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Article 2 Build-Operate-Transfer Plan

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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.