESSETH:

THIS AGREEMENT, made this 2nd day of January, 2009, by and between **BANK OF GUAM**, a Guam Banking Corporation organized under the laws of Guam, and authorized to do business within Guam, hereinafter sometimes referred to as "Bank" and the **GOVERNMENT OF GUAM**, hereinafter sometimes referred to as "the Government" is with reference to the following facts:

Pursuant to Public Law 29-116 as amended by Public Law 29-124, the Legislature of Guam has authorized the Governor of Guam to borrow **Twenty Million Dollars (\$20,000,000.00)**. The Governor of Guam has determined to borrow such sum, and Bank has agreed to extend such loan in such amount, all upon the terms and conditions herein provided.

In consideration of the mutual promises hereinafter contained, and of other valuable consideration, Bank and the Government agree as follows:

1. **Loan.**

(a) Subject to the conditions and upon the terms herein provided, Bank agrees to lend and the Government will borrow the sum of Twenty Million Dollars (\$20,000,000), lawful money of the United States (hereinafter "the Loan").

(b) The Loan shall be evidenced by a Promissory Note (hereinafter "the Note") in the form of **Exhibit A**, attached hereto, and by referenced incorporated herein.

(c) Interest on the Loan will be exempt from all Government of Guam taxation, including under the Guam Territorial Income Tax.

2. **Interest and Repayment.**

The Loan shall bear interest and shall be repaid pursuant to the provisions of the Note in the form of **Exhibit A** hereto.

3. **Security.**

(a) The obligations of the Government under the Loan are general and not special obligations of the Government of Guam, subject to the full faith and credit of the territory of Guam.

(b) The Loan shall be secured by:

(1) a pledge and assignment of revenues payable to the Government under Section 30 of the Organic Act, 48 U.S. Code §1421h, subject to a prior pledge of such revenues pursuant to (i) the terms of an Indenture made between the Government of Guam and

Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee with respect to the Government of Guam Limited Obligation (Section 30) Bonds including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A (“the Indenture”) dated as of December 1, 2001, and issued pursuant to 5 GCA §1508.1 and 12 GCA Chapter 51, and (ii) a Bank of Guam loan dated as of September 17, 2002 with an outstanding balance of \$5,023,537.29, with a maturity date of October 1, 2012 (“the Bank of Guam 2002 Loan”), and (iii) a Bank of Guam loan dated as of July 17, 2008 with an outstanding balance of \$13,259,462.37, with a maturity date of July 1, 2012 (“the Bank of Guam 2008 Loan”), but otherwise a first lien upon such Revenues; and

(2) a pledge and assignment of proceeds payable to the Government from any bond issuance relating to the Landfill; and

(3) a pledge and assignment of solid waste tipping fees collected by the Government;

Said Pledges and Assignments shall be in the respective forms attached as **Exhibit B** hereto (collectively referred to as the “Pledges”).

(c) As additional security for the Loan, the Government shall open a separate reserve account with the Bank, into which account the amount which equal to 1/12th of the annual installment payment shall be deposited each month from the date of loan disbursement until full payment. The Government agrees that funds held in said reserve account will be utilized by the Bank to make the Government’s annual installment payments under the Loan. Further, in the event that the Government’s monthly contributions to the account are not sufficient at the various times in which Section 30 funds are remitted to the Bank of Guam Trust Department, the Bank will set-off the necessary amount to make the Government’s full annual installment payment under the Loan.

4. **Representations, Warranties and Agreements.** The Government makes the following representations, covenants and warranties, which shall survive the execution and delivery of this Agreement, the Pledges and the Note and shall be continuing:

(a) The Government has the authority necessary to execute, deliver and perform the terms of this Agreement, the Pledges and the Note, and to borrow hereunder. The execution, delivery and performance of this Agreement, the Pledges and the Note, and all other agreements, instruments and documents provided for herein and the borrowing contemplated hereby have been duly authorized by proper proceedings and do not and will not conflict with or result in a breach by Government or any officer or representative of the Government of any law or any regulation, order, writ, injunction or decree.

(b) This Agreement constitutes a valid and binding obligation of the Government, enforceable in accordance with its terms, and the Pledges and the Note when duly executed on behalf of the Government, and delivered in accordance with this Agreement, will constitute valid and binding obligations of the Government enforceable in accordance with their terms. The Pledges are, subject only to the rights of a trustee, depository or of the bond holders under the Indenture, under the Bank of Guam 2002 Loan and the Bank of Guam 2008 Loan,

valid, binding and enforceable upon the Government of Guam, and upon the property subject thereto, and is effective to create and perfect the lien it purports to create upon the property subject thereto.

(c) There is no action, suit or proceeding pending or, to the knowledge of the Government, threatened against or affecting the Government in any court or before any arbitrator or before any governmental agency, wherein an adverse determination would materially adversely affect the ability of the Government to perform its obligations under this Agreement, the Pledges and the Note.

(d) All borrowings or public indebtedness of the Government, in addition to the borrowing represented by the Loan, do not exceed the ten percent (10%) ceiling imposed by Section 11 of the Organic Act of Guam, 48 U.S. Code §1423a, as amended.

(e) All necessary action required by law to authorize performance of the terms and conditions of the Loan by the Government has been made including any necessary appropriation for repayment.

(f) The Government will not be immune from suit in any action whatsoever as may arise out of the Loan, and the Bank will not be limited in any way as to the remedies available to it, or as to the amount or amounts that may be collected under such litigation.

(g) Pursuant to Public Law 29-129, the Government of Guam waived immunity from any suit or action in contract on the Loan, notwithstanding any substantive or procedural provision of Chapter 6 of Title 5 of the Guam Code Annotated, but did not waive sovereign immunity as to the personal liability of elected or appointed officials and employees of the Government of Guam.

5. **Supporting Documents.** Government will as a condition of the Loan and prior to disbursement of the Loan deliver the following documents in form and substance satisfactory to Bank:

(a) The Pledges in the respective forms of **Exhibit B** hereto executed and delivered by the Government of Guam (i) revenues payable from time to time by the United States of America to the Government pursuant to Section 30 of the Organic Act, (ii) proceeds payable from time to time by any issuer of any bond or bonds issued related to or for the Landfill, and (iii) solid waste tipping fees collected by the Government, respectively.

(b) An opinion of the Attorney General of Guam in the form of **Exhibit C** hereto.

(c) A certification by the Director of Administration of the Government that all borrowings or public indebtedness of the Government of Guam, in addition to and inclusive of the borrowing under the Loan, do not exceed the ten percent (10%) ceiling imposed by Section 11 of the Organic Act of Guam, 48 U.S. Code §1423a.

(d) An opinion of counsel to the Guam Economic Development and Commerce Authority that the Loan has been duly authorized by such Authority consistent with 12 GCA §50103(k).

(e) A Revenue Ruling by the Director of the Department of Revenue & Taxation that all of the interest earned on the loan is exempt from all Government of Guam taxation.

6. **Opinion of Counsel.** The obligation of Bank to make its Loan disbursement is subject to receipt from its own counsel of a favorable opinion that such counsel has reviewed all documents required by this Agreement, in connection with the Loan, is satisfied with their contents, and deems them to be sufficient to secure the Loan.

7. **Use of Loan Funds.** The Loan funds extended hereunder shall be used by the Government for the purposes specified in Public Law 29-116 as amended by Public Law 29-124. Breach of this provision or of any statutory provision as to application of the Loan shall not impair the obligations of the Government to the Lender hereunder.

8. **General Conditions to Disbursement.** Lender shall not be obligated to make any disbursement under the Loan:

(a) When the Government has defaulted in the making of any payment required by this Agreement.

(b) When the Government is in breach of any covenant, condition or warranty under this Agreement or the Pledges.

(c) When any claim has been made by the Department of Revenue and Taxation of the Government of Guam that interest hereon is not exempt from taxation under the Guam Territorial Income Tax or the Guam Business Privilege Tax.

9. **Conditions to Disbursement.** The obligations of the Lender to disburse funds hereunder shall be conditioned upon the following, which shall be satisfied prior to disbursement of any funds hereunder:

(a) All conditions to the lawful borrowing by the Government hereunder, to the making and performance of this Agreement and to the making and performance of the Pledges by the Government shall have been obtained.

(b) The Government shall have made and delivered to Lender:

(1) This Agreement.

(2) The Note.

(3) The Pledges.

(4) Notice of the Pledge as required by the Pledge to the trustee and depository under the Indenture, and direction to pay funds held by such trustee and depository under the Indenture as and when payable to the Government to the Lender hereunder pursuant to the provisions of the Pledges, duly acknowledged by such trustee and depository.

(5) Notice of the Pledge as required by the Pledge to the Secretary of the Treasury and Secretary of the Interior of the Government of the United States, subject to the prior pledges under the Indenture.

(6) The Certificate required by paragraph 5(c) as to 48 U.S. Code §1423a compliance.

(c) Lender and its legal counsel shall have been furnished an opinion of the Attorney General of Guam in substantially the form of **Exhibit C** hereto.

(d) Government shall have furnished to Lender and its legal counsel the Revenue Ruling, and a true copy of the application for the Revenue Ruling referred to in Section 10 hereof, together with other assurances as to the tax exempt status of the Loan reasonably requested by Lender.

(e) Approvals of the borrowing hereunder and of the terms and conditions thereof by Resolution of the Guam Economic Development and Commerce Authority and of the Legislature of Guam as required by 12 GCA §50103(k) have been obtained and evidence thereof furnished to Lender.

10. **Warranty and Covenants with Respect to Tax Exempt Status of Loan.** This Agreement is made upon the condition (and Government does hereby warrant) that the interest of the Loan paid to the Lender shall be exempt from taxation under the Guam Territorial Income Tax and the Guam Business Privilege Tax.

Prior to initial disbursement hereunder the Government shall furnish to the Lender a Revenue Ruling with specific reference to the Loan issued by the Department of Revenue of Taxation in the manner provided, and after application made, as provided by law to the effect that the interest of this Loan is exempt from taxation under the Guam Territorial Income Tax and the Guam Business Privilege Tax. The Government shall first make application for such Revenue Ruling, providing accurate detail as to the terms, conditions and purposes of this Loan, including detailed information as to the intended usage of Loan funds hereunder.

Government shall not use directly or indirectly any portion of the Loan proceeds hereunder for any purpose inconsistent with that disclosed to the Department of Revenue and Taxation in the application for the Revenue Ruling.

Government shall not use, directly or indirectly, any of the Loan proceeds hereunder in any manner that may result in a determination that the Loan or interest hereof is, in whole or in part, or for the whole or any portion of the term of the Loan or period in which it remains outstanding, subject to taxation under the Guam Territorial Income Tax or Guam Business Privilege Tax.

Government agrees to indemnify and hold Lender harmless from any claim (including costs of defense of such claim whether or not such claim be sustained) that the interest on the Loan is in any period in which it remains outstanding subject to taxation under the Guam Territorial Income Tax or Guam Business Privilege Tax. The provisions of this paragraph and obligations of the Government hereunder shall be continuing and survive repayment of the principal of this Loan.

11. **Warranties.** The Government makes the following warranties which shall continue in effect until the obligations hereunder have been fully paid and satisfied.

(a) The Government has the statutory authority necessary to make, deliver and to perform the terms of this Agreement, the Note and the Pledges, and to borrow as provided hereunder.

(b) The making, delivery and performance of this Agreement, and the borrowing contemplated hereby have been duly and regularly authorized by all requisite action of the Government and of each agency or instrumentality of the Government of Guam having jurisdiction.

(c) This Agreement constitutes a legal, valid and binding obligation of the Government, enforceable in accordance with its terms.

(d) There is no action, suit or proceeding pending or, to the knowledge of the Government, threatened against or affecting the Government in any court or before any arbitrator or before any other forum which may materially adversely affect the ability of the Government to perform its obligations under this Agreement, nor has any default occurred or any claim of default been made with respect to any covenant, indenture or agreement to which Government is a party.

(e) The making, delivery and performance of this Agreement by the Government are not contrary to any provision of law or regulation, nor will the same constitute, or with lapse of time and giving of notice, give ground to declare a default or breach of any covenant, warranty, indenture or agreement to which the Government is a party or which is secured by a pledge of assets or revenues of Government.

(f) The Government is not immune from suit to enforce the obligations hereunder or under the Pledges and Assignments.

(g) The Pledges have been duly and validly executed and delivered to the Lender, and constitute the valid, binding and enforceable lien upon the property therein described as security for the Loan, subordinate only to the Indenture payable under the Loan.

12. **Default and Remedies of the Bank.** The following shall constitute events of default:

(a) Default in the due and punctual payment of principal or interest when due and payable under the Loan.

(b) A failure by the Government to pay when due any bonded indebtedness of the Government, under the Indenture or otherwise, and whether or not secured by the property subject to this Loan, or any indebtedness owed Lender under the Bank of Guam 2002 Loan and the Bank of Guam 2008 Loan.

(c) Any breach of any other obligation on the part of the Government under this Loan, if such breach is not cured within 60 days after notice of breach is given to the Government, and opportunity to cure.

(d) The repeal of or amendment to Section 30 of the Organic Act, 48 U.S. Code §1421h, resulting in reduction of the Revenues payable thereunder to the Government.

Upon the occurrence of an event of default, Lender (i) may elect to accelerate all sums outstanding upon the Loan, and to demand the immediate payment of the full principal and interest thereof, and other amounts due and outstanding, and cease further disbursement of any undisbursed funds hereunder; (ii) Lender may with or without acceleration apply to payments of amounts due and secured hereby any funds pledged as security for the Loan, to amounts due under the Loan and secured hereby, including amounts due by acceleration; (iii) and may further exercise any remedies at law or in equity, including the initiation of proceedings in mandamus or for specific performance to compel the performance of this Agreement.

13. **Affirmative Covenants of Government.** The Government will duly perform and observe all covenants and conditions undertaken and to be observed by it pursuant to this Agreement, the Pledges and the Note, the terms of which are incorporated herein.

14. **Restriction on Further Pledge or Change of Trustee or Depository under Indenture.** The Government of Guam shall not create or permit the creation of any pledge, lien, charge or other encumbrance upon the Revenues, or other assets pledged or assigned under the Pledges and Assignment while the Loan remains outstanding except the Pledges or any encumbrance subordinate to the Pledges. The Government shall not assert against such property any pledge, lien, charge or encumbrance which the Government of Guam itself may hold. The Government of Guam shall not issue, while the Loan remains outstanding, under authority of the Indenture, any further bonds of equal rank to those issued and outstanding under the Indenture.

The Government shall furnish to the Bank such information as to the projected amount of and date of payment in each year of revenues pursuant to Section 30 of the Organic Act. Not later than September 15th of each calendar year, or 15 days prior to any earlier date upon which revenues payable under Section 30 of the Organic Act in such calendar year are projected to be received, the Government shall advise the Bank of the projected amount of revenues to be paid in such calendar year, and projected date of receipt by the Government or for its account of such revenues. Nothing contained herein shall limit the obligation of the Government under the Pledges with respect to payment of such revenues to a depository or trustee under the Indenture so long as the Indenture remains outstanding or to the Lender under the Pledges.

15. **Non-Waiver.** Any failure or neglect by Bank to collect or receive any payments due upon any collateral, or to collect any collateral or to collect or receive any payments due

under this Agreement, the Note or the Pledges shall not release Government from any liability to the Bank or constitute a waiver of any of the rights or remedies available to the Bank.

16. **Saturdays, Sundays and Legal Holidays.** If any party hereto is required to perform, pursuant to a provision of this Agreement, 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.

17. **Construction.**

(a) **Powers Cumulative.** All rights, powers and remedies herein given to the Bank are cumulative and not alternative, and are in addition to all statutes or rules of law; and partial exercise or forbearance or delay by Bank in exercising the same shall not operate as any waiver thereof or of any other power or rights hereunder or granted to Bank by law, and the exercise of any rights or partial exercise thereof or of any other rights, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Bank.

(b) **Covenants Survive Closing.** All covenants, agreements, undertakings, representations and warranties made herein shall survive the execution hereof and all closings hereunder.

(c) **No Trust for Third Parties.** Nothing herein contained shall be deemed to establish any trust fund for the benefit of any third person or persons, nor to impose any liability upon Bank to pay or be chargeable with any claims of third persons against the Government.

(d) **Invalid Provisions.** In the event any one or more of the provisions contained in this Loan Agreement or in any documents which are the subject of this Loan Agreement or given hereunder shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, unenforceability or illegality shall not affect any other provision of this Loan Agreement and/or of such other documents, and this Loan Agreement and such documents shall be construed as if such provision had never been contained herein or therein.

(e) **Governing Law.** This Loan Agreement is executed, delivered and to be performed in the Territory of Guam, and the validity, construction, enforcement, and interpretation of this Loan Agreement and all security agreements executed and delivered pursuant to this Loan Agreement shall be governed by the laws of the Territory of Guam.

(f) **Captions; Accounting Terms.** The captions and section headings herein are for reference and convenience only, and shall not enter into the interpretation hereof. In the event of any conflict between any caption and the written text, the terms of the written text shall control. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of any financial statements or financial instruments submitted to Bank by Government pursuant to or in connection with this Loan Agreement.

18. **Indemnification.** Government shall indemnify and hold Bank harmless from any liability, cost or damage arising out of Government's breach hereof. Bank may appear in or defend any action or proceedings purporting to affect the rights or duties of the parties hereunder or property, subject to any security interest, and Government shall pay all of Bank's costs and expenses.

19. **Costs and Expenses.** Government shall pay on demand all costs and expenses in connection with the preparation, execution, delivery, filing and recording of the Loan Documents and the other documents to be delivered under the Loan Documents, including the reasonable fees and out-of-pocket expenses of counsel for the Bank with respect thereto. Government shall pay all other expenses of Bank, including reasonable attorney's fees, in connection with the administration of this Loan Agreement and the other Loan Documents and all costs and expenses, if any, in connection with the enforcement of this Loan Agreement, the Note and the Pledges.

20. **Counterparts.** This Loan Agreement may be executed in as many counterparts as may be deemed necessary or convenient, and each counterpart shall be deemed an original.

21. **Assignment.** The Government hereby grants to the Bank the unrestricted and unqualified right and power to sell, assign, convey or transfer all, or any part of, this Loan, and Note, and all the rights, powers, remedies, and benefits appertaining thereto (including but not limited to all tax exemptions), to another lending institution, as the Bank may in its sole discretion decide.

22. **Miscellaneous.**

(a) Any notice or demand upon the Government of Guam, or the Lender 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 filed in writing by such party with each other party or by delivery to such place as may be designated herein. At the date of execution of this Agreement, the address of the Government of Guam and Lender are as follows:

Government of Guam: Department of Administration
P.O. Box 884
Hagatna, Guam 96932

Lender: Bank of Guam
111 Chalan Santo Papa
P.O. Box BW
Hagåtña, Guam 96932

(b) The Note contemplated to be executed and delivered pursuant to the Agreement is hereby made subject to all conditions, agreements and covenants contained herein to the same extent as if they were fully set forth in and made a part of the Note, and this

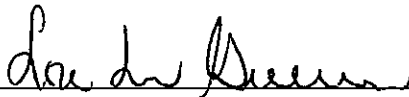
Agreement is made subject to all the conditions, agreements and covenants contained in the Note to the same extent as if they would be set forth herein, and made a part hereof.

(c) Government shall execute and deliver to Bank, such other and further documents or instruments as may be reasonably requested in connection with the transaction contemplated hereunder.

(d) The section headings used herein are for reference and for convenience only and shall not enter into the interpretations hereof.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers on this 2nd day of January, 2009.

BANK OF GUAM

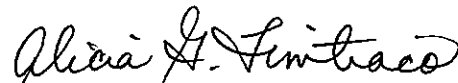
By: 

Its Duly Authorized Representative

GOVERNMENT OF GUAM

By: 
FELIX P. CAMACHO
Governor of Guam

**APPROVED AS TO LEGALITY
AND FORM:**

By: 
ALICIA G. LIMTIACO
Attorney General of Guam