

## 28 GAR - PUBLIC UTILITIES

### CHAPTER 2

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**§2101. Authority and Purpose.** (a) 5 GCA, Section 56108 authorizes the Guam Waterworks Authority to prescribe rules and regulations, including matters pertaining to business management as may be necessary for the proper and efficient operation of the Agency. Such rules and regulations shall include, but not be limited to, the manner in which charges for utility services and installation shall be paid to the Agency.

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(b) Violation of any rule or regulation, upon notice and opportunity to be heard being given to violator, will be sufficient cause for discontinuance or suspension or refusal to establish service by the Agency of the services rendered to the violator.

(c) Powers and Authority of Inspectors or Agents of the GWA. The inspectors and other duly authorized employees of the GWA bearing proper credentials and identification shall be permitted to enter all premises for the purposes of inspection, observation, measurement, sampling, and testing pertinent to the water system and discharge to the community system, in accordance with these provisions.

(1) The inspectors or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system.

(2) The inspectors and other duly authorized employees of the GWA bearing proper credentials and identification shall be permitted to enter all premises through which the GWA holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the water and/or wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the premises involved.

(d) The purpose of these rules and regulations is to establish practices governing the provision of water and wastewater services and to define mutual obligations between GWA and its consumers. This includes, but is not limited to, providing for such hearing procedures as will adequately protect rights of affected persons under the constitution of the United States and the Guam Organic Act.

**§2102. Definitions.** (a) For the purpose of these Rules and Regulations, unless it is evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

(1) *Agency* or *GWA* shall mean the Guam Waterworks Authority. *GWA* is the Guam Waterworks Authority.

(2) *Applicant* is a person, firm, partnership, corporation or association or agency requesting GWA to supply water and/or sewer service.

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- (3) *Application* is a written request to GWA for water and/or sewer service, as distinguished from an inquiry as to the availability or charges for such service.
- (4) *BOD* (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees centigrade, expressed in milligrams per liter.
- (5) *Bounty* is the amount paid to any individual who reports an illegal water and/or sewer hookup.
- (6) *Building sewer* shall mean that portion of a sewer, normally privately owned and installed, between a building and its connection with the public sewer at the street right of way line, easement boundary, or other designated point.
- (7) *Chief Engineer* shall mean the person holding the office of Chief Engineer, Water or Wastewater Division, Guam Waterworks Authority.
- (8) *Chief Officer* shall mean the person holding the office of the Chief Officer of the Guam Waterworks Authority.
- (9) *Collection main* is a sewer main of GWA from which service collection lines are extended to customers.
- (10) *Consumer* or *Customer* shall mean the person, firm, partnership, corporation or association, regardless of government-connected status as well as any governmental department, whose name appears on the records of the Guam Waterworks Authority as the party responsible and liable for receiving water service. The consumer or customer shall be the owner of the property to be served or a lawful tenant or agent of the owner regardless of the identity of the actual user of the service.
- (11) *Consumer's pipe* shall mean the pipe extending from the consumer's side of the meter.
- (12) *Cost of service connection* shall mean the sum of the cost of the labor, materials, transportation, equipment, and road repair, if any, and other incidental charges necessary for the complete installation of a service connection, but excluding the cost of the meter and meter box.
- (13) *Cross-connection* shall mean any physical arrangement whereby a public water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains contaminated water, sewage, or other waste or liquid of unknown or unsafe quality or agricultural injection methods employed on the consumer's premises served by GWA which may be capable of

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importing contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which, or because of which, "backflow" could occur, are considered to be cross-connections.

(14) *Elderly* person as determined by Guam statutes.

(15) *Electrical grounding* shall mean the connection by an electric conductor of any electric appliance or electric machinery to the water system of GWA.

(16) *Escrow* shall mean cash held in trust by GWA.

(17) *Fire hydrant fee* is a charge to recover costs incurred to periodically replace fire hydrants as well as the costs of maintaining them.

(18) *Force majeure* shall mean any cause against which GWA could not have reasonably foreseen or made provision for, including but not limited to, acts of God and sudden actions of the elements, such as floods, typhoons, earthquakes or tornadoes or in the case of war or acts of the public enemy.

(19) *Garbage* shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

(20) *GEPA* is the Guam Environmental Protection Agency.

(21) *Handicapped* person is a person with a physical or mental condition which substantially contributes to the person's inability to manage his or her own resources, carry out activities of daily living, or protect oneself from neglect or hazardous situations without assistance from others as determined by Guam statutes. Indicators of serious impairment to human health include but are not limited to:

- (i) Age, infirmity, or mental incapacitation, or
- (ii) use of life support systems, such as dialysis machines or iron lungs.

(22) *Illegal hookup* or *Illegal connection* is any hookup to water and/or sewer pipes belonging to the Government of Guam made without prior written permission of the Agency, the removal of water from any other of the Agency's lines, fire hydrant, etc., without obtaining prior approval of GWA or the unauthorized dumping of sewage or any other matter into the Agency's water and/or sewer systems.

(23) *Illness* is exemplified by a customer who suffers from a medical ailment or sickness and obtains a verifiable document

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from a locally licensed medical physician stating the nature of the illness and that discontinuance of service would be especially dangerous to a customer's health in the opinion of a licensed medical physician.

(24) *Inability to pay* may exist when a customer:

- (i) Qualifies for government welfare assistance, but has not begun to receive assistance on the date of receipt of bill and can obtain verification from the government welfare assistance agency, or
- (ii) Has an annual income below the stated federal poverty level and can produce evidence of this, and
- (iii) Signs a declaration verifying that the customer meets one of the above criteria.

*Inability to pay* does not excuse an obligation to pay for water and/or sewer services incurred.

(25) *Industrial waste* is sewage discharge as a result primarily of a process which creates or changes raw or unfinished materials into another form or product. This discharge typically does not meet GEPA requirements and may require pretreatment.

(26) *Installation charge* is assessed to a customer whenever GWA performs the service connection, and shall be in accordance with GWA's Schedule of Rates and Charges.

(27) *Main* shall mean the GWA supply or distribution pipe to which water service connections can be made; or the sewer into which several laterals or other sewer lines may discharge.

(28) *Main extension* shall mean the extension of water and/or sewer mains beyond existing facilities.

(29) *Meter* is the instrument for measuring and indicating or recording the volume of water or flow rate that has passed through it.

(30) *Meter tampering* is a situation where a meter has been illegally altered.

(31) *Minimum charge* is the minimum amount the customer must pay GWA for the availability of water and/or sewer service, irrespective of whether any water and/or sewer service was used, as specified in the Schedule of Rates and Charges.

(32) *Multi-customer extension* is a main extension designed to serve other than a single resident customer. It includes commercial and industrial developments, office buildings, governmental buildings, shopping centers, and planned unit developments. It also includes residential duplexes, triplexes,

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apartment houses, condominiums, commercial structures, and industrial structures but excludes "subdivisions" as defined in these rules.

(33) *Ownership by GWA and conveyance of property and improvements to GWA* shall be the property and improvements owned by, and conveyance made to, the Government of Guam, with administrative uses assigned to GWA.

(34) *Pay differential* is incurred when GWA performs work outside the normal hours of operation.

(35) *Penalty* is the amount assessed by the Agency for any illegal hookup, fines, or charges established other than the standard "rates".

(36) *pH* is an expression of the intensity of the basic or acid condition of a liquid using a range from 0 to 14 where 0 is most acid, 14 most basic, and 7 is neutral. The acceptable pH range of sewage varies from 5.5 to 7.8.

(37) *Point of delivery* is the point where facilities owned, leased, or under license by a customer connect GWA's pipes at the outlet side of the meter or backflow prevention device, or GWA's collection system.

(38) *Premises* is real and tangible property, but excludes dwellings in matters involving ingress or egress for GWA agents and inspectors.

(39) *Private Fire Protection* shall mean a service connection used solely for standby services for a private owned fire protection system.

(40) *Properly ground garbage* shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (•) inch in any dimensions.

(41) *Public Sewer* or *Public Sewer System* shall mean the sewage system which is owned and/or operated by the Government of Guam.

(42) *Public Water System* shall mean the water system owned and operated by the GWA.

(43) *Rates* shall mean the monetary charge established by GWA to be charged for the provision of water and/or sewer service by GWA to its consumers including, but not limited to, water rates, sewer rates, monthly minimum charge, service deposits, and installation charges.

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(44) *Reading* is a number obtained from the meter in order to determine the recordation of customer's consumption or usage.

(45) *Sanitary Engineer* shall mean the Engineer of the Guam Waterworks Authority assigned to the Wastewater Operations Division, or any other Government of Guam engineer designated by the General Manager of the Guam Waterworks Authority.

(46) *Sanitary Sewer* shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

(47) *Schedule of Rates and Charges* is the entire body of effective rates and charges of GWA.

(48) *Service connection* shall mean the main tap, pipe, fittings, and valves, from the water main to and including the meter and shut-off valve, or, the main tap, pipe that transports sewage from an individual customer's premises to a common service (normally as collection main) of collection of GWA.

(49) *Service connection permit* is issued to contractors jointly by GWA and GEPA, and is required before such contractors can construct a sewer service connection. A charge is made to cover the inspection costs incurred by GWA, and is assessed in accordance with GWA's Schedule of Rates and Charges.

(50) *Service deposit* is the charge, as specified in GWA's Schedule of Rates and Charges which covers the cost of establishing a new account.

(51) *Service disconnect* is when GWA disconnects as a result of customer request, customer non-payment or for any other non-compliance to these Rules and Regulations.

(52) *Service re-connection charge* is the charge as specified in GWA's Schedule of Rates and Charges which must be paid by the customer prior to re-connection of water and/or sewer service each time the water and/or sewer service is disconnected at the customer's request or for non-payment or whenever service is discontinued for failure otherwise to comply with GWA's rules.

(53) *Sewers* shall mean a pipe or conduit for carrying sewage.

(54) *Sewer boundary clean out* shall mean a clean out outlet, usually 4" or 6" in diameter, located between the private property and government property for identification of responsibilities as well as for easy maintenance.

(55) *Single residential customer service lateral extension* is the water main extension designed to serve a single family residential structure, or, the extension of the branch or side sewer from the

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public sewer main designed to serve a single family residential structure.

(56) *Slug* shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than five (5) minutes more than (5) times the average twenty-four (24) hour concentration of flows during normal operation.

(57) *Special reading* is performed by GWA at a customer's request and occurs between cycles. For example, when a customer is vacating the premises or an indication of unusually high consumption.

(58) *Standards* shall mean the current GWA Standards of Water and Wastewater System Planning, Materials, Construction, Water and Wastewater Division, Guam Waterworks Authority.

(59) *Standard methods* shall mean the examination and analytical procedures set forth in the latest Edition at the time of analysis of "Standards Methods for the Examination of Water and Sewage" as prepared, approved and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(60) *Subdivider* shall mean a person, or other legal entity, who causes land to be divided into two or more divisions of land for the purpose of sale, lease rental, transfer of title to or interest in, any or all of such division and shall include resubdivisions.

(61) *Subdivision* shall be approved by the Territorial Land Use Commission and shall mean improved or unimproved land divided or proposed to be divided into two or more divisions of land for the purpose of sale, lease, rental, transfer of title to or interest in, any or all of such divisions and shall include resubdivisions.

(62) *Subdivision water system* shall mean the water system, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks reservoirs, and all appurtenances necessary to provide water and fire protection for such subdivision, and where necessary, sources of supply.

(63) *Suspended solids* shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are largely removable by laboratory filtering and as determined by the appropriate procedure in "Standard Methods."

(64) *Waste, Sewage or Wastewater* shall mean a combination of the water-carried wastes from residences, business buildings,

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institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

(65) *Wastewater Division* shall mean the Wastewater Division of the Guam Waterworks Authority, Government of Guam.

(66) *Wastewater/sewage treatment plant* shall mean any arrangement of devices and structures used for treating sewage.

(67) *Wastewater/sewage works* shall mean all facilities for collecting, pumping, treating, and disposing of sewage.

(68) *Water division* shall mean the Water Division of the Guam Waterworks Authority, Government of Guam.

(69) *Water service* shall mean the provision of water to a premise or premises from facilities of GWA.

**§2103. General Conditions and Service Limitations.** (a) Any prospective consumer whose premises are within service limits established by GWA and where pressure conditions permit, may obtain:

(i) Water service, provided that GWA has a sufficient water supply developed for domestic use and for fire protection and can provide new or additional water service without detriment to those already served.

(ii) Sewer service provided that GWA has sufficient sewer facilities developed for domestic use to provide new or additional sewer service without detriment to those already served.

(1) The consumer agrees to abide by these Rules and Regulations.

(b) All prospective consumers upon the completion of a government sanitary sewer system shall connect to the system as soon as possible. It is mandatory by law that they be connected after a five-year grace period of its existence or upon their private-own system failure, or whichever comes first.

(c) All prospective consumers upon the completion of a government sanitary sewer system who cannot meet the gravity flow to the system should obtain a waiver from GEPA or provide a pump station with holding tank to prevent sewage from backing up to their facility or building.

(d) All customers who maintain private sewer lines, shall have on file with the GWA, blueprints/diagrams of the customer's private sewer lines up to the point of collection with the public sewer system.

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(e) Where an extension of mains is necessary, or where large quantities of water are required, or a substantial investment is necessary to provide service, a current or prospective consumer will be informed in writing by GWA at time of construction permitting processing as to the conditions and charges to be made for the particular area and situation in question before water and/or sewer service may be approved. If GWA approves the water and sewer service, and the prospective consumer agrees to the conditions and deposits the estimated charges, steps will be initiated to provide the requested water and/or sewer service.

(f) All water supplied by GWA will be measured by means of suitable meters. Privately operated water wells shall not be exempt from this rule, and shall also require a suitable GWA water meter.

(1) When it is impractical to meter the service, a flat rate may be charged, or other method of computation applied to calculate charges subject to the provisions as set forth in P.L. 22-53, Sections 12026 and 12027. The amounts to be paid for water and/or wastewater service shall be in accordance with the rates in effect and shall be as indicated hereinafter. Rates shown are current rates and are subject to change upon proper processing of rate changes in accordance with Administrative Adjudication Law.

(g) All service connections including the shut-off valve shall become the property of GWA for operation and maintenance after installation and new connections or disconnections may be made thereto by GWA at any time. GWA is not responsible for maintenance and repairs to consumer's pipe as defined in Section 2101.

(h) GWA will exercise reasonable diligence and care to deliver an adequate supply of water to the consumer, make every effort to maintain pressure, and to avoid shortages or interruptions in water service, but will not be liable for any interruption, shortage, low pressure, high pressure, insufficiency of supply of portability, or any loss or damage occasioned thereby beyond GWA's control as established under Section 2116 of this rule.

(i) Whenever, in the opinion of GWA and in the interest of the public, special conservation measures are advisable in order to forestall water shortage and a consequent emergency, GWA may restrict the use of water by any reasonable method of control.

(j) GWA reserves the right at any and all times to shut off water from the mains without notice for the purpose of making emergency

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repairs. Consumers, depending upon a continuous supply of water, shall provide emergency water storage and any check valves or other devices necessary for the protection of plumbing fixtures against failure of the pressure or supply of water in GWA's mains. Repairs or improvements will be performed and completed as rapidly as practicable and, insofar as practicable, at such times as will cause the least inconvenience to the consumer.

(k) Where property is situated at such an elevation that it cannot be assured of a dependable supply or of adequate service from GWA's distribution system, the consumer, in consideration of connection with GWA's system must agree to accept such water service as is available and to install if necessary, and maintain at his expense a tank and pump of suitable design and of sufficient capacity to provide an adequate and dependable supply of water. The consumer shall permit GWA to inspect the installation for compliance with the Agency's requirements. The consumer shall install an air gap or other protective devices between the consumer's supply pipe and the service connection. The consumer shall execute a written release in favor of GWA for all claims on account of any inadequacy in GWA's system or inadequacy of water supply to the consumer.

(l) **Minimum Water Delivery Pressure.** GWA shall maintain a standard water delivery pressure range of a minimum 20 pounds per square inch (PSI) to a maximum 90 PSI at the customer's meter.

(1) GWA shall not be liable for any loss, damage, or inconvenience to any person by reason of any increase and decrease of water pressure when the same is caused by an act of God, drought, an unavoidable accident, a disturbance or condition of any kind beyond the reasonable control of GWA or when the same is reasonably necessary for the repair, maintenance, alteration, or extension of any facility belonging to GWA.

(m) The retail resale of water received by the consumer is not permitted unless approved in writing by GWA.

(n) **Protection of GWA Equipment.** All equipment belonging to GWA and installed upon the consumer's premises, with the consumer's consent, for measurement, test, check or any other purpose, shall continue to be the property of GWA, and may be repaired, replaced or removed by GWA at any time without the consent of the consumer. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of GWA upon said premises and shall in no way interfere with the operation of same. No rent or other charge shall be

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paid for space on the consumer's premises reasonably required by GWA for equipment and facilities of GWA required for the supply of water and/or sewer service to those premises.

(1) Any damage to water and/or sewer mains, service connections, valves, fire hydrants, or other property of GWA shall be paid for by the person, persons, or organization responsible for the damage.

(2) The consumer shall be liable for any damage to a meter or other equipment or property of GWA caused by the consumer or his tenants, agents, employees, contractors, licensees or permittee, on the consumer's premises and GWA shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor. In the event settlement for such damage is not promptly made, GWA reserves the right to discontinue water and/or sewer service to such premises.

(3) When a meter or other appurtenances of GWA is found to have been damaged as result of use for operation of appliances and appurtenances controlled by the consumer, including but not limited to damage caused by hot water or steam, emanating from the premises serviced, chemical or excessive pressure surges, the consumer shall pay for all costs required to repair the meter or other appurtenances.

(o) **Responsibility for consumer's equipment.** The consumer shall at his own risk and expense furnish, install and keep in good and safe condition all equipment that may be required for receiving, controlling, applying and utilizing water, and all equipment affecting the wastewater system, and GWA will not be responsible for any loss or damage caused by the improper installation of such equipment, or the negligence, want of proper care or wrongful act of the consumer or any of his tenants, agents, employees, contractors, licensees or permittee in installing, maintaining, using, operating or interfering with any such equipment.

(1) Water and/or sewer service may be discontinued to any consumer whose water and/or sewer system includes plumbing fixtures, or water containers in any form, or any use, which in the opinion of GWA may endanger GWA's water supply or sewer service from a public health standpoint, and in accordance with the provisions contained in Section 2110. Any such discontinuation of services shall continue until objectionable installations have been corrected and GWA has been assured that the objectionable uses and practices will not be resumed.

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(2) GWA will not be responsible for damage to person or property caused by spigots, faucets, valves and other equipment that may be open when water is turned on at the meter; either when turned on originally or when turned on after a temporary shutdown.

(p) **Provision of service.** The following paragraphs outline customer's and GWA responsibilities.

(1) **GWA responsibility.** GWA shall be responsible for providing water to the customer's point of delivery and for the safe conduct and handling of the sewage after it passes the point of collection.

(i) GWA may, at its option, refuse service until the customer has obtained all required permits and/or inspections indicating that the customer's facilities comply with local construction and safety standards.

(ii) GWA shall be responsible for maintaining in safe operating condition all meters, equipment, and fixtures installed on the customer's premises by the utility for the purpose of delivering water to the customer.

(2) **Customer responsibility.** Each customer shall be responsible for the carriage, control, handling storage, and distribution of all water furnished by GWA and the maintenance of water and/or sewer facilities from and beyond the point of delivery in safe operating condition.

(i) Each customer shall be responsible for safeguarding all GWA property installed in or on the customer's premises for the purpose of supplying GWA service to that customer.

(ii) Each customer shall be responsible for payment for any equipment damage resulting from unauthorized breaking of seals, interfering, tampering, or bypassing the GWA meter.

(iii) Each customer shall be responsible for notifying GWA of any equipment failure identified in GWA's equipment that is installed in or on the customer's premises for the purpose of supplying water and/or sewer service to that customer.

(3) **Continuity of service.** GWA shall make all reasonable efforts to supply a satisfactory and continuous level of service. However, GWA shall not be liable or responsible for any loss, damage, inconvenience, or claim of damage attributable to any interruption, shortage, reduction, or discontinuation of service resulting from:

(i) Any cause against which GWA could not have reasonably foreseen or made provision for, i.e., force majeure.

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(ii) Intentional service interruptions to perform maintenance, alterations, extension, or make repairs necessary to eliminate the possibility of harm to the population or damage to company and/or customer equipment.

(4) **Service interruptions.** GWA shall make all reasonable efforts to re-establish service within the shortest possible time when service interruptions occur.

(i) GWA shall make reasonable provisions to meet emergencies resulting from failure of service, and GWA shall issue instruction to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(ii) In the event of national emergency or local disaster resulting in disruption of normal service, GWA may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(iii) When GWA plans to interrupt service for more than eight (8) hours to perform necessary repairs or maintenance. GWA shall inform affected customers at least 12 hours in advance of the scheduled date and estimated duration of the service interruption. Such repairs shall be completed in the shortest possible time to minimize the inconvenience to the customers of GWA.

(iv) Except for momentary interruptions due to automatic equipment operations, GWA shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause of interruptions, date, time, duration, location, approximate number of customers affected, and in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(q) **Privately owned sewer truck discharging to public sewer.**

Bulk discharge of sewage can be accepted at sewage treatment plants and is subject to a charge as set forth in the Schedule of Rates and Charges. The user must be registered at the Wastewater Division and be in possession of a current permit which allows the user access to GWA's treatment facilities. An authorization permit must be obtained from GEPA and GWA Wastewater Administration Office. A dumping area will be assigned upon the approval of the authorization.

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(r) GWA shall charge a fee in obtaining utility clearance as specified in the Schedule of Rates and Charges.

(s) **State of Emergency.** In accordance with P.L. 21-134, Section 4, upon the declaration of a state of emergency by the Governor as the result of disaster that threatens the public water supply, it shall be considered a petty misdemeanor for any person to use water supplied by GWA for any unauthorized use. Use of water not pertaining to public health, safety, and welfare shall not be authorized. Unauthorized use shall include, but not be limited to:

(i) Washing of motor vehicles, windows, streets, sidewalks and buildings.

(ii) Irrigation or watering of ornamental plants, shrubs, flowers, lawns, and golf courses.

(1) Upon conviction arising from unauthorized use under this Section, a fine of not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) shall be levied. This fine shall be in addition to any other penalty(ies) imposed by a court.

(2) The state of emergency shall not exceed a period of fifteen (15) days, although successive states of emergency may be proclaimed by the Governor if deemed to be in the public interest.

**§2104. Application for Water and Sewer Service and Service Re-connection.** (a) Each prospective consumer requesting water and/or sewer service shall submit the prescribed application form duly signed and with all requested information. Such information shall include, but not be limited to:

(1) Name or names if for joint service.

(2) Service address/telephone number.

(3) Billing address/telephone number, if different than service address.

(4) Name and address of another party for termination notices. This shall be at the option of the customer.

(5) Address where service was provided previously.

(6) Date applicant will be ready for service.

(7) Indication of whether premises have been supplied with water and/or sewer service previously.

(8) Purpose for which service is to be used.

(9) Provide documentation that shows that applicant is owner or tenant of or agent for the premises.

(10) Estimated annual usage (except for residential applicants).

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- (11) Map and legal description of the property to be served.
- (12) Such other I.D. as the Agency may reasonably require.
- (13) Business License for commercial customers.

(b) The consumer shall be responsible for the payment of all charges for water and/or sewer service at the designated location(s). Charges will begin when the water and/or sewer service(s) is established and will continue until due notification from the consumer or until discontinued by GWA for failure of the consumer to comply with these Rules and Regulations.

(c) A consumer taking possession of a property and using water and/or sewer service without having made application to GWA for water and/or sewer service to such property, shall be held liable for the water delivered and sewer collected from the date of the last recorded meter reading. If proper application for water and/or sewer service is not made upon notification to do so by GWA and if accumulated bills for water and/or sewer service are not paid upon presentation, the water and/or sewer service shall be subject to discontinuance without further notice. Further, the consumer will be committing a theft pursuant to local statutes.

- (1) A charge will be imposed for illegal use of water and/or sewer service.

(d) Any new applicant for service or any existing customer is required to make a service deposit for each account or application to cover charges for utility services in accordance with the service deposit rules as set for in the Schedule of Rates and Charges.

- (1) GWA shall issue a nonnegotiable receipt to applicant for the deposit. The inability of the customer to produce such a receipt shall in no way impair his right to receive a refund of the deposit.

(e) Upon discontinuance of services, GWA will refund the balance of the customer's deposit in excess of unpaid bills for the services at no interest.

(f) **Grounds for refusal of service.** GWA may refuse to establish service if any of the following conditions exist:

- (1) The applicant has an outstanding amount due GWA.
- (2) A condition exists which in GWA's judgement is unsafe or hazardous to the applicant or GWA's facilities.
- (3) Refusal by the applicant to provide GWA with a deposit.
- (4) Customer who has been duly served notice by the GWA, and subsequent to having had the opportunity to be heard by the

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Agency, GWA has established that the customer is in fact in violation of the GWA's Water and Wastewater Rules and Regulations.

(5) Failure of the customer to furnish such service, equipment, rights-of-way, and other pertinent provisions, as specified by GWA.

(6) Customer refuses to provide or obtain documentation as required by GWA.

(7) Customer has not completed the appropriate requirements of the Government of Guam permitting, i.e., encroachments, grading, clearing, building, etc.

(g) **Service re-connection.** GWA shall make a charge as set forth in the Schedule of Rates and Charges for the re-connection of water and/or sewer services.

(1) In addition, there shall be a pay differential for service scheduled by the customer during other than the normal business hours worked by GWA's service personnel. The differential cost shall be borne entirely by the customer.

(h) Applicant requesting inspection and acceptance by GWA of water service connection during other than the normal business hours worked by GWA's service personnel shall be charged a pay differential as set forth in the Schedule of Rates and Charges.

(1) Applicant's request for inspection and acceptance shall be issued by the applicant at least forty-eight (48) hours in advance. GWA will attempt to schedule a customer at the requested time. However, GWA does not guarantee that the requested time will be available. If the requested time is unavailable, the customer will be informed of alternative available dates.

(i) If sewer service is disconnected because of fire, reconstruction, demolition, or similar circumstance, the boundary connection shall be plugged by the owner to prevent damage or failure to the government line.

(1) During the construction of said plug, GWA shall have access thereto for inspection purposes and if considered advisable by GWA, may require an inspector on the job continuously. At no time shall boundary connection plugs be considered constructed completely until GWA has been notified and has given proper inspection and approval. If the work is not approved, it shall be repaired or removed and reconstructed, whichever is directed by GWA.

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(2) All work and materials, including cost of inspection and test shall be borne by the owner.

(3) If the owner does not construct a plug to the boundary connection, GWA shall design and construct such plug at the owner's expense.

### **§2105. Installation of Water and Sewer Service Connections.**

(a) **Water Installation.** When the application for a service connection has been approved, such connection will be installed by GWA at the expense of the applicant, as established under §2109, and thereafter will be maintained by GWA at its expense.

(1) There shall be one meter for each water service connection, unless GWA, because of operating necessity, installs two or more meters in parallel. All meters will be sealed by GWA before installation and no seal shall be altered or broken except by one of its authorized employees.

(2) Each applicant for service shall be responsible for the cost of installing all plumbing from the meter box.

(3) All installation charges shall be non-refundable contributions to GWA.

(4) Where water service is provided customers should provide and maintain a private cutoff valve within 18 inches of the meter on the customer's side of the meter, and GWA shall provide a like valve on GWA's side of such meter.

(5) The customers with meters of 2 inches or more shall provide an approved meter box at the customer's property line except when this is not practicable, in which case the meter shall be installed upon the customer's premises in some convenient location approved by GWA. This shall not apply to subdividers (see Section 2108).

(6) Where the meter location on the customer's premises is changed at the request of the customer or due to alterations on the customer's premises, the customer shall provide and have installed at this expense all plumbing necessary for relocating the meter and GWA may make a charge for moving the meter.

(7) The customer's lines or piping shall be installed in such manner as to prevent cross-connections or backflow.

(b) **Sewer Installation.** When the application for a service connection has been approved, such connection will be installed by a licensed contractor possessing a service connection permit at the expense of the applicant and thereafter such connection will be

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maintained by GWA at its expense. The applicant shall indemnify the GWA from any loss or damage that may directly or indirectly be occasioned by the service connection.

- (1) Each applicant for service shall be responsible for the cost of installing all plumbing up to the service connection.
- (2) All installation charges shall be non-refundable contributions to GWA.
- (3) The customer's lines or piping shall be installed in such a manner as to prevent cross-connections or backflow.

(i) In order to provide proper sanitary protection to GWA's water supply and to comply with the applicable regulations of GWA, GWA will require that following the effective date of these Rules and Regulations no cross-connections with other water supplies, or other physical connections, shall exist, or be installed, located, maintained or operated which could permit backflow of contaminated water or any other dangerous, impure, unsanitary, or unpotable substance from the consumer's premises into GWA's water supply system, except as provided for in the GWA Service Rules and Regulations.

(ii) Location and inspection of protective devices. Any device installed for the prevention of backflow as may be required under these Rules and Regulations, shall, unless GWA approves otherwise in writing, be located above ground and in such a manner as to be safe from flooding or submergence in water of other liquids, properly protected from external damage, freely accessible and with adequate working room for inspection, testing and repairing. All such devices shall be tested and inspected internally not less than once annually or more often in those instances where successive inspections indicate repeated failure. Repairs replacement of parts, etc. shall be made whenever necessary at the expense of the consumer. Making annual tests and inspections shall be the responsibility of the consumer and shall be made by the consumer or other qualified person or persons in accordance with methods acceptable to GWA. Records of tests and inspections shall be made on forms prescribed by GWA and a copy of such records shall be furnished to GWA. Failure of the consumer to make the proper tests and submission of records may result in GWA's

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making the tests, needed repairs and replacements and charging the costs thereof to the consumer.

(iii) **Affidavit of compliance.** Upon request of GWA the consumer shall present an affidavit either certifying to the fact that there are no connections or other installations of the type prohibited in this Rule on his premises or describing in detail all conforming and nonconforming connections or installations.

(iv) Discontinuance of water and/or wastewater service for non-compliance. Failure on the part of the consumer to comply with GWA's requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water service until such time as the requirements have been met.

(v) GWA shall not be liable for any injury to persons or damage to property which may result directly or indirectly from the installation of testing or any device intended to protect GWA's public water supply from contamination.

(c) **Installation charge.** The cost of the service connection shall be paid by the applicant before the connection is installed. Installation charges shall be based on the cost of such installation as established by GWA and as set forth in the Schedule of Rates and Charges and in effect as of the date of the installation.

(d) **Water and Wastewater system development charge.** In addition to the installation cost, a water and/or wastewater system development charge shall be levied against each user who is for the first time connecting the property into GWA's water and/or sewer system or connections requiring additional water supplies and sewer service from existing water and/or sewer services. System development charges shall be based on the cost of such installation as established and as set forth in the Schedule of Rates and Charges and in effect as of the date of the installation of water and/or sewer services.

(1) This service rule pertaining to a water and wastewater system development charge shall be effective upon approval and ratification by the Guam legislature, and shall be based on the applicable portions of Guam Code Annotated, Title 5, Chapter 56.

(e) **Consumer's water pipe.** The consumer shall install and connect at the consumer's expense the water supply pipe to the shut-off valve or outlet installed by GWA. The consumer's pipe shall at all times remain the sole property of the consumer, who shall be responsible for

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its maintenance and repair. If the consumer's pipe is installed before the service connection is set, GWA will make the connection to it provided, however, it is requested by the consumer prior to the installation of the service connection.

(f) **Connection to main.** Only employees of GWA or licensed contractors under the supervision of GWA will be allowed to connect or disconnect the service connection to or from GWA main. Contractor connections, however, must be approved by GWA.

(g) **Location of service connection or main.** No service connection or water and/or sewer main will be installed by GWA in any private road, lane, street, alley, court or place, until such private streets are open to the public and brought to proper grade and GWA is given proper easements for the main or service connection. Such easement shall provide permanent and continuous access for repair and maintenance of GWA facilities. Otherwise, an applicant desiring water and/or sewer service to property fronting on such private roads, lanes, etc., must extend his supply pipe to the nearest public street on which a main exists.

(1) Private lines shall have clean outs at least 100 apart for maintenance purposes.

(h) **Size and location of water meters and water and sewer service connection.** GWA will determine the location and size of all meters and service connections to its system. Factors to be considered may include but are not limited to the nature of the service, the size and location of the building or buildings to be served and the location of the property and buildings with respect to the mains. All water meters shall be installed in the sidewalk area, preferably in the concrete sidewalk, unless GWA, because of operating necessity, installs the meters elsewhere. Drawings and standards for typical water meter and water and sewer service installations are shown in the Standards of GWA.

(i) **Change in location or size of service connections.** When the proper size of service connection for any premises has been made, GWA has then fulfilled its obligations insofar as the size of the service connection and the location thereof are concerned. If thereafter the consumer desires a change in size of the service connection or a change in the location thereof, he shall bear all costs of such change. An enlargement of service will be approved by GWA only if GWA is able to serve the increased demand without adversely affecting existing customers on the system.

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(1) The customer shall obtain prior authorization and approval from GWA when a new use is planned for property that previously has been provided with sewer service shall result in a change in customer category classification. All costs related to a change in customer category classification, including inspection, shall be borne by the customer.

(2) GWA may disconnect any water and/or sewer service line to the customer if sewer service is being furnished without a proper application or pursuant to an application containing misrepresentation of material fact.

(j) **Alteration to public water and sewer system.** All work and materials in connection with the change in location or elevation of any part of the existing public water and/or sewer system, made necessary by the new service connection, shall be at the expense of the applicant.

(k) **Contours or elevation.** When required by GWA, contours or elevations shall be furnished by the applicant, based on the Coast and Geodetic Survey Vertical Control System for Guam. Horizontal control shall be tied to the U.S.C. & Geodetic Survey System on Guam or to recorded local surveys approved by the Department of Land Management and GWA.

(1) **Sewer System.** The building foundation should be at least 12" above the level of road pavement at the closest manhole and the slope should be no less than 1/4" per foot.

(l) **Master Metering.** GWA reserves the right to limit the number of houses or buildings and the area of land to be supplied by one service connection.

(m) **Water and sewer service to undeveloped areas.** Any prospective consumer requesting water and/or sewer service for areas beyond the service limits or undeveloped areas or tracts of land in which a distribution or collection system has not been installed are required to furnish GWA with plans and specifications for the proposed distribution and collection system for such area or tract which shall conform to the standards and requirements of GWA. Such distribution or collection system shall be installed at the expense of the consumer in accordance with the plans and specifications as approved by GWA.

(1) Each prospective consumer shall pay the incremental installation expense which reflects each consumer's responsibility for the water service distribution or sewer collection installation

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charges. The incremental installation expense shall be so formulated as prescribed in Section 2118.

(2) GWA shall have the right to connect subsequent consumers to the installed distribution or collection system. If such water and/or sewer service connections are of a permanent nature, and installation of said connections are made within five years of the date the service connection is activated, a refund shall be made applicable to the original applicant.

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(n) **Easements and rights of way.** Each customer shall grant adequate easements and rights-of-way to ensure the customer's proper service connection. Failure on the part of the customer to grant adequate easement and right-of-way shall be grounds for GWA to refuse service.

(1) When GWA discovers that a customer has constructed on an easement or right-of-way and such construction poses a hazard or significantly interferes with GWA access to equipment, GWA shall notify the customer of such and take whatever actions are necessary to have the obstruction removed.

(o) Developers and Subdivision owners who have installed water pump stations whose sole purpose is to serve a particular development or subdivision, and consequently have no excess capacity to serve customers beyond the boundaries of said development or subdivision, shall be required to maintain their own pump station(s) and force main(s) in proper working condition to the satisfaction of GWA.

(p) Sewer services for commercial establishment with restaurant or food processing facilities must install grease traps prior to discharging into the public sewer system. Such establishments without effective grease traps shall be subject to termination by GWA of water and/or sewer services.

(1) New applicants for sewer service. Prior to application for a building permit, applicants for sewer service shall be required to include in the building plans, the location of all grease traps.

(2) Existing sewer service customers. Existing customers shall be required to install grease traps within three months of the effective date of GWA's Service Rules and Regulations as noted in Section 2123.

q. All costs and expenses incident to the installation and connection of sewer pumps installed by the customer to the

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public sewer system shall be borne by the customer. The customer shall indemnify GWA from any loss or damage that may directly or indirectly be occasioned by the installation of the sewage pumps.

(1) The cost for the operation and maintenance of pumps installed by the customer that are connected to the public sewer system shall be borne entirely by the customer.

(2) GWA shall not be liable for any injury to person or damage to property that may result directly or indirectly from the damages resulting from any customer pump malfunction or failure.

(r) Building clean outs shall always be covered unless there is an emergency to relieve pressure or backup into the building. If in the event of an emergency and significant discharge occurs, GWA must be notified in order to administer appropriate action.

(1) It shall be considered an illegal hookup for customers to discharge or cause to be discharged any storm water, roof runoff, or any waters from an uncontaminated cooling system, swimming pool, decorative fountain or pond, into the building clean outs. Such illegal hookup shall be subject to penalties as determined by GWA in accordance with Public Law No. 19-14.

**§2106. Illegal Connection.** (a) When an illegal connection is discovered, such action shall constitute theft, and the responsible party will be processed in accordance with local statutes, specifically Public Law 19-14, Section 9, wherein it states, "...such theft shall be prosecuted in the same manner as any other theft, with the criminal penalties as provided by the law." The responsible party shall be responsible for reimbursing GWA for its services in accordance with the Schedule of Rates and Charges.

(b) It shall be considered an illegal hookup for any customer to discharge or cause to be discharged any storm water, surface water, unpolluted industrial process water, roof runoff, subsurface drainage, or any waters from an uncontaminated cooling system, swimming pool, decorative fountain or pond, into the public sewer system or any private sewer system which is connected to the public sewer system.

(c) It shall be theft for any person to take water from a fire hydrant, except authorized Agency personnel or persons having written authorization from the Agency, and fire fighters acting in their official capacity. Illegal use or connection to a fireplug shall be considered an illegal connection with pipe size based on diameter of the fireplug.

(1) Any person other than authorized Agency personnel, or firemen in their official capacity, or persons who have written

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authorization from the Agency, who knowingly and intentionally tampers with or damages water and/or sewer pipes belonging to the Guam Waterworks Authority with the intent to steal water, tap into the sewer system, or damage the system shall be guilty of a felony of the third degree, and shall be subject to a penalty payable to Guam Waterworks Authority as specified in GWA's Schedule of Rates and Charges, in addition to all other fines, penalties and prison time allowed by law.

(d) If any illegal hookup is discovered (including but not limited to illegal hookups by building contractors), water/wastewater shall be disconnected at that location and may not be reinstated directly or indirectly for that lot until a penalty calculated in accordance with Section 2104 of this rule has been paid to the Guam Waterworks Authority.

(1) The General Manager of the Guam Waterworks Authority may formulate a payment schedule that consists of a fifty (50) percent initial payment, with up to three (3) installment payments, to be repaid with the respective regular bills. A twelve percent (12%) annual interest shall be assessed on the unpaid balance.

(2) Any person who connects illegally to any water and/or sewer line may not be granted additional building permits until any such penalty is paid.

(3) The owner and tenant (if any) of any lot having an illegal water and/or sewer hookup shall be personally, jointly and severably liable for all penalties and estimated value of water used.

(e) It shall be the specific responsibility of land/home owners and tenants to make sure that there are no illegal hookups serving the property, and to correct the situation hereinafter provided, or, if caught, to pay the requisite penalty for the estimated water/wastewater usage for up to four (4) years.

(1) GWA shall determine the estimated value of the water/wastewater usage by the illegal connection for a period of up to four (4) years, based upon the estimated time the illegal hookup was in place, using average consumption figures for the type of consumption of the illegal hookup system-wide for all consumers of that class of figures. The estimated value of usage shall take into account usage of the premises, number of occupants or users, and size of buildings or area served by such illegal hookup.

(2) It shall be the burden of the recipient of the illegal hookup to establish that the illegal hookup was in use for less than a period of

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four (4) years or that the estimated usage as determined by GWA is incorrect.

(f) It shall be considered a felony of the third degree for any person other than an employee of the Agency acting in his official capacity to knowingly tamper with any line, valve or meter, or knowingly damage or cut any line, valve or meter, or tap into any water line belonging to GWA for the purpose of taking water without the previous written approval of the Guam Waterworks Authority.

(1) As stipulated by Public Law 19-14, Section 8, if any employee or agency of any Contractor knowingly taps into any water and/or sewer line belonging to GWA without prior written approval, his employer and any general contractor who may have been supervising the employee or the agent or the employer or the subcontractor shall have their contractor's licenses revoked by the Contractor's Licensing Board for eighteen (18) months if the Board finds:

(i) That one (1) or more persons involved were employed by or were agents of the contractor or employers, and one (1) or more persons knowingly tapped into water and/or sewer lines without the prior written permission of GWA.

(ii) That at least one (1) of the persons who illegally tapped into the line was acting in his capacity as a principal, officer, agent or employee of the employer or contractor.

(iii) It is immaterial if the contractor or employer had actual knowledge of the illegal hookup, if done in the course of employment.

(g) It shall be considered an illegal hookup if the connection to a line is metered for other purpose than the designated service.

(h) A bounty as specified in GWA's Schedule of Rates and Charges shall be paid to any person who reports an illegal water and/or sewer hookup for the same location. If several persons report an illegal hookup, the bounty shall be divided evenly between those persons reporting the illegal hookup.

(1) If any person reports more than ten (10) illegal hookups within a twelve-month period, that person shall not receive any bounty unless at least fifty percent (50%) of the reported illegal hookups are determined to be actually illegal.

**§2107. Meter Reading and Rendering of Bills.** (a) All bills shall be rendered upon actual readings, except as provided for in 12GCA,

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Section 12027, and subject to the provisions as set forth in 12GCA, Section 12026.

(1) Bills shall be rendered upon actual readings taken within no more than (70) days of the billing, subject to the following provisions:

(i) Regular bills are sent at approximately thirty (30) day intervals; and

(ii) All meters shall be read at least every forty (40) days, unless the Public Utilities Commission has approved an alternate billing plan to read the meters approximately every two (2) months and estimate every other bill.

(2) If GWA fails to read a meter for more than seventy (70) days, GWA may only charge the consumer for usage based on consumption as registered on the meter between the date of the new reading and subsequent normal reading cycle to determine actual usage.

(3) The Governor may issue an executive order, in the event of a natural disaster or unusual circumstance, that may extend the seventy (70) day period of readings, subject to sections prescribed in P.L. 22-53.

(4) Inaccessibility to GWA's meters attributable to the fault of the consumer, and subsequent notification in writing by GWA informing the consumer of the inaccessibility to GWA's meters, shall allow GWA to make estimated billings until the meter becomes accessible.

(5) Special readings may be made when necessary for closing of accounts or for other reasons.

(b) GWA may not back bill customers for additional consumption of water or sewer service due to faulty meters or previous billings except as provided for in 12GCA, Section 12027.

(1) In the event of non-functioning or defective meters, GWA shall not back bill customers for additional consumption of water based upon estimated usage, except for back billing not to exceed the four billing cycles immediately preceding the discovery by GWA of such an error, and not to exceed four (4) months, for the reasonable estimated usage for such billing cycles, using reasonable estimates based upon the subsequent actual average daily consumption by the consumer over a two (2) month period, or other formula, as prescribed by the Public Utilities Commission.

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(2) In the event of billing errors or omissions, GWA shall not back bill customers for additional consumption of water based upon estimated usage, except for back billing not to exceed the four billing cycles immediately preceding the discovery by GWA of such an error, and not to exceed four (4) months.

(c) The sections as contained in this Rule shall not apply to any circumstance in which the meter has been damaged or is inaccessible as a result of actions or negligence on the part of the consumer, or where there is evidence of fraud or meter tampering on the part of the consumer, or by an agent or employee of the consumer, or where there is proof of fraud, collusion or conspiracy by the consumer to pay less than the proper charges for water and sewer service.

(d) Closing bills for short periods of time since the last meter reading date will ordinarily be determined by the amount of water actually used, as indicated by the meter reading and is subject to a minimum charge.

(e) Readings of separate meters may not be combined. For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately, and the readings thereof shall not be combined except in cases where GWA, because of operating necessity, installs two or more meters in parallel to serve the same consumer's supply pipe.

(1) When there is more than one meter at a location, the metering equipment shall be so tagged or plainly marked as to indicate the facilities being metered.

(f) It is the responsibility of the consumer to protect the meter and its setting so that the reading of the meter can be accomplished speedily and accurately. The Agency recognizes that in some cases the meters and its settings can be damaged by persons other than consumers. In any case, if the meter is damaged or non-recording, the customer should notify GWA.

(1) **Access to customer premises.** GWA shall at all times have the right of ingress to and egress from the customer's premises at all reasonable hours for any purpose reasonably connected with GWA's property used in furnishing service and the exercise of any and all rights secured to it by law or these rules.

(2) The customer shall provide convenient access to the meter and shall not cause or permit any obstruction thereto. If a meter is obstructed, GWA shall give notice thereof to a responsible occupant of the property served or by mail to the customer's last

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known billing address. Within five days thereof, the customer shall cause the obstruction to be removed or shall enter into an agreement with GWA whereby GWA shall remove the obstruction or relocate the meter at the expense of the customer.

**§2108. Billing Collection.** (a) All bills shall be due and payable upon deposit in the United States Mail or upon other presentation to the consumer. The consumer shall be responsible to keep GWA informed of the consumer's most recent billing address. Payment shall be made at the office of GWA or by mail addressed to GWA, or to duly authorized collectors of GWA.

(b) Any bill which is not paid on or before the specified due date after presentation or deposit in the United States Mail shall be deemed delinquent and the water and/or sewer service shall be subject to the provisions of GWA's discontinuation of water and/or sewer service as set forth in §2110. Discontinuation of water and/or sewer services does not confer upon the consumer any right to defer or delay any payment due, and does not limit any power of GWA to enforce payment of any charge or fee when due.

(1) Failure to receive bills or notices which have been properly placed in the United States Mail shall not prevent such bills from becoming delinquent nor relieve the customer of his obligations therein.

(2) Charges for service commence when the service is installed and connection made, whether used or not.

(c) Two or more persons who join in one application for service shall be jointly and severally liable thereunder and shall be billed by means of single periodic bills.

(d) Those customers with unreliable postal service, such as general delivery addresses should come to GWA to pick up and pay their bills.

(e) **Insufficient funds (NSF) checks.** GWA shall be allowed to recover a fee as set forth in the Schedule of Rates and Charges for each instance where a customer tenders payment for GWA service with an insufficient funds check.

(1) When the GWA is notified by the customer's bank that there are insufficient funds to cover the check tendered for GWA service, GWA shall make a diligent effort to contact the customer, either in person or by telephone, to inform the customer of the inadequate payment. GWA may, at its discretion, require the

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customer to make payment in cash, money order, certified check, or other means which guarantee the customer's payment to GWA.

(2) A customer who tenders an insufficient check shall in no way be relieved of the obligation to render payment to GWA under the original terms of the bill nor defer GWA's provision for termination of service for nonpayment of bills.

(3) When a customer tenders an insufficient check and does not clear the check after being notified by GWA, GWA shall debit the account for the written amount plus a service charge as set forth in the Schedule of Rates and Charges.

(f) **Deferred payment plan.** GWA shall prior to termination offer to qualifying residential customers a deferred payment plan for the customer to retire past due bills for GWA service.

(1) Each deferred payment agreement entered into GWA and the customer due to the customer's inability to pay an outstanding bill in full shall provide that service will not be discontinued if:

(i) Customer agrees to pay fifty (50) percent of the outstanding bill at the time the parties enter in the deferred payment agreement.

(ii) Customer agrees to pay all future bills for GWA's service in accordance with the billing and collection practices of GWA.

(iii) Customer agrees to pay the remaining outstanding balance in installments over a period not to exceed six (6) months.

(2) Any customer who desires to enter into a deferred payment agreement shall establish such agreement prior to GWA's scheduled termination date for nonpayment of bills; customer failure to execute a deferred payment agreement prior to the scheduled termination date shall not prevent GWA from terminating service for nonpayment.

(3) Deferred payment agreements shall be in writing and shall be signed by the customer and an authorized GWA representative.

(4) A deferred payment agreement offered by GWA shall state immediately preceding the space provided for the customer's signature and in bold face print at least two sizes larger than any other used thereon the words "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN. IF YOU DO SIGN THIS AGREEMENT, YOU GIVE UP YOUR RIGHT TO DISPUTE THE AMOUNT DUE UNDER THE AGREEMENT EXCEPT FOR

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GWA'S FAILURE OR REFUSAL TO FOLLOW THE TERMS OF THIS AGREEMENT."

(5) A deferred payment agreement shall include a finance charge which shall equal the prime rate posted locally by a financial institution acceptable to GWA, or as otherwise established.

(6) If an applicant for GWA service has not fulfilled the terms of a deferred payment agreement, GWA shall have the right to disconnect service pursuant to GWA's termination of service rules as contained in §2110, and under such circumstances, it shall not be required to offer subsequent negotiation of a deferred payment agreement prior to disconnection.

(g) **Late payment penalty.** GWA shall include in its tariffs a late payment penalty tariff which may be applied to past due bills.

(1) The amount of the late payment penalty shall be indicated upon the customer's bill when rendered by GWA.

(h) **Bill analysis.** When a customer requests GWA to provide an analysis of past charges, a bill analysis charge will be assessed as set forth in the Schedule of Rates and Charges.

(1) This charge shall not apply when the request for a bill analysis is pursuant to a billing dispute.

(i) **Minimum charge.** All customers are subject to a minimum charge as set forth in the Schedule of Rates and Charges. This charge is designed primarily to recover costs of facilities, and will be assessed regardless of the service interruptions experienced during the billing period.

(j) GWA may offset any charge, fee, or other indebtedness due or owing by a consumer to the GWA against any deposit, payment, credit or advance made by the customer.

(k) Thirty (30) days after notifying a customer, GWA shall transfer the outstanding balance from a closed account to an active account of the same customer if the balance is not paid or an installment payment is not arranged with GWA.

**§2109. Meter Tests and Adjustment of Bills.** (a) **Meter tests.** All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving his premises, and subsequent to corrective actions being taken by the Agency in accordance with GWA standard operating procedures, may request GWA to perform a test of the meter after depositing a test fee. The consumer, if he so requests, will be notified as to the time of the test and

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may witness the test if he so desires. The test fee will be refunded if the test indicates the meter is registering more than two percent (2%) over the actual flow. If a meter is found to be working improperly, it will be replaced or repaired by GWA within fifteen (15) days.

(1) The test fee shall be set forth in the Schedule of Rates and Charges.

(b) **Adjustment of bills for meter inaccuracy.** If, as the result of the test, the meter is found to register more than two percent of actual flow under conditions of normal operation, GWA will refund to the consumer the overcharge, based on past consumption, for a period not exceeding six months, unless it can be proved that the error was due to some cause, the date of which can be fixed. In this latter case, the overcharge shall be computed back to, but not beyond, such date.

(c) If a meter fails to register due to any cause except the non-use of water, an estimated bill may be rendered. Such estimated bill will be subject to equitable adjustment taking into account all factors before, during and after the period of said bill.

**§2110. Discontinuation of Water and Sewer Service.** (a) GWA may disconnect or discontinue water and/or sewer service in order to enforce compliance with sewer service in order to enforce compliance with GWA's Service Rules and Regulations. The termination of water service shall include termination of sewer service.

(b) **Non-permissible reasons to disconnect service.** GWA may not disconnect service for any of the reasons stated below:

(1) Delinquency in payment for services rendered to a prior customer at the premises where service is being provided, except if it can be determined that there is intent between the parties to circumvent the provisions of these regulations, and where the prior customer continues to reside on the premises.

(2) Failure to pay for a bill to correct a previous underbilling due to an inaccurate meter or meter failure if the customer agrees to enter into a deferred payment plan as stipulated in Section 2108.

(3) GWA shall not terminate service when conditions are especially dangerous to health provided:

(i) The customer can establish through medical documentation that, in the opinion of a licensed medical physician, termination would be especially dangerous to the customer's health.

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(ii) Life-saving apparatus used in the home is dependent on utility service for operation of such apparatus.

(4) GWA service to elderly or handicapped persons who have an inability to pay will not be terminated until all of the following avenues have been exhausted:

(i) The customer is unable to meet the requirements of the utility's deferred payment plan; and

(ii) Funds available from various government and social assistance agencies have been exhausted; and

(iii) A third party designated by the customer has been notified and is unable to satisfy the outstanding utility bill.

(c) **Termination of service without notice.** GWA service may be disconnected without advance written notice under the following conditions:

(i) The existence of an obvious hazard to the safety or health of the consumer or the general population.

(ii) GWA has proof of meter tampering or other acts to defraud GWA.

(iii) Unauthorized resale or use of water services.

(iv) GWA has proof that a cross-connection at the consumer's water piping system exists and/or a positive total coliform and a contamination of lead and copper in the consumer's piping system has been identified by a certified laboratory.

(1) GWA shall not be required to restore service until the conditions which resulted in the termination have been corrected to the satisfaction of GWA.

(2) GWA shall maintain a record of all terminations of service without notice. This record shall be maintained for a minimum of three (3) years and shall be available for inspection.

(d) **Termination of service with notice.** GWA may disconnect service with notice to any customer for any reason stated below provided the utility has met the notice requirements established in these Rules:

(i) Customer violation of any of GWA's Rules and Regulations and internal operating procedures.

(ii) Failure of the customer to pay a bill for service within 30 days after the remaining or presentation of the bill thereof to the consumer.

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- (iii) Failure of the customer to provide GWA reasonable access to its equipment and property.
  - (iv) Customer breach of contract for service between GWA and customer.
  - (v) When necessary for GWA to comply with an order of any governmental agency having such jurisdiction.
  - (vi) Where negligent or wasteful use of water exists on any premises, if such conditions are not corrected after giving the consumer written notice to do so.
  - (vii) Failure to comply with the requirements of Section 2109 of GWA's Service Rules and Regulations.
- (1) GWA shall maintain a record of all terminations of service with notice. This record shall be maintained for a three year period and be available for inspection.

(e) **Termination notice requirements.** GWA shall terminate service to any of its customers without providing advance written notice to the customer of GWA's intent to disconnect service, except under those conditions specified where advance written notice is required.

(1) Such advance written notice shall contain, at a minimum, the following information:

- (i) The name of the person whose service is to be terminated and the address where service is being rendered.
- (ii) The amount of the bill which the customer has failed to pay in accordance with the payment policy of GWA or under circumstances as prescribed in Section 4 of this rule, and where it should be paid to avoid disconnection.
- (iii) The date the notice is delivered or placed in the U.S. mail and the exact date on or after which service may be terminated.
- (iv) A statement advising the customer that GWA will on request make an investigation of, and hold a hearing on, any disputed bill, charge, fee, or indebtedness in accordance with Section 2121 of GWA's Service Rules and Regulations.
- (v) A statement advising the customer to contact GWA at a specific address and phone number for information regarding any deferred billing or other procedures which GWA may offer or to work out some other mutually agreeable solution to avoid termination of the customer's service.
- (vi) The name of government agencies or other organizations known to GWA that render assistance to certain eligible

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persons who are unable to pay their utility bill and which have requested that their name, address, and phone number be given to any customers facing possible termination of service. Such information may be provided on a separate sheet included with the notice of termination.

(2) Where applicable, a copy of the termination notice will be simultaneously forwarded to designated third parties.

(3) If the consumer wishes to dispute a proposed termination of service, the consumer must, within five (5) business days from the notice of termination, appeal the dispute in accordance with the procedures outlined in Section 2121.

(f) **Timing of termination with notice.** GWA shall be required to give at least ten (10) days advance written notice prior to the termination date.

(1) Such notice shall be considered to the customer when a copy thereof is posted first class in the U.S. mail to the customer's last known billing address.

(2) If after the period of time allowed by the notice has elapsed and the delinquent account has not been paid nor arrangements made with GWA for the payment thereof or in the case of a violation of GWA's rules the customer has not satisfied GWA that such violation has ceased, GWA may then terminate service on or after the day specified in the notice without giving further notice.

(3) Service may only be disconnected in conjunction with a personal visit to the premises by an authorized representative of GWA.

(4) GWA shall have the right (but not the obligation) to remove any or all of its property installed on the customer's premises at the termination of service.

(g) **Landlord Tenant Rule.** In situations where service is rendered at an address different from the mailing address of the bill or where the utility has reason to know that a landlord/tenant relationship exists and that the landlord is the customer of the utility, and where the landlord as customer would otherwise be subject to disconnection of service, the utility may not disconnect service until the following actions have been taken:

(i) Where it is feasible to so provide service, GWA, after providing notice as required in these rules, shall offer the occupant the opportunity to subscribe for service in his or her own name

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consistent with §2104. If the occupant then declines to so subscribe, GWA may disconnect service pursuant to the rules.

(ii) GWA shall not attempt to recover from a tenant or condition service to a tenant with the payment of any outstanding bills or other charges due upon the outstanding account of the landlord.

(h) **Consumer about to vacate premises.** Each consumer about to vacate any premises supplied with water by GWA shall give notice in person, in writing or by telephone of his intention to vacate (4) four working days prior thereto specifying the date service is desired to be discontinued, otherwise he shall be held responsible for all water service furnished to such premises until GWA has received such notice of discontinuance. Before buildings are demolished, GWA shall be notified so the service connection can be closed.

(i) No termination of service shall be made during any time when the business office in GWA is not open, or during the pendency of any investigation by GWA of, or hearing on, the bill, charge, fee, or indebtedness involved provided the consumer has placed into escrow with GWA an amount equal to the disputed amount.

**§2111. Schedule of Rates and Charges.** All rates and charges are available free of charge at GWA on a "Schedule of Rates and Charges" form. This form shall be considered as an appendix to the GWA Water and Wastewater Service Rules and Regulations.

**§2112. Electrical Grounding.** (a) Protective grounding of alternating current secondary distribution circuits made to the water system shall be subject to written approval by GWA.

(b) No grounding of direct current system to any portion of the water system shall be permitted. Authorized representatives of GWA shall be permitted to enter upon the consumer's premises, during reasonable hours, to assure compliance with this provision. Non-compliance with this provision may result in discontinuance of water service until the violation is corrected and liability for any damage to the GWA and for personal injury resulting therefrom.

(c) GWA will not be responsible for the maintaining of a continuous metallic water piping system and reserves the right, without liability to public utility electric companies, electric consumers, or any other agency or individual to create a physical break in its service connection and mains, or to incorporate non-metallic pipes and appurtenances in its system and to make joints of any materials,

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without regard to their efficiency as conductors of electricity and without giving notice.

**§2113. Consumer's Pumping Installations.** (a) Consumers shall not be permitted to install or operate pumps on either side of the water meter, except in cases approved in writing by GWA.

(b) Approvals given by GWA under this will be qualified by clauses making them revocable upon ninety (90) days notice during which period the consumer, if he desires to continue the operation of the pump, shall eliminate the objectionable features causing the giving of such notice. However, if the objectionable operation of a pump, whether approved under this clause or not, constitutes a health hazard to the public water supply system, the operation of such pump shall be discontinued immediately and not resumed until such health hazard has been removed.

(c) No pump shall be equipped with a direct water supply connection for priming purposes except with the written permission of GWA.

**§2114. Cross-Connections and Backflow Prevention.** (a) In order to provide proper sanitary protection to GWA's water supply and to comply with the applicable regulations, GWA will require that following the effective date of these Rules and Regulations no cross-connections with other water supplies, or other physical connections, shall exist, or be installed, located, maintained or operated which could permit backflow of contaminated water or any other dangerous, impure, unsanitary, or unpotable substance from the consumer's premises into GWA's water supply system, except as provided below:

(1) Cross-connection with other water supplies. Owners (or operators) of presently existing water supplies which are in active use and cross-connected to GWA's system will be required to secure permits for the continuance of such cross-connections. Permits will be granted on a provisional basis, renewable yearly, under the following conditions:

(i) Where such water supplies are regularly examined by GEPA and GWA and are approved by GEPA and GWA as acceptable, safe and sanitary supplies and continue as such at all times while the connections are in existence.

(ii) Where such water supplies do not meet the requirements of (i) above, are not normally under pressure and are maintained solely for fire fighting purposes, and where adequate protection against back-flow to the GWA water

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system is provided by mechanical, or other methods or devices satisfactory to GWA.

(b) **Separate pressure system.** GWA will require the installation of mechanical, or other, methods or devices on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or a separate storage facility, or in any other way increases the pressure of the water and/or sewer within his premises above the pressure furnished by GWA; or has such equipment devices or arrangement of piping, storage or industrial methods or processes that might, under certain conditions, raise the pressure of the water and/or sewer within his premises above the pressure of the water and/or sewer in the mains of GWA. Plans for such installations must be approved by GWA.

(c) **Location and inspection of protective devices.** Any device installed for the prevention of backflow as may be required under these Rules and Regulations, shall, unless GWA approves otherwise in writing, be located above ground and in such a manner as to be safe from flooding or submergence in water of other liquids, properly protected from external damage, freely accessible and with adequate working room for inspection, testing and repairing. All such devices shall be tested and inspected internally not less than once annually or more often in those instances where successive inspections indicate repeated failure. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the consumer. Making annual tests and inspections shall be the responsibility of the consumer and shall be made by the consumer or other qualified person or persons in accordance with methods acceptable to GWA. Records of tests and inspections shall be made on forms prescribed by GWA and a copy of such records shall be furnished to GWA. Failure of the consumer to make the proper tests and submission of records may result in GWA making the tests, needed repairs and replacements and charging the costs thereof to the consumer.

(1) The size of the preventive devices shall adhere to the following dimensions:

	Dimension ground level to centerline of backflow prevention device	Dimension distance to surrounding obstruction
Size of device	Min.      Max.	

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3/4" to 1-1/2"	18"	48"	24"
2" to 3"	24"	48"	24"
4" to 6"	30"	48"	24"
8" to 10"	36"	48"	24"

(2) In all cases, the backflow prevention device shall be installed according to the backflow preventor manufacturer's direction and easily accessible location.

(d) **Irrigation systems.** The following guidelines relating to the backflow prevention device for irrigation systems shall apply:

(1) Atmospheric vacuum breaker after the last control valve of each sprinkler circuit and at a minimum of six inches above the highest irrigation head. The atmospheric vacuum breaker shall be installed only on irrigation circuits with heads that will not return any pressure in the circuit, after the circuit control is closed.

(2) Pressure vacuum breakers shall be installed at the beginning of each irrigation circuit and at the minimum of twelve inches above the highest irrigation head on the circuit. Individual irrigation circuit having quick coupling valves or other similar type heads that will permit pressure to be retained in the circuit shall have a pressure vacuum breaker on each circuit. A pressure vacuum breaker may not be installed where; double check valve assembly, reduce pressure principal backflow prevention device, or air gap separation is required.

(3) A double check valve assembly may be installed to serve multiple irrigation circuits in lieu of vacuum breakers on each individual irrigation circuit.

(4) A reduced pressure principal backflow preventor or air gap separation shall be required before any piping network in which fertilizers, pesticides, and other chemicals or other toxic contaminants are injected or siphoned into the irrigation system.

(e) **Maintenance requirements.** The following guidelines relating to the maintenance requirements of prevention devices, e.g., backflow prevention devices, vacuum breakers, etc., shall apply:

(1) It shall be the responsibility of water users to maintain all backflow preventors and vacuum breakers within the building or on the premises in good working order. No piping nor other arrangement for the purpose of bypassing backflow devices shall be permitted.

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(2) Periodic testing and inspection schedule shall be established by the General Manager for all backflow preventors in intervals between such testing, inspection, and overhaul of each device shall be established in accordance with age and condition of the backflow prevention device. The inspection interval should not exceed one year. Backflow prevention devices should be inspected frequently after initial installation to ensure that the devices are properly installed, and debris resulting from the installation has not interfered with the functioning of the device. The inspection and testing shall be performed by a certified tester approved by the General Manager. In those instances where the General Manager deems the installation to constitute a hazard, inspections may be required at more frequent intervals. Records of any tests, repairs, and overhauls shall be recorded and kept on a form prescribed by the General Manager. Should the water user fail to perform the proper tests, and fail to provide all records relating to the test, the General Manager may at his discretion, perform the necessary tests, needed repairs and replacements, and charge the cost thereof to the water consumer.

(f) **Affidavit of compliance.** Upon request of GWA, the consumer shall present an affidavit either certifying to the fact that there are no connections or other installations of the type prohibited in Section 2101 of this Rule on his premises or describing in detail all conforming and nonconforming connections or installations.

(g) **Discontinuance of water and/or sewer service for non-compliance.** Failure on the part of the consumer to comply with GWA's requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water and/or sewer service until such time as the requirements have been met.

(h) GWA shall not be liable for any injury to persons or damage to property which may result directly or indirectly from the installation of testing or any device intended to protect GWA's public water supply from contamination.

**§2115. Private Fire Protection Service.** (a) Private fire protection service will be furnished only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire service connection will be installed by GWA and shall be paid for by the consumer in accordance with the provision for the installation of new service connections. After the water is turned on

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GWA assumes no liability for loss or damage of any kind whatsoever that may occur to the premises serviced, regardless of cause.

(b) All private fire protection services will be metered with a detector check valve and a by-pass meter of a type approved by GWA. The meter and the meter box required therefor shall be furnished, installed, and maintained by GWA and be paid by the consumer as to all costs. All service connections and the bypass meter shall become the property of GWA after installation. The check valve assembly, including the assembly enclosure and facilities leading therefrom shall be installed, owned, operated, and maintained by the consumer.

(c) A charge will be made for water used through such connection for fire protection purposes but any water loss through leakage or used in violation of the conditions contained herein shall be paid for by the consumer at the regular Schedule of Rates and Charges. GWA may disconnect and remove the said service connection if water is used for other than fire protection purposes or if leaks are not corrected. Whenever such disconnection is in effect, GWA shall not be held in any way liable for loss or damage sustained due to such condition.

(d) A monthly minimum charge will be charged the consumer for the size of meter installed, in accordance with Section 2111, Schedule of Rates and Charges.

(e) All provisions of §2115 as contained in GWA's Service Rules and Regulations shall pertain to existing fire sprinkler systems.

**§2116. Use of and Damage to Fire Hydrants, Change in Hydrant Location, Hydrant Color Codes.** (a) **Use of Fire Hydrant.** Any use of a fire hydrant or tampering therewith or the taking of water therefrom for purposes other than fire protection by persons other than authorized employees of the Guam Fire Department or of GWA is prohibited except upon prior application to and written permit by GWA. The Guam Fire Department shall have the prior right to use any hydrant at any time and shall have the authority to remove peremptorily, if necessary in case of fire, any connection that may be made to a hydrant under a permit issued by GWA. The use of any hydrant under a permit and the connections thereto shall be subject to the direction and approval of GWA.

(b) **Application to Permit.** Application for a permit for the use of a fire hydrant for purposes other than fire protection shall be made in writing to GWA and when required, shall be accompanied by payment of the applicable connection charges. It shall be non-transferable and

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shall be shown upon demand by the permittee, its agents or employees. GWA reserves the right to reject any application, to refuse to issue any permit and to revoke any permit at any time. No permit will be issued unless the permittee agrees to notify GWA as soon as the use of the hydrant is finished. In the event that a permit shall be revoked, the use of the hydrant thereunder shall cease immediately and all connections thereto shall be properly removed forthwith. GWA will inspect each hydrant which has been used under a permit, and all costs of repairs which GWA may adjudge to be due to such use and the cost of inspection shall be paid for by the permittee. All water drawn from a hydrant under permit shall be metered and shall be paid for by the permittee at the current water rates. A traveling portable meter will be issued the permittee by GWA for this purpose. The permittee shall make the meter available to GWA for reading not less than once a month. Any damage caused to the meter during the time of use by the permittee shall be paid for by the permittee. The permittee shall pay all of the costs of connecting to and disconnecting from the hydrant.

(c) **Hydrant Wrenches.** Only regulation fire hydrant wrenches approved by GWA shall be used for the operation of fire hydrants.

(d) **Damage to hydrant or property.** The permittee shall report promptly any defect in or damage to the hydrant. The cost of any loss or damage to property or of any injury to persons resulting from the use of the hydrant shall be paid for by the permittee. GWA will not be held responsible for any damage to property or injury to persons arising from the use of any hydrant for any cause whatsoever. Any damage to fire hydrants shall be paid for by the person or organization responsible for the damage.

(e) **Change in location or removal of hydrant.** The Agency will, if it approves the request for a change in location or removal of a hydrant, change such location provided the cost of all labor, material, equipment and all other charges are paid by the person or entity requesting such change.

(1) **Fire Protection.** In fixing the standards for fire protection insofar as water supply is concerned, GWA will be guided by the standards of the National Board of Fire Underwriters.

(f) **Color Codes.** All fire hydrants shall be painted in accordance with Guam P.L. 19-49, Section 21206.2

**§2117. Refrigeration and Air Conditioning Equipment.** (a) New installation or replacement installation of refrigeration or air

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conditioning equipment requiring the use of water from the public water system shall be made only after a permit authorizing such installation has been issued by GWA. Before a permit is issued the owner shall inform GWA in writing of the make, type, horsepower and tonnage of installation, the minimum and maximum water requirements, the name and address of the applicant, the location of the premises where the unit is to be installed and such additional information regarding the proposed installation as may be required by GWA.

(b) Any water-using unit of refrigeration or air conditioning equipment of small size shall be equipped with an automatic water-regulating device and/or water-conserving device which will limit the total flow of water to six gallons per minute momentary actual load or 2 gallons per minute per ton of refrigeration, whichever is the less, and which will automatically stop the flow of water when the unit stops.

(c) Any large size water-using unit of refrigeration or air conditioning equipment shall be equipped with a water conserving device which will (a) limit the flow of water to not more than 0.2 gallon per minute per ton of refrigeration, actual load, and (b) automatically stop the flow of water when the unit is shut down.

(d) For the purpose of these regulations a unit of less than 25 tons rated capacity shall be considered a small unit.

(e) Where several units serve the same premises, their combined capacity shall be considered to be the capacity of the unit.

(f) All installations of water-using refrigeration and air conditioning equipment, regardless of capacity, which are to be served by the public water system must conform with all other applicable Rules and Regulations.

(g) Where refrigeration or air conditioning equipment not requiring the use of water in the process is available for a new or replacement installation, GWA may require the use of such equipment, in the interest of water conservation, as a condition for issuing a permit.

**§2118. Main Extensions.** (a) **General requirements.** Upon request by a potential applicant for a main extension, GWA shall prepare, with an estimated cost of preparation, a preliminary sketch and rough estimate of the cost of installation to be paid by said applicant. Such estimated cost shall be based upon the cost of a main not in excess of six (6) inches in diameter, except where a larger main is required by the special needs of the applicant.

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(1) Any applicant for a main extension requesting GWA to prepare detailed plans, specifications, and cost estimate shall be required to deposit with the utility an amount equal to the estimated cost of preparation. GWA shall, upon request, make available within 30 days after receipt of the deposit referred to above, such plans, specifications, and cost estimates of the proposed main extension. Where the applicant accepts GWA construction of the extension, the deposit shall be credited to the cost of construction; otherwise, the deposit shall be non-refundable. If the extension is to include oversizing of facilities to be done at GWA's expense, appropriate details shall be set forth in the plans, specifications, and cost estimates.

(2) Where GWA requires an applicant to advance funds for a main extension, GWA shall furnish the applicant with a copy of GWA's Schedule of Rates and Charges prior to the applicant's acceptance of GWA's extension agreement.

(3) All main extension agreements requiring payment by the applicant shall be in writing and signed by each party before GWA commences construction.

(4) Each applicant may seek outside bids for main extensions providing that the size, design, type, trenching specifications, and quality of material shall be specified by GWA.

(5) Bids which are lower than GWA's estimated cost of extension and meet the specifications of GWA must be accepted by GWA or GWA must adjust its estimate to conform with the bid and construct the extension in accordance with the specifications supplied for the bidders. Bids received by the applicant that are lower than GWA's estimated cost must be from a company(ies) or person(s) that is not debarred. Additionally, the cost must be from suppliers' regularly priced item.

(6) In the event GWA's actual cost of construction is less than the amount advanced by the customer, GWA shall make a refund to the applicant within thirty (30) days after the completion of the construction. Likewise, if GWA's actual cost of construction is more than the amount advanced by the customer, GWA shall collect the deficiency within thirty (30) days after the completion of the construction.

(b) **Minimum written requirements.** Each main extension agreement shall, at a minimum, include the following formation:

- (i) Name and address(s) of applicant(s).
- (ii) Proposed service address.

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- (iii) Description of requested service.
- (iv) Description and map of the requested line extension.
- (v) Itemized cost estimate to include details of materials, labor, and other costs as necessary.
- (vi) Payment terms.
- (vii) A clear and concise explanation of any refunding provisions, if appropriate.
- (viii) GWA's estimated start date and completion date for construction of the main extension.

(1) Each applicant shall be provided with a copy of the written main extension agreement.

(c) **Single residential customer service lateral extensions.** Each applicant for a single residential customer service lateral extension shall be required to pay GWA the cost of the first 100 feet of the service lateral extension as a non-refundable contribution in aid of construction. The applicant shall pay to GWA the cost of the service lateral extension in excess of 100 feet as an advance in aid of construction subject to the refund provisions of Section 2103 of this rule.

(1) During a five-year period following completion of a single residential customer service lateral extension, any additional customer requesting a service connection to said extension shall pay to the GWA an amount equal to the cost of 100 feet of the original service lateral extension. GWA shall refund such additional customer's payment to the original applicant for the single residential customer service lateral extension. GWA shall refund such additional customer's payment to the original applicant for the single residential customer service lateral extension. When such payments by additional customers equal the original advance in aid of construction, no additional sums shall be collected for subsequent connections to the extension.

(2) If after five (5) years from GWA's receipt of the advance, the advance has not been totally refunded, the advance shall be considered a contribution in aid of construction, and shall no longer be refundable.

(d) **Multi-customer extensions.** The applicant(s) for a multi-customer service lateral extension shall be required to pay as a contribution in aid of construction to GWA the cost of the service lateral extension to be installed. The costs of the extension shall include necessary service stubs or service pipes, fittings, gates and housing

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therefor, meters and meter boxes. To this shall be added the cost of fire hydrants when requested by public authority, whenever such hydrants are to become the property of GWA.

(e) **Ownership of facilities.** Any facilities installed hereunder shall be the sole property of GWA and shall thereafter be operated and maintained by GWA as part of its water storage, water distribution system, and sewer system. In those instances in which title to plant items such as fire hydrants will be held by a political subdivision such facilities shall not be included as part of the main extension under the rule, and the cost of such facilities shall not be recorded in the books of GWA.

(f) Subdividers shall submit to the Department of Land Management a preliminary planning/development map showing the proposed water and/or sewer system layout. After the Department of Land Management submits the preliminary planning/development phase subdivision map to GWA for review, within thirty (30) days, GWA will inform the Department in writing of its approval, requirements for its approval, or its disapproval of a such subdivision map giving reasons for its disapproval.

(1) Subdividers will be required to provide for meter boxes in the proposed water system layout.

(g) Increase in size of water and sewer main extensions for service to other areas. Whenever the Agency finds it is necessary that the water mains proposed to deliver water to a subdivision or the sewer mains proposed to collect sewer from a subdivision should be of a greater capacity, in order to supply water, fire protection, or sewer and sanitary protection to property not in the subdivision, it shall require the subdivider to install mains of such greater capacity.

(1) Reimbursement to subdivider for additional costs of water main within subdivision. When the subdivider is required to install a larger size main for the reasons set forth in the preceding paragraph, GWA will reimburse the subdivider, as soon as practicable after acceptance by GWA of the completed work, the additional cost of the installation over and above the cost of a 6 inch main in residential areas or of any portion of the cost of an 8 inch main in other areas provided further that reimbursement will be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

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(2) After the installation has been completed and accepted by GWA, the subdivider shall furnish GWA with an affidavit itemizing the costs incurred by him in the installation of the said larger mains. The said additional costs shall be determined by GWA.

(h) **Delays in Construction.** If any period exceeding one year or such extension as may be granted passes without substantial progress in the construction of the water facilities, after approval of plans by GWA, the plan thereof shall be resubmitted to GWA for review and for making such changes as it deems proper because of changed conditions or revision of standards.

(i) **Disinfection of Water System.** No water system, in whole or in part, including main extensions to the system, shall be placed in service without first being disinfected by certified personnel of GWA. The cost of such disinfection shall be borne by the subdivider or consumer requiring the new system. Sterilization will be done in accordance with the Standards of GWA.

### **§2119. Water Resources Conservation and Water Pollution.**

All decisions regarding water resources conservation and water pollution, to be made in conjunction with the operations of GWA's Water Division, shall be based on the applicable portions of (Title X, Chapter XI, Water Pollution Control Act), 10 GCA, Chapter 47, and (Title XXII, Chapter V, Water Resources Conservation Act), 10 GCA, Chapter 46, as amended by P.L. 17-87 and the Guam Water Resource Development and Operating Regulations.

**§2120. Regulations Regarding the Use of Public Sewers.** (a) No persons shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Sanitary Engineer that such wastes can harm either the sewers, sewage treatment process, or equipment, would increase the operating costs substantially, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Sanitary Engineer will give consideration to such factors as the quantities of subject wastes in relation to flow and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.

(1) The substances prohibited are:

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(i) Any storm water, surface water, ground or salt water, roof runoff, subsurface drainage, swimming pool discharge.

(ii) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas, or heavy grease, inorganic materials, and other debris not normally contained in domestic sewage.

(iii) Any waters or waste containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant. This includes, but is not limited to, phenols, cyanides, iron, chromium, copper, zinc, and similar objectionable or toxic substances.

(iv) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operations of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, improperly ground and unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(v) Any noxious or malodorous gas, such as phenol, which singly, or in combination with other substances, might create a nuisance or hazard to life or interfere with the operation of the sanitary sewer in such concentrations exceeding the limits which may be established by the Sanitary Engineer as necessary, after treatment of the composite sewage, to meet the requirements of the Guam Water Pollution Control Commission for such discharge to the receiving waters.

(vi) Any radioactive wastes or isotopes of such half life or concentrations as may exceed limits established by the Sanitary Engineer in compliance with applicable Territorial regulations.

(vii) Any liquid or vapor having temperature higher than one hundred forty (140) degrees Fahrenheit.

(viii) Any liquid or waste containing more than 100 parts per million by weight, of fat, oil or grease or containing any fat, oil, grease or other substances that will become solidified or

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visibly viscous at temperatures between 50 degrees and 140 degrees Fahrenheit.

(ix) Any liquid or waste containing emulsified fat, oil or grease exceeding 50 parts per million of ether-soluble matter.

(x) Any waters or wastes having a pH lower than 5.5 or having any other corrosive properties capable of causing damage or hazards to structures, equipment, and personnel in sewage works.

(xi) Any wastes or waters having a pH in excess of 7.8.

(xii) Materials or equipment which exert or cause:

(1) Excessive discoloration

(2) Unusual volume of flow or concentration of wastes constituting "slugs."

(xiii) Waters and wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment effluent cannot meet the requirements of the Guam Water Pollution Control Commission for discharge to the receiving waters.

(b) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 2101, and which in the judgment of the Sanitary Engineer, may have a deleterious effect upon the sewage works, processes, equipment, costs, or on receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Sanitary Engineer may:

(i) Reject the wastes,

(ii) Require pretreatment to an acceptable condition for discharge to the public sewers,

(iii) Require control over the quantities and rates of discharge, and/or

(iv) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

If the Sanitary Engineer permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Sanitary Engineer, and subject to the requirements of all applicable codes, ordinances, and laws. If wastes are discharged to the public sewers by pumping, the maximum capacity of the pumping station shall be not greater than five (5) times the average twenty four (24) hour flow during normal operation.

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(c) Grease, oil, and sand interceptors (commonly known as grease traps) shall be provided when, in the opinion of the Sanitary Engineer, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Sanitary Engineer, and shall be located as to be readily and easily accessible for cleaning and inspection.

(d) Where preliminary treatment of flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously unsatisfactory and effective operation by the owner at his expense.

(e) When required by the GWA/Government Sanitary Engineer, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Sanitary Engineer. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(f) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in these regulations shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", and shall be determined at the control manhole. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premise is appropriate or whether a grab sample or sample should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hr. composites of all outfalls whereas pH's are determined from periodic grab samples).

(g) No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Territory and any industrial concern whereby any industrial waste of unusual strength or character may be accepted by the Territory for treatment, subject to payment therefore, by the industrial concern.

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**§2121. Administrative and Hearing Requirements.** (a) **Bill disputes.** In the event a consumer questions the accuracy of a bill rendered to him by GWA, the question shall be brought to the attention of the Agency for an oral explanation. After the oral explanation, if the consumer still believes that the billing is in error, and after depositing in escrow with GWA, an amount equal to the amount of the disputed bill or an amount equal to the average of the three (3) months' prior billing prior to the time the dispute arose, whichever is less, the consumer may request a written statement from GWA as stated in 12 GCA, Sections 13103 and 13104. That written statement is subject to appeal before the Chief Officer of GWA who will review the case and render a decision in accordance with the General Manager's findings.

(1) If an adjustment is due a consumer, GWA shall render an adjustment of account including a credit for or return of any deposit or part of deposit and interest at the rate of six percent (6%) per annum. However, should the dispute be resolved in favor of the Agency, the customer's account shall be charged an amount equal to the amount of interest payable at the rate of six percent (6%) per annum on the disputed amount during the time that said dispute was outstanding and the deposit shall be paid over to the Agency. Disconnection or termination of services shall not be undertaken by GWA with respect to the disputed amount until the expiration of thirty (30) days from the date the written statement shall be mailed or delivered to the customer.

**§2122. Severability.** If any rule, section, sentence, clause, or phrase of these Rules and Regulations or their application to any person or circumstances or property is held to be unconstitutional or invalid, the remaining portion of these Rules and Regulations or the application of these Rules and Regulations to other persons or circumstances or property shall not be affected and shall therefore remain constitutional and valid.

**§2123. Effective Date.** The Rules and Regulations shall become effective upon their approval and adoption in conformance with Title 3 GCA, Paragraph 24202, Section (b).

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### Article 2 Build-Operate-Transfer Plan

- §2210. General Provisions.
- §2211. Purpose.
- §2212. Policy.
- §2213. Definitions.

**NOTE:** Articles 2 to 8 added by P.L. 24-294:2.

**§2210 General Provisions.** (a) **GWA Mission Statement.** The directors, managers and employees of the Guam Waterworks Authority ('GWA') will plan for, operate and maintain an integrated, Island-wide water and wastewater system to serve all Island residents and businesses with reliable, high quality services, both now and in the future. In carrying out their mission, they will:

1. be sensitive to consumer needs with respect to project reliability, value, quality and public information;
2. promote wise water use through conservation, developing water use alternatives, environmental protection;
3. provide a safe, healthy and professional work environment; and
4. seek reasonable rates which ensure full recovery of costs, including operational and capital requirements.

In the interest of promoting harmonic working partnership with all stakeholders in the authority, the board, through its management, shall instill a spirit of partnership and cooperation with all its working relationships.

**§2211. Purpose.** The purpose of the implementing rules and regulations, hereinafter referred to as the Regulations, is to provide standard policies and procedures governing the use of the 'Build-Operate-Transfer' concept, or variants thereof, for the purpose of allowing private sector financing of the design, construction, and operation and maintenance of water and wastewater projects in the most expeditious manner.

**§2212. Policy.** It is the policy of Guam to promote the economy, efficiency and effectiveness of all water and wastewater projects following the Build-Operate-Transfer concept, or variants thereof, by:

1. developing and maintaining sound implementing rules and regulations;

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2. providing for increased public confidence in the procedure through which such projects are awarded;
3. exercising fair and equitable treatment of all persons involved in the public bidding or direct negotiation of such contracts;
4. eliminating cumbersome administrative obstacles which operate to delay, impede, hinder or otherwise render such projects unattractive;
5. repealing or amending all laws inconsistent with the provisions of Public Law Number 24-37, as provided by §14 of that Law;
6. fostering competition in the public bidding process; and
7. providing safeguards which operate to ensure the quality and integrity of the public bidding or direct negotiation of contracts.

**§2213. Definitions.** Terms used in these Regulations have the following meaning ascribed to them, unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular Chapter in the Regulations.

1. *Contract* means all types of Guam agreements, regardless of what they may be called, for water and wastewater projects following the Build-Operate-Transfer ("BOT") concept, or variants thereof.
2. *May* denotes the permissive.
3. *Person* means any business, individual, union, committee club, other organization or group of individuals.
4. *Shall* denotes the imperative.
5. *Request for Proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.
6. *Bidder Questionnaire* means the application through which contractors apply for pre-qualification.
7. *Build-Operate-Transfer* ("BOT") means a contractual arrangement whereby the project proponent, a Guam licensed business entity having at least one (1) principal as a resident of Guam for the duration of the project, undertakes the financing of the design and construction of new water or wastewater infrastructure facility(ies), and the operation and maintenance thereof. The project proponent shall employ or hire local residents to the maximum extent possible. The products or services from these facilities are then sold to GWA who shall be the sole customer and who in turn is responsible for the distribution of such products

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or services and collection of appropriate fees, rentals and charges thereof from GWA's consuming customers. The water or wastewater facility is operated and maintained by the project proponent over a fixed term, not to exceed fifty (50) years, during which it is allowed to charge GWA appropriate fees, rentals and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating maintenance expenses in the project. The project proponent transfers, in whole or in part in accordance with approved contract terms, the facility to GWA at the end of the contract term.

*BOT* shall also include undertaking the financing of the design, renovation and replacement of equipment of existing water or wastewater infrastructure facility(ies), or the operation and maintenance thereof.

8. *Variants of Build-Operate-Transfer* means other forms of project finance which may include, but is not limited to, '*Build-Transfer-Operate*,' '*Build-Own-Operate-Transfer*,' '*Modernize-Operate-Transfer*,' and '*Rehabilitate-Own-Transfer*.'

9. *Build-Transfer-Operate* ('*BTO*') means a system of project finance where GWA allows the project proponent, a Guam-licensed business entity having at least one (1) principal as a resident of Guam for the duration of the project, to build a water or wastewater project, transfer the project to GWA, and continue to operate the project until the expiration of the contract term.

10. *Build-Own-Operate-Transfer* ('*BOOT*') means a system of project finance where GWA allows the project proponent, a Guam-licensed entity, to build a water or wastewater project, own that project, operate that project, then transfer the project to GWA after the expiration of the contract term.

11. *Modernize-Operate-Transfer* ('*MOT*') means a system of project finance where GWA allows the project proponent, a Guam-licensed business entity having at least one (1) principal as a resident of Guam for the duration of the project, to modernize a water or wastewater project, operate that project, then transfer the project to GWA after the expiration of the contract term.

12. *Rehabilitate-Own-Transfer* ('*ROT*') means a system of project finance where GWA allows the project proponent, a Guam-licensed business entity, to rehabilitate a water or wastewater project, own

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that project, then transfer the project to GWA after the expiration of the contract term.

13. *Bid* means an offer to perform a contract for the design, construction, operation, rehabilitation and maintenance of Guam's water and wastewater infrastructure projects. Bid includes a proposal in response to a Request for Proposals.

14. *Bidder* means one who makes a bid or submits a proposal.

15. *Take or Pay Clause* means a contract provision where GWA agrees to pay a fixed amount for the project's product, regardless of whether the product is taken by GWA.

16. *Consortium* means a group of entities formed to undertake water and wastewater infrastructure projects whose combined resources make them eligible under this Act.

17. *Guam Waterworks Authority* ('GWA') means the government of Guam agency tasked with the mission of producing, treating, transmitting, storing, and distributing and selling water, and selling and disposing of wastewater, on Guam.

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### Article 3 Advertisement of Project List

- §2310. Policy.
- §2311. GWA's Master Plan(s).
- §2312. Identification and Prioritization of Projects.
- §2313. GWA Pre-Feasibility Studies and Indication of Resources.
- §2314. Publication.

**§2310. Policy.** In order to attract prospective bidders and promote competition, all BOT projects will be identified, prioritized and published.

**§2311. GWA's Master Plan(s).** The list of all 'Build-Operate-Transfer' infrastructure projects must be part of GWA's most current water and wastewater infrastructure master plan(s).

**§2312. Identification and Prioritization of Projects.** The GWA Board of Directors shall identify and prioritize water and wastewater infrastructure projects from its master plan suitable for the use of the 'Build-Operate-Transfer' concept, or variants thereof.

**§2313. GWA Pre-Feasibility Studies and Indication of Resources.** GWA's General Manager shall conduct project pre-feasibility studies and shall indicate that GWA will have adequate financial resources to promptly pay tolls, fees, rentals and charges for each project on the list.

**§2314. Publication.** At a minimum, the list of projects eligible for this concept shall be published in a local, national and where applicable, international, newspapers of general circulation at least once. No award shall be made under this Act until after the first publication of this list.

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### Article 4 Pre-Qualification of Bidder

- §2420. Policy.
- §2421. Pre-Qualification Process.
- §2422. Bidder Questionnaire Responses.
- §2423. Duties and Composition of the BOT Committee.
- §2424. Pre-qualification Criteria of the BOT Committee.
- §2425. Invitation to Submit Bid Proposal.

**§2420. Policy.** After the advertisement of the project list, prospective bidders will be subject to the pre-qualification process. The pre-qualification process operates to identify qualified bidders able to perform the contract if it is awarded to them. GWA is seeking bidders who have the proven experience, financial resources, and professional expertise to engage in the highest quality design, construction, and operation and maintenance of water and wastewater projects.

**§2421. Pre-Qualification Process.** The BOT Committee shall screen prospective bidders to determine if the pre-qualification requirements are met.

**§2422. Bidder Questionnaire Responses.** Prospective bidders will be required to obtain a Bidder Questionnaire from GWA and submit a response to the Bidder Questionnaire supplied by GWA according to a timetable set by GWA. The Bidder Questionnaire shall be accompanied by the criteria of §2424. Prospective bidders shall be given at least sixty (60) days from the date of publication or notice to submit a response to the Bidder Questionnaire and initiate the bidding process.

**§2423. Duties and Composition of the BOT Committee.** The General Manager shall appoint, with the consent of the Board and in concurrence with the director or agency heads, seven (7) representatives from the following departments/agencies to sit on the BOT Committee. The Committee shall consist of one (1) representative from the Guam Waterworks Authority ('GWA'), the Department of Public Works ('DPW'), the Guam Environmental Protection Agency ('GEPA'), the University of Guam: Water, Energy and Research Institute ('WERI'), the Department of Land Management ('DLM'), the Guam Planning Council ('GPC') and the Guam Economic and Development Authority ('GEDA'). The General Manager shall *not* appoint himself. Each Committee member shall serve for a two (2) year term and said terms shall be staggered in a manner to be determined by the Board. The concurrence

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of four (4) Committee members shall be necessary to establish a quorum and make any decision.

(a) The BOT Committee shall review every Bidder Questionnaire Response submitted by prospective bidders and, within sixty (60) days after receipt of a completed response, notify the prospective bidder by certified mail of the Committee's decision.

(b) A rejected bidder may appeal the decision of the BOT Committee to the General Manager in writing within fifteen (15) days after the date on which it receives the notice of rejection. If the General Manager affirms the rejection, the rejected bidder may further appeal the rejection to the Board within thirty (30) days after the General Manager's written affirmation. During the time said appeal is pending, GWA may *not* enter into a contract which the rejected bidder had given written notice it wanted to bid on within thirty (30) days after it submitted its Bidder Questionnaire Response.

### **§2424. Pre-qualification Criteria of the BOT Committee.**

Prospective bidders' responses to Bidder Questionnaires will be evaluated to ensure satisfaction of all the following criteria of the BOT Committee:

1. minimum of five (5) years experience with water or wastewater projects;
2. record of financial strength to commit to a water and wastewater project;
3. key project team personnel familiar with and experienced in water and wastewater projects;
4. flexible organizational and management structure;
5. acceptable credit rating from a nationally recognized credit rating agency; and
6. other criteria at the discretion of the Committee, prospective bidders must be notified of these additional criteria.

**§2425. Invitation to Submit Bid Proposal.** After a bidder is found by the BOT Committee to have satisfied the pre-qualification requirements, the bidder will be invited to submit a bid proposal on the project.

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### Article 5 The Request for Proposals

- §2530. Use
- §2531. Maximum Practicable Competition.
- §2532. Content.
- §2533. Financial Incentives.
- §2534. Repayment Scheme.
- §2535. Contract Termination.
- §2536. Project Supervision.
- §2537. Contract Terms and Conditions.

**§2530. Use.** The Request for Proposals is used to initiate the competitive public bidding for water and wastewater infrastructure projects suitable for the use of the 'Build-Operate-Transfer' concept, or variants thereof.

**§2531. Maximum Practicable Competition.** The Request for Proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying GWA's needs, and shall not be unduly restrictive.

**§2532. Content.** The Request for Proposal shall include the following:

1. instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by GWA, the location, time and date of each stage of the bidding process and other special information;
2. the project description, evaluation factors, project schedule;
3. the pre-determined formula using official price indices providing for the adjustment of the tolls, fees, rentals and charges during the life of the contract (Any adjustment shall take into account reasonableness of rates to the end users of private sectors water and wastewater infrastructure.);
4. the preferred form(s) of project financing, including, but not limited to, Build-Operate-Transfer, Build-Transfer-Operate, Build-Own-Operate-Transfer, Modernize-Operate-Transfer and Rehabilitate-Own-Transfer;
5. fixed terms of the imposition and collection of tolls, fees, rentals and charges not to exceed fifty (50) years;

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6. he required contents of the Technical Proposal;
7. he required contents of the Financial Proposal;
8. maintenance and repair standards required of the project;
9. the contract terms and conditions, including legal standards, warranty, bonding or other security requirements and financial incentives; and
10. to provide with packet submission, a valid license to conduct business on Guam.

**§2533. Financial Incentives.** The financial incentives and arrangements that the government of Guam may provide as authorized by the Guam Economic Development Authority ('GEDA') for the project shall be included in the contract terms accompanying the Request for Proposals. These incentives and arrangements may include, but are not limited to, guarantees such as a 'take or pay clause,' GEDA incentives or repayment in the form of a share of revenue of the project, subject to the limitations of Public Law Number 24-37, §9. Qualified Bidders are subject to GEDA's application process of the QC Program, as mandated by Chapter 58 of Title 12 of the Guam Code Annotated. Projects may be financed partly from direct government of Guam appropriations, or in-kind contributions, not exceeding forty percent (40%) of the project cost, and the balance to be provided by the project proponent.

**§2534. Repayment Scheme .** The repayment scheme shall be included in the contract terms accompanying the request for proposals. For the financing, design, construction, operation and maintenance of any infrastructure project undertaken through the Build-Operate-Transfer arrangement, or any of its variations, the project proponent shall be repaid by authorizing it to charge and collect from GWA, its sole wholesale consumer, reasonable tolls, fees and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project. For negotiated contracts, and for projects which have been granted a natural monopoly or where the public has no access to alternative facilities, the Guam Public Utility Commission ('GPUC') shall approve the tolls, fees, rentals and charges to GWA based on a reasonable rate of return.

**§2535. Contract Termination.** Contract termination provision shall be included in the contract terms accompanying the request for proposals. In the event that a project is revoked, canceled or terminated

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by the government through no fault of the project proponent, or by mutual agreement, the government of Guam shall compensate said project proponent for its actual expenses incurred in the project, plus a reasonable rate of return thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination. In the event that the government defaults on certain major obligations in the contract, and such failure is not remediable, or if remediable shall remain unremedied for an unreasonable length of time, the project proponent/contractor may, by prior notice to GWA specifying the turn-over date, terminate the contract. The project proponent/contractor shall be reasonably compensated by the government of Guam for equivalent or proportionate contract cost as defined in the contract.

**§2536. Project Supervision.** Every infrastructure project undertaken under the provisions of this Act shall be in accordance with the plans, specifications, standards and costs approved by GWA, and shall be under the supervision of GWA.

**§2537. Contract Terms and Conditions.** The contract terms and conditions included in the Request for Proposals shall detail the following:

1. contract governed by Guam law;
2. project's geographical location;
3. specific products or services to be provided by the project;
4. quality standards required of the project;
5. maintenance and repair standards required of the project;
6. manner in which GWA will supervise the project;
7. fixed terms of the imposition and collection of tolls, fees, rentals and charges not to exceed fifty (50) years;
8. financial, accounting, and management practices and objectives;
9. repayment scheme and schedule for payments including, but not limited to, escrow;
10. environmental standards and objectives (These standards and objectives shall be consistent with the laws and regulations administered by the Guam Environmental Protection Agency);
11. conditions for contract termination and penalties;

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12. the pre-determined formula using official price indices providing for the adjustment of the tolls, fees, rentals and charges during the life of the contract;
13. requirement that at least sixty percent (60%) of the facility operator's onsite labor force shall be local residents;
14. means for dispute resolution which may include, but is not limited to, use of the American Arbitration Association;
15. effect of default and compensation for contract termination;
16. financial incentives and arrangements;
17. representation that person being awarded the contract has not retained a person, to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of *bona fide* employees or *bona fide* established commercial selling agencies for the purpose of securing business;
18. a prohibition against gratuities, kickbacks and favors prescribed as follows:

**1. Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity of an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract of subcontract; or to any solicitation or proposal therefor.

**2. Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

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**3. Contract Clause.** The prohibition against gratuities, kickbacks and favors to Guam prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

**4. Favors to Guam.** For purposes of this Section, a favor is anything, including raffle tickets, of more than de minimus value and whether intended for the personal enjoyment of the receiver or for the department or organization in which they are employed or for any person, association, club or organization associated therewith or sponsored thereby. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of Guam or for any employee or agent of Guam to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of Guam whether or not such favor or gratuity may be considered a reimbursable expense of Guam, during the pendency of any matter related to procurement including contract performance warranty periods;

19. transfer provisions;
20. contract renegotiations circumstances which may include, but is not limited to, unforeseen events or changed circumstances; and
21. other contract terms as needed.

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### Article 6 Bid Evaluation and Award

- §2640. Policy
- §2641. Limitation on Direct Negotiations.
- §2642. Bidding Process
- §2643. Contents of the Technical Proposal.
- §2644. Contents of the Financial Proposal.
- §2645. Timing of the Bidding Process.
- §2646. Confidentiality.
- §2647. Technical Proposal Opening.
- §2648. Evaluation of the Technical Proposal.
- §2649. Clarification of the Technical Proposal.
- §2650. Financial Proposal Opening.
- §2651. Evaluation of the Financial Proposal.
- §2652. Clarification of the Financial Proposal.
- §2653. Proposal Corrections or Withdrawals.
- §2654. Project Award.
- §2655. Cancellation of Request for Proposals.

**§2640. Policy.** In order to foster competition in the contract selection process, public bidding under a two (2) envelope/two (2) stage system will be used, *except* for unsolicited proposals or where direct negotiations are permitted.

**§2641. Limitation on Direct Negotiations.** Direct negotiations shall be resorted to only when one (1) complying bidder is available in accordance with Public Law Number 24-37, §8. Otherwise, no negotiation shall take place between GWA and a bidder with respect to a bid submission. This limitation, however, shall *not* prevent requests for clarification as provided in §§2649 and §2652.

**§2642. Bidding Process.** Each participating pre-qualified bidder shall submit two (2) envelopes. The first envelope shall contain the Technical Proposal, and the second envelope the Financial Proposal.

**§2643. Contents of the Technical Proposal.** The Technical Proposals shall address the areas identified in the Request for Proposals and detail the manner in which the Bidder proposes to comply with §3(a) of Public Law Number 24-37 concerning the employment of local residents to the maximum extent possible.

**§2644. Contents of the Financial Proposal.** The Financial Proposal shall address the areas identified in the Request for Proposals.

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**§2645. Timing of the Bidding Process.** The location, time and date of each stage of the bidding process will be established by GWA and provided to pre-qualified bidders with the Request for Proposals.

**§2646. Confidentiality.** All information contained in the Technical Proposal and the Financial Proposal shall remain confidential until after contract award, *except* as follows:

1. upon opening of the Technical Proposal, it may be publicly announced the name of the bidder and the presence or absence of documents required by the Request for Bids;
2. upon opening of the Financial Proposal it may be publicly announced the name of the bidder, the submitted price(s) and the presence or absence of documents required for a complete submittal, as indicated in the Request for Bids.

This confidentiality requirement shall extend to the GWA Board of Directors, BOT Committee, GWA employees and any other advisors or government personnel involved in the bidding process.

**§2647. Technical Proposal Opening.** The Technical Proposals shall be opened publicly in the presence of one (1) or more witnesses at the time, date and location designated in the Request for Proposals.

**§2648. Evaluation of the Technical Proposal.** The BOT Committee shall evaluate the Technical Proposals based on the requirements set forth in the Request for Proposals. The Committee shall obtain expert advice as needed. This evaluation will ensure technical merit. After the evaluation, the BOT Committee shall approve or reject the Technical Proposal. The Financial Proposal of a bidder whose Technical Proposal has been rejected shall be returned to the bidder. No criteria may be used in the proposal evaluation that are not set forth in the Request for Proposals.

**§2649. Clarification of the Technical Proposal.** The BOT Committee may request clarification of the Technical Proposal *if* that committee believes that such clarification is needed. All qualified bidders shall receive this Request for Clarification. This clarification is at the discretion of the Committee. Bidders shall be given a reasonable time in which to provide clarification.

**§2650. Financial Proposal Opening.** The Financial Proposals accompanying approved Technical Proposals shall be opened publicly in the presence of one (1) or more witnesses at the time, date and location designated in the Request for Proposals.

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**§2651. Evaluation of the Financial Proposal** . The BOT Committee shall evaluate the Financial Proposals based on the requirements set forth in the Request for Proposals. The Committee shall obtain expert advice as needed. This evaluation will ensure financial merit. After the evaluation the BOT Committee shall provide a report to the GWA Board of Directors with its recommendation within sixty (60) days of the public opening of the Financial Proposals. No criteria may be used in the proposal evaluation that are not set forth in the Request for Proposals.

**§2652. Clarification of the Financial Proposal** . The BOT Committee may request clarification of the Financial Proposal if that committee believes that such clarification is needed. All qualified bidders shall receive this Request for Clarification. This clarification is at the discretion of the Committee. Bidders shall be given a reasonable time in which to provide clarification.

**§2653. Proposal Corrections or Withdrawals** . Technical and Financial Proposals may only be corrected or withdrawn as set forth in the Request for Proposals.

**§2654. Project Award.** GWA's Board of Directors shall award the contract to the bidder who, having satisfied the minimum financial, technical, organizational and legal standards, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed or rehabilitated and operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. This award may be conditioned upon GPUC approval required by §2235. GWA's Board of Directors shall consider the report of the BOT Committee before identifying the successful bidder. The winning project proponent shall be *automatically* granted by GWA the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals and charges from its sole wholesale customer, GWA. This shall *not* operate to preclude contract modification. Any contract modification shall require the approval of GWA's Board of Directors. A copy of each contract shall forthwith be submitted to *ILiheslaturan Guahan* for its information within thirty (30) days of award.

**§2655. Cancellation of Request for Proposals** . At any time before the project award, GWA's Board of Directors may cancel the Request for Proposals.

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### Article 7 Unsolicited Proposals

- §2760. Unsolicited Proposals.  
§2761. Evaluation of Unsolicited Proposals.  
§2762. Price Matching.

**§2760. Unsolicited Proposals.** Unsolicited proposals for projects may be accepted by GWA on a negotiated basis, provided, that *all* the following conditions are met:

1. such projects involved a new concept and technology and are *not* part of the current list of priority projects as provided for in §2214, *Publication*;
2. no direct government guarantee, subsidy or equity is required; and
3. GWA has invited, by publication in a newspaper of general circulation and by other international media, comparative or competitive proposals, and no other proposal is received for a period of sixty (60) working days. Providing further, that in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days.

**§2761. Evaluation of Unsolicited Proposals.** The BOT Committee shall evaluate all unsolicited proposals to ensure technical and financial merit within ninety (90) days of receipt. If the Committee finds that the unsolicited proposal has merit, it will submit its recommendations and the proposal to the Board of Directors for disposition.

**§2762. Price Matching.** When another proponent submits a lower price proposal following publication by GWA and the original proponent matches that price within thirty (30) working days, then the BOT Committee shall identify which proposal has greater technical merit and submit its recommendations and the proposals to the Board of Directors for disposition.

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### Article 8

#### Compliance with Federal Requirements

§2865. Federal Funds

**§2865. Federal Funds.** Where a project involves the expenditures of Federal assistance or contract funds, or other Federal funds as defined by §20 of the Organic Act of Guam, 48 U. S. C. §1423j, the GWA Board of Directors, the BOT Committee, GWA employees and any other advisors or government personnel involved in the bidding process shall comply with such Federal law and regulations which are applicable and which may be in conflict with or may not be reflected in these Regulations.

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