

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>PETITION FOR APPROVAL OF</b>	)	<b>GWA DOCKET NO. 17-12</b>
<b>GWA'S AMENDED SYSTEM</b>	)	
<b>DEVELOPMENT CHARGE</b>	)	
<b>IMPLEMENTATION GUIDELINES</b>	)	<b>ALJ REPORT</b>
<b>AND FINANCIAL OFFSET POLICY</b>	)	
_____	)	

**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the "PUC" or the "Commission") pursuant to the Petition for approval of the Amended System Development Charge Implementation Guidelines, filed by the Guam Waterworks Authority ("GWA") on September 7, 2017 (the "Petition").

**BACKGROUND**

On July 22, 2008, GWA filed a petition for the PUC to approve GWA's proposed water and wastewater system development charges and accompanying rules ("SDC"). Petition to Establish a System Development Charge, GWA Docket 08-08 (July 22, 2008). The SDC Implementation Guidelines were adopted pursuant to the PUC's January 29, 2010 Order issued in GWA Docket 08-08. That Order also required GWA to establish a policy for GWA to provide credits or offsets to developers provided that certain conditions were met.

**DISCUSSION**

**A. Petition for Approval of SDC Implementation Guidelines Update and SDC Financial Offset Policy**

GWA submits that since the adoption of the SDC Implementation Guidelines, public laws were passed in 2013 that affect payment deadlines for residential

construction, and that require an Affordable Housing SDC. For instance, Public Law 32-075 shifted “the collection of the System Development Charge from the building permit stage to the occupancy permit stage.” P.L. 32-075, p. 2 (Nov. 27, 2013). The intent was to “negate the need for developers to front the cost of the SDC far in advance of the sale of the house, thus lowering the cost of development, while still ensuring that GWA receives the full amount necessary to protect existing ratepayers from the impact of new development.” *Id.* The law further provided that an amortized SDC would be made “available for all customers building a single family dwelling, regardless of income.” *Id.* at 2-3.

As a result, updates to the SDC Implementation Guidelines were required. According to GWA, it has spent nine (9) months revising its SDC Implementation Guidelines (also referred to herein as the “Update”).

**B. Revised System Development Charge Implementation Guidelines**

Revisions to the SDC Implementation Guidelines include the following. The Update creates an exception that SDCs owed for single family dwelling may be paid prior to occupancy, as opposed to prior to issuance of a building permit.<sup>1</sup> The Update also clarifies that SDCs shall be determined based on the number of meters as well as service units.<sup>2</sup> Further, the Update indicates that GWA can require a bond for any capital

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<sup>1</sup> Exhibit A, p. 6.

<sup>2</sup> Exhibit A, p. 7.

improvement or facility expansion.<sup>3</sup> The Update also includes a provision that GWA may terminate water or wastewater service in the event of non-payment of an amortized SDC.<sup>4</sup>

Significantly, the Update establishes the “Affordable Housing System Development Charge,” which includes language from P.L. 32-075, codified under 12. G.C.A. § 12116.5(i). This particular revision provides guidelines for GWA’s Affordable Housing SDC. The guidelines reflect Guam law as it relates to who qualifies for an Affordable Housing SDC, what type of proof is required to qualify, and grievance procedures. The guidelines related to the Affordable Housing SDC also provide that GWA must review the Median Household Income for Guam “at least once every five years.”<sup>5</sup>

While the Update still includes the requirement that all SDC revenues must be placed in a special restricted fund, revisions include the requirement that GWA provide the PUC with a “full accounting of the receipts and expenditures into and from the [Island Water and Sewer Infrastructure Development] Fund shall be filed annually” for the PUC’s “review and approval.”<sup>6</sup> Also, any financial offsets requested by developers will require the approval of GWA’s General Manager, pursuant to the new SDC Financial Offset Policy.<sup>7</sup>

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<sup>3</sup> Exhibit A, pp. 10-11.

<sup>4</sup> Exhibit A, p. 12.

<sup>5</sup> Exhibit A, p. 12.

<sup>6</sup> Exhibit A, p. 2.

<sup>7</sup> Exhibit A, p. 3.

**C. SDC Financial Offset Policy for Developers**

With regard to the proposed SDC Financial Offset Policy, this policy serves to provide developers with an SDC financial offset by constructing any off-site water and/or wastewater infrastructure.<sup>8</sup> Under this policy, developers may avail of a financial offset, which will include costs associated with the design and construction of any “Sanitary Sewer Facility Expansion or Water Facility Expansion” as defined under the SDC Implementation Guidelines.<sup>9</sup>

Further, as stated in the SDC Implementation Guidelines, the following do not qualify for an SDC offset: the dedication of rights-of-way or easements; the construction of improvements by the developer on private property; and line extension costs or other agreed upon privately funded costs that are required under GWA rules or regulations or Guam law to accommodate development.<sup>10</sup> This policy further provides instructions on how developers can apply for an SDC offset under the guidelines.<sup>11</sup> These instructions include the developer’s submission of engineering plans, total project costs, and financial offset request; as well as GWA’s review of such offset application.<sup>12</sup> The guidelines further include GWA’s acceptance of the improvement, as well as an instruction related to phased development.<sup>13</sup>

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<sup>8</sup> Exhibit B, p. 1.

<sup>9</sup> Exhibit B, p. 2.

<sup>10</sup> Exhibit B, p. 2.

<sup>11</sup> Exhibit B, pp. 2-3.

<sup>12</sup> Exhibit B, pp. 2-3.

<sup>13</sup> Exhibit B, p. 3.

### **CONCLUSION**

Based on the record before the Commission, the proposed revisions to the SDC Implementation Guidelines and new SDC Financial Offset Policy have undergone careful scrutiny. GWA has engaged in working sessions with the ALJ to assist the PUC's review of these policies. The ALJ finds that approval of these two policies will allow GWA to better implement an SDC system as required by statute. Accordingly, the SDC Implementation Guidelines and SDC Financial Offset Policy submitted to the PUC for its approval should be granted.

### **RECOMMENDATION**

Based on the foregoing, the ALJ recommends that the PUC approve the revised SDC Implementation Guidelines, attached as "Exhibit A," and the SDC Financial Offset Policy, attached as "Exhibit B." A proposed Order is submitted herewith for the Commission's consideration.

Dated this 28<sup>th</sup> day of March, 2018.



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**JOEPHET R. ALCANTARA**  
**Administrative Law Judge**

# **EXHIBIT A**

## **GUAM WATERWORKS AUTHORITY SYSTEM DEVELOPMENT CHARGE IMPLEMENTATION GUIDELINES Revised August 2017**

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## **Section 1. Short Title**

This document shall be known and cited as the “Guam Waterworks Authority System Development Charge Implementation Guidelines.”

## **Section 2. Definitions**

The following definitions shall apply under these Guidelines:

**“Affordable Housing System Development Charge”** or **“AHSDC”** means the SDC made available to any person who constructs, or causes to construct, affordable homes as their primary residence or for an immediate family member where the total cost of the home and lot does not exceed the United States Housing and Urban Development (HUD) Median Income Statistic (set at \$210,000 in 2013), pursuant to Section 19 of these Guidelines.

**“Amortized System Development Charge”** or **“ASDC”** means the amortized SDC made available to all Guam residents building a single-family dwelling, regardless of income, pursuant to Section 18 of these Guidelines.

**“Assessment”** means the determination of the amount of the applicable SDC per service unit which can be imposed by GWA on new development pursuant to these Guidelines.

**“Capital Improvement”** means either a water or sanitary sewer facility to be owned and operated by or on behalf of GWA, and involving assets greater than or equal to \$5,000.00 and/or will extend the life of an existing GWA asset.

**“Facilities Expansion”** means either a water facility expansion or a sanitary sewer facility expansion or the construction of any new facility designed to expand the water or sewer system for future customers. Pursuant to § 12116.5, both uses above can include system repairs servicing existing customers but which also provide additional capacity to the system that can be used to accommodate new users. For the purposes of determining the capital amount recoverable from SDCs only that portion of a water or sanitary sewer facility’s capital costs incurred to accommodate new users shall be eligible for inclusion in the SDC.

**“Island Water and Sewer Infrastructure Development Fund”** means the fund created under 12 G.C.A. § 12116.5(c) and administered by GWA into which all SDC revenues shall be deposited. The use of all funds so deposited shall require advance approval from the PUC. A full accounting of the receipts and expenditures into and from the Fund shall be filed annually for PUC review and approval.

**“Land Use Assumptions”** means the projections of population and employment growth and associated changes in land uses and densities adopted by GWA, as may be amended by the CCU from time to time, upon which the SDC Capital Improvement plan is based

or as contained in any Guam Master Plan or other water or sanitary sewer improvement plan that is used by GWA for the same purpose and approved by the CCU for such use.

**“New Development”** means a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure or any use or extension of land which has the effect of increasing the requirements for capital improvements or facility expansions, measured by the number of service units to be generated by such activity and which requires either the approval of the Guam Land Use Commission (GLUC), adherence to Guam’s subdivision laws and regulations, the issuance of a building permit or a substantial change in the demand or loading of such project through an existing connection to GWA’s water or sanitary sewer system, respectively.

**“Offset”** means the amount of the reduction of the applicable SDC designed to fairly reflect the value of area-related facilities provided by a developer pursuant to Guam’s development regulations or requirements. An offset requires approval by the General Manager, in accordance with the SDC Financial Offset Policy.

**“Offsite”** means outside the boundaries of the property for which a new development is proposed.

**“Plan Approval”** means the point at which the applicant has complied with all conditions of approval set by the GLUC and/or the applicant has undertaken all steps to receive the approval by GWA that are a prerequisite to the issuance of a building permit (and can include conditions that are required by GWA after the building permit has been issued).

**“PUC”** means the Guam Public Utilities Commission.

**“Recoupment”** means the imposition of an SDC to reimburse GWA for capital improvements which GWA has previously put in place that has sufficient capacity to serve new development and new capital improvements for the purpose of serving new development.

**“Sanitary Sewer Facility”** means an improvement for providing sanitary sewer service, including but not limited to land or easements, treatment and pre-treatment facilities, lift stations or force mains. Sanitary sewer facility excludes sanitary sewer lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities. Sanitary sewer facilities exclude site-related facilities.

**“Sanitary Sewer Facility Expansion”** means the expansion of the capacity of any existing sanitary sewer facility for the purpose of serving new development, and may, under certain circumstances, include the repair, maintenance, modernization or expansion of an existing sanitary sewer facility to serve existing development as long as such



expansion adds additional capacity to serve future users to the system or accommodate existing users who are expanding the demand upon the system.

**“SDC Capital Improvements Plan”** means either a water or sanitary sewer improvements plan formulated by GWA adopted or revised pursuant to this Article, including but not limited to, the GWA five-year Capital Improvements Plan, the GWA Master Plan as it may be amended from time to time by the CCU, and any capital improvement plan approved by the CCU. The SDC Capital Improvements Plan refers to the aggregation of capital improvements or facility expansions and the associated costs programmed for all service areas for a particular category of capital improvements or facility expansions which may be financed in whole, or in part, through SDCs.

**“Service Area”** means either the area currently served by GWA or the area which GWA has agreed to serve as evidenced by the signature of an authorized representative from GWA on a building permit.

**“Service Unit”** means the applicable standard units of measure shown on the conversion table in the SDC Capital Improvements Plan as defined herein which can be converted either to three-fourths inch (3/4”) water meter equivalents, as the context indicates, which serves as the standardized measure of consumption, use or generation attributable to the new unit of development. Service units may also be referred to as Equivalent Residential Units.

**“Site-Related Facility”** means an improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of water or sanitary sewer facilities to serve the new development, and which is not included in the SDC Capital Improvement Plan and for which the developer or property owner is solely responsible under subdivision laws or other applicable regulations.

**“Subdivision”** means an improved land divided or proposed to be divided into two or more divisions of land for the purpose of sale, lease, rental, transfer or title to or interest in any or all of such divisions, including resubdivisions, as approved by the GLUC pursuant to GAR, Title 28, Chapter 2, Article 1 § 2102(61).

**“System Development Charge”** means a one-time impact fee or charge assessed by GWA on each user who is for the first time connecting property into GWA water or wastewater system, or to each developer if the density of development on the existing connection is increased pursuant to these Guidelines in order to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to new development. SDCs **do not include** the dedication of rights-of-way or easements for such facilities or the construction of improvements by the developer thereon. SDCs also do not include line extension costs or other agreed upon privately funded costs that are required under GWA rules or regulations or Guam law to accommodate development regardless of type.

**“Temporary Use”** means any connection made by any person or entity for an activity not required to obtain a building permit that lasts for any period less than six (6) months. The uses contemplated herein includes but are not limited to, village fiestas, carnivals, public events or private uses where the activity has been sanctioned by the Government of Guam.

**“Water Facility”** means an improvement for providing water service, including but not limited to land or easements, water treatment facilities, water supply facilities or water distribution lines. Water facility excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities. Water facility excludes site-related facilities.

**“Water Facility Expansion”** means the expansion of the capacity of any existing water facility for the purpose of serving new development, and may, under certain circumstances, include the repair, maintenance, modernization or expansion of an existing water facility to serve existing development as long as such expansion adds additional capacity to serve future users to the system or accommodate existing users who are expanding the demand upon the system.

### **Section 3. Purpose and Effect**

These Guidelines are intended to assure the provision of adequate public water and sanitary sewer facilities in Guam to serve new development and accommodate changes to existing buildings or facilities where density is increased by requiring each development to pay its pro rata share of the costs of such improvements necessitated by and attributable to such new development. The SDCs established by these Guidelines are additional and supplemental to, and not in substitution of, any other requirements imposed by Guam law regarding the development of land, the issuance of building permits or the issuance of certificates of occupancy. Such SDCs are intended to be consistent with and in furtherance of the policies of Guam’s building and subdivision laws and regulations and existing GWA Rules and Regulations relating to the provision of public water and sanitary sewer facilities in conjunction with the development of land.

### **Section 4. Authority**

These Guidelines are adopted by the PUC pursuant to 12 G.C.A. § 12116.5, enacted into law by Public Law 26-164, and amended by Public Law 29-133, and the PUC’s inherent authority. The provisions of these Guidelines shall not be construed to limit the power of GWA to utilize other methods authorized under Guam law or pursuant to other GWA powers to accomplish the purposes set forth herein, either in substitution for or in conjunction with these Guidelines. Additional policies, not inconsistent with these Guidelines, may be developed by a Resolution of the CCU to implement and administer the requirements hereunder.

**Section 5. Applicability**

The provisions of these Guidelines apply to all “new development” as defined in Section 4 above, and do not apply to temporary uses.

**Section 6. SDCs as Condition of Development Approval**

No application for new development shall be approved by GWA without assessment of SDCs pursuant to these Guidelines, and no building permit shall be issued unless the applicant has paid the SDCs with the exception of single-family dwellings for which the SDC may be paid prior to initial occupancy pursuant to Public Law 32-075. With respect to new development eligible for the ASDC, a building permit may be issued if the applicant has paid the initial charge required under Section 18 of these Guidelines.

**Section 7. Adoption of GWA’s Capital Improvements Plans**

The current GWA Capital Improvements Plan, as currently stated in the GWA Master Plan, was adopted by the CCU on March 13, 2007, via Resolution No. 11 - FY2007. The current Plan will be updated and amended and new improvement plans adopted by GWA as it deems necessary, to include projects slated for SDC funding.

**Section 8. Approval of the SDCs**

The water and wastewater SDCs set forth in Schedule I were adopted by the CCU on October 13, 2009 through Resolution No. 01 - FY2010 as authorized under 12 G.C.A. § 12116.5(a).

**Section 9. SDC Calculations**

The American Water Works Association has established guidelines for the development of SDCs for water service in their M-1 manual on Water Fees and Related Charges. Two generally accepted methodologies are recommended: (1) the equity method, also known as the “buy-in” method; and (2) the “incremental” method. The CCU has chosen to implement a “hybrid” of these two methods for several reasons, including but not limited to the following:

- (1) The hybrid method results in a reasonable and equitable fee to new water customers; and
- (2) The hybrid method achieves the financial objectives of the Board.

The equity or “buy-in” method achieves equity between new and existing customers in the investment of ratepayer capital into the water and wastewater systems. This approach assesses new customers a charge to approximate the average equity of the existing customers. With the equity method the new and existing customers share equally in the costs of current system and in new facilities.

The “incremental” method is similarly designed to achieve equity between new and existing customers by requiring that new customers pay for the additional capital investments needed to serve new customers. The “hybrid” method integrates into one SDC the capital due from new customers to fund new capital investment for growth while achieving equity between new and existing customers for their use of existing water and wastewater facilities. Under all methods, customers are assessed SDCs based on the size of the water meter needed to serve the customer’s demand. Larger meters have the capacity to use more system assets; thus, a higher charge is necessary to establish equity between large and small users of the system. An equivalent unit of service is used to determine the fee for each meter size. Meter sizes are expressed in terms of equivalent meters, based on the relative capacity of the various meter sizes. Larger meters are assessed the SDC based on a ratio of the larger meter’s capacity to the equivalent unit’s capacity. An equivalent unit is defined as a ¾” water meter service

The SDCs due for the new development shall be collected prior to or at the time of issuance of the building permit (with the exception of single-family dwellings for which the SDC may be paid prior to initial occupancy) or prior to or at the time of connection to the GWA’s water or sanitary sewer system if no building permit is required.

Following the filing and acceptance of an application for a building permit or the request for connection to GWA’s water or sanitary sewer system, GWA shall compute the SDCs due for the new development in the following manner:

1. The amount of each SDC due shall be determined based on the number of meters and service units required by the new development or expanded by an existing development, per Schedule I below.
2. If appropriate, and as condition precedent to connection to GWA’s water or sanitary sewer line, GWA may adjust the assessment if the developer has expanded the required number of service units beyond what was indicated in the original assessment from GWA.

**Section 10. Assessment of SDCs**

- A. The approval of any new development shall include, as a condition, the assessment of the SDCs applicable to such development. Assessment shall occur at the time application is made for the building permit or utility connection based upon the engineering plans submitted to GWA for approval. A new assessment may be undertaken by GWA, if for any reason, the plans are modified in any manner which causes GWA to change the size and/or quantity of the meter(s). All assessments under this provision shall be pursuant to Schedule I below.
- B. Following the lapse or expiration of a building permit approval for a particular development, a new assessment shall be made prior to the final approval of a new development on the same tract of land. However, no further assessment shall be

charged if there are no changes to the design requiring an increase in meter size and/or quantity for the development, provided that an SDC had been paid and a refund had not been made.

**Section 11. SDC Payments**

- A. All SDCs assessed under the provisions of Section 10 of these Guidelines shall be collected by GWA prior to the issuance of any building permit, with the exception of single-family dwellings, as identified in Section 6.
- B. The SDCs collected by GWA shall be deposited within seven (7) business days into the Island Water and Sewer Infrastructure Development Fund (IWSIDF) which shall be created and administered by GWA as provided in Section 12 of these Guidelines.
- C. In the case of a new assessment done for the reapplication of an expired building permit with paid SDCs, any applicable additional SDCs shall also be paid to GWA.
- D. Whenever the property owner of a development proposes to increase the number of service units requiring an increase in meter size and/or quantity, the additional SDCs for such new service units shall be assessed at the time the new or amended building permit application is filed in the same manner as required for an original building permit.

**Section 12. Accounts and Disbursements**

- A. The Chief Financial Officer for GWA shall establish and maintain an account for the IWSIDF as required under 12 G.C.A. § 12116.5(c). All SDC proceeds shall be deposited in said account.
- B. GWA shall select the banking institution licensed on Guam that provides the best rates for deposit in relation to its fee structure and which also provides an opportunity for GWA to invest the funds into short-term guarantee investment contracts or other such investments with no penalty. The rates for such deposits shall be reviewed annually.
- C. Fees to the bank to service the IWSIDF shall be agreed upon by GWA and the lending institution selected by GWA to hold such funds.
- D. GWA shall ensure that the banking institution provides an annual report on all transactions on the IWSIDF to the PUC and monthly reports to GWA.
- E. Interest earned on the account shall be considered funds of the account and shall be used solely for the capital improvement projects provided for under these Guidelines.

- F. Disbursement of funds shall be authorized by GWA at such times as are reasonably necessary to carry out the purposes and intent of these Guidelines.
- G. All SDCs collected by GWA shall be expended within a reasonable period of time, not to exceed ten (10) years from the date the SDCs were deposited into the account.
- H. Execution of a design or construction contract or purchase orders for self-performance by GWA shall be considered to be expenditure of funds of the account.
- I. GWA shall maintain and keep financial records for all SDC proceeds and for all expenditures made under these Guidelines. The records of the account for which the SDCs are deposited shall be open for public inspection and copying during ordinary business hours. GWA may assess fees for copying services in accordance with the Guam Sunshine Act of 1999.

**Section 13. Use of Proceeds of SDC Accounts**

The SDCs paid to GWA pursuant to these Guidelines may be used to finance or to recoup all or a portion of the costs of any capital improvement or facility expansion identified in GWA's applicable capital improvements plan, including the construction contract price, surveying and engineering fees, and land acquisition costs. SDCs may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of GWA to finance such capital improvements or facilities expansions or renovations.

**Section 14. Refunds**

- A. Any SDC or portion thereof collected pursuant to these Guidelines, which has not been expended within ten (10) years from the date full payment was received by GWA, shall be refunded, upon application, to the record owner of the property at the time the refund is paid; or if the fee was paid by another governmental entity, to such governmental entity; together with interest calculated from the date of collection to the date of refund.
- B. All amounts collected under these Guidelines shall be considered expended on a first-in, first out basis.
- C. If a refund is due and a portion of an assessed amount has been expended, GWA shall pro-rate the refund by subtracting the amount expended from the total paid and then adding the interest earned on the unexpended amount in the same manner as in Section 14A above.

- D. If the building permit for a new development for which an SDC has been paid has expired, and a modified or new application has not been filed, GWA shall, upon written application, refund the amount of the SDCs to the applicant. If no such application is made within 5 years from the date the permit has expired, no application for refund may be made.

**Section 15. Updates to Plan and Revision of SDCs**

- A. GWA shall update its SDC Capital Improvement Plan in accordance with a schedule set by the CCU. Regardless of whether such plans are modified, GWA shall at a minimum, present annual requests for capital expenditures from the IWSIDF pursuant to 12 G.C.A. § 12116.5(c).
- B. The CCU, with the approval of the PUC, may amend the tables in Schedule I if it deems it necessary.

**Section 16. Agreement for Capital Improvements**

Owners of any new development(s) may construct or finance a capital improvement or facility expansion designated in the SDC Capital Improvements Plan or rated under the Utility Line Upgrade Guidance Document as qualifying for SDC funding. An agreement must be entered with GWA prior to the issuance of any building permit for the development. The agreement shall meet GWA's requirements for SDC offsets, shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to GWA standards and such other terms and conditions as deemed necessary by GWA. GWA may require that the capital improvement or facility expansion be bonded in GWA's favor at a minimum of 100%, per GWA's bond policy.

If SDC offsets are included in the agreement, the total cost of the project shall not be less than the cost of the SDC based on an assessment of the development's meter quantity and size, per the SDC Financial Offset Policy.

**Section 17. Procedures to Contest SDCs**

- A. Any person may file a written protest at any time prior to the issuance of a building permit. However, until the protest is resolved as provided herein, no building permit shall issue.
- B. All protests shall be prepared in the form prescribed by GWA and be hand-delivered to either GWA's legal counsel or to GWA's General Manager.
- C. The written protest shall contain information that GWA may reasonably require, including but not limited to, a detailed summary of the grounds upon which the person is disputing the assessment. The protest must also contain the following information:

1. General description of development, including lot number and village.
  2. All approved plans for the development.
  3. Appraised value of the land and off-site facilities.
  4. Total estimated SDCs that the owner feels is appropriate.
  5. Approvals from the GLUC if required by law.
  6. Name, address, fax and phone number for owner or owner's representative.
- D. GWA shall provide a written response to the protest within thirty (30) days following the receipt of such protest which either rejects the protest outright (for cause, deficiency in the protest or other valid reason) or grants an adjustment to the assessed amount. No SDC shall be waived in its entirety if the construction is for "new development" as defined in these Guidelines.
- E. If a party is dissatisfied with GWA's written response, within 30 days from the receipt of GWA's written response, they may file a Petition for Review with the PUC asking the PUC to review GWA's findings. A copy of the Petition must also be filed with GWA on the same date the Petition is filed with PUC.

**Section 18. Amortized System Development Charge (ASDC)**

- A. Pursuant to 12 GCA § 12116.5(b), qualified persons constructing or purchasing a single-family dwelling intended for their personal residence and/or for immediate family members may be entitled to amortize the cost of the applicable SDCs. The schedule of Amortized System Development Charges is shown on Schedule II attached to these Guidelines. The applicable ASDC shall be added to the monthly GWA bill for the dwelling.
- B. A person whose application for an ASDC is denied can file a written protest in the manner provided by Section 17 of these Guidelines, and, if dissatisfied with GWA's response to the protest, file a Petition for Review with the PUC.
- C. The ASDC shall not apply to any commercial development or the construction of multi-family dwellings.
- D. The ASDC is not transferable. Prior to selling or conveying title to the affected dwelling to any person who is not an immediate family member or who is not himself or herself eligible for an ASDC, a person paying an ASDC shall be required to pay the entire unpaid balance of the ASDC in full, including any accrued interest, prior to selling or conveying the title. An applicant for an ASDC must sign and acknowledge a Notice, in the form of Schedule III to these Guidelines, evidencing this requirement, as a condition to approval of the application. This statement shall be recorded by GWA. No water or wastewater account shall be transferred to a new owner or occupant of the residence until the balance of the ASDC has been paid in full.



- E. Eligible persons hereunder may exercise the option to amortize SDCs but are not required to do so. The option to amortize SDCs hereunder shall not apply to any commercial development or the construction of multi-family dwellings.
- F. GWA may terminate water or wastewater service for non-payment of an amortized SDC in accordance with applicable procedures.

**Section 19. Affordable Housing System Development Charge (AHSDC)**

- A. Pursuant to 12 GCA § 12116.5(i), any person who constructs, or causes to construct, a home where said structure will be the primary residence for themselves or an immediate family member or with the intent to sell, shall be charged 1.01% for water connections and 1.65% for sewer connections of the actual cost to construct the home and purchase the land in the event the actual total cost equals the HUD Median Income Statistic or less.
- B. GWA shall require reasonable proof to be provided showing that the home will in fact be a primary residence, pursuant to 12 GCA § 12116.5(i)(1)(A).
- C. The AHSDC shall not apply to those persons who construct, or cause to be constructed, homes that do not meet the requirements of the Guam Building Code, or to persons renovating existing structures.
- D. A person whose application for an AHSDC is denied can file a written protest in the manner provided by Section 17 of these Guidelines; and, if dissatisfied with GWA's response to the protest, file a Petition for Review with the PUC.
- E. The ASDC shall not apply to any commercial development or the construction of multi-family dwellings.
- F. At least once every five years, beginning 2023, GWA shall review the Median Household Income for Guam, as published by the HUD Median Income Statistic, and shall then adjust the total cost threshold requirement of the AHSDC.

**SCHEDULE I**

**SCHEDULE OF WATER SYSTEM DEVELOPMENT CHARGES  
ADOPTED BY THE GUAM PUBLIC UTILITIES COMMISSION**

<b>Actual Meter Size (inches)</b>	<b>SDC By Water Meter Size</b>
5/8 x 3/4	\$2,126
3/4	\$3,190
1	\$5,316
1 1/2	\$10,632
2	\$17,011
3	\$34,022
4	\$53,160
6	\$106,320
8	\$170,112
10	\$244,536

**SCHEDULE OF WASTEWATER SYSTEM DEVELOPMENT CHARGES  
ADOPTED BY THE GUAM PUBLIC UTILITIES COMMISSION**

<b>Actual Meter Size (inches)</b>	<b>SDC By Water Meter Size</b>
5/8 x 3/4	\$3,474
3/4	\$5,212
1	\$8,686
1 1/2	\$17,372
2	\$27,795
3	\$55,590
4	\$86,860
6	\$173,720
8	\$277,952
10	\$399,556

**SCHEDULE II**

**AMORTIZED SYSTEM DEVELOPMENT CHARGES**

**WATER:**

**INITIAL CHARGE--\$500**

**MONTHLY CHARGE FOR 96 MONTHS (8 YEARS)--\$22.58**

**WASTEWATER:**

**INITIAL CHARGE--\$500**

**MONTHLY CHARGE FOR 96 MONTHS (8 YEARS)--\$41.29**

**INTEREST AT THE RATE OF 7.5 PERCENT OVER THE EIGHT-YEAR AMORTIZATION PERIOD SHALL BE INCLUDED IN THE MONTHLY AMORTIZED SYSTEM DEVELOPMENT CHARGES.**

**SCHEDULE III**

*(SPACE ABOVE LINE FOR RECORDER'S USE ONLY)*

**NOTICE OF OBLIGATION TO PAY AMORTIZED  
SYSTEM DEVELOPMENT CHARGE**

Notice is hereby given that [Names of Property Owners] (“Owner”) qualified for the Amortized System Development Charge (“ASDC”) provided for under 12 GCA 12116.5(b), as amended by Guam P.L. 29-133, or pursuant to Section 19 of the Guam Waterworks Authority SDC Implementation Guidelines, in connection with the construction of a single-family residence on

[Property Description] (the “Property”).

The ASDC is neither transferable, nor assignable. Pursuant to 12 GCA 12116.5(b)), and Section 19 of the Guam Waterworks Authority SDC Implementation Guidelines, prior to the sale or transfer of the title to the Property to any person other than an immediate family member or a person also eligible to receive the benefit of the ASDC, the entire remaining balance of the ASDC, including any accrued and unpaid interest, must be paid in full.

Date: \_\_\_\_\_

**GUAM WATERWORKS AUTHORITY**

BY: General Manager or Authorized Representative  
NAME: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO:**

(OWNER/OWNERS)

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGEMENTS**

GUAM, U.S.A.            )  
                                  ) **ss:**  
CITY OF HAGATNA    )

**ON THIS** \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_ known or identified to me to be the \_\_\_\_\_ of GUAM WATERWORKS AUTHORITY, a Government of Guam agency, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
*(official signature and seal of notary)*

GUAM, U.S.A.                    )  
  ) **ss:**  
CITY OF HAGATNA            )

**ON THIS** \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
*(official signature and seal of notary)*

GUAM, U.S.A.                    )  
  ) **ss:**  
CITY OF HAGATNA            )

**ON THIS** \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
*(official signature and seal of notary)*



**SYSTEM DEVELOPMENT CHARGE  
FINANCIAL OFFSET POLICY**

August 2017

**I. PURPOSE**

This policy shall provide the requirements and procedure for developers to request a System Development Charge (SDC) financial offset by constructing any offsite water and/or sewer system infrastructure needed to provide utility service to a proposed development without adversely impacting existing customers.

**II. DEFINITIONS**

From the SDC Implementation Guidelines:

**“Offset”** means the amount of the reduction of the applicable SDC designed to fairly reflect the value of area-related facilities provided by a developer pursuant to Guam’s development regulations or requirements.

**“Offsite”** means outside the boundaries of the property for which a new development is proposed.

**“Project”** means an offsite sanitary sewer or water facility expansion.

**“Sanitary Sewer Facility Expansion”** means the expansion of the capacity of any existing sanitary sewer facility for the purpose of serving new development, and may, under certain circumstances, include the repair, maintenance, modernization or expansion of an existing sanitary sewer facility to serve existing development as long as such expansion adds additional capacity to serve future users to the system or accommodate existing users who are expanding the demand upon the system.

**“System Development Charge” (SDC)** means a one-time impact fee or charge assessed by GWA on each user who is for the first time connecting property into GWA water or wastewater system, or to each developer if the density of development on the existing connection is increased pursuant to these Guidelines in order to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to new development. SDCs **do not include** the dedication of rights-of-way or easements for such facilities nor the construction of improvements by the developer thereon. SDCs also do not include line extension costs or other agreed upon privately funded costs that are required under GWA rules or regulations or Guam law to accommodate development regardless of type.

**“Water Facility Expansion”** means the expansion of the capacity of any existing water facility for the purpose of serving new development, and may, under certain circumstances, include the repair, maintenance, modernization or expansion of an existing water facility to serve existing development as long as such expansion adds additional capacity to serve future users to the system or accommodate existing users who are expanding the demand upon the system.

### **III. COVERAGE**

- A. The following improvements or activities do not qualify for SDC offset, per the SDC definition:
  - i. the dedication of rights-of-way or easements,
  - ii. the construction of improvements by the developer thereon (on private property), and
  - iii. line extension costs or other agreed upon privately funded costs that are required under GWA rules or regulations or Guam law to accommodate development regardless of type.
- B. The offsite improvement must meet the definition of Sanitary Sewer Facility Expansion or Water Facility Expansion, described in the definitions above.
- C. The financial offset shall include costs associated with asset construction including, but not limited to design, permitting, construction, materials, and testing. Upon GWA’s acceptance of the assets, GWA shall be responsible for operation and maintenance costs.

### **IV. GUIDELINES**

- A. The developer shall submit engineering plans and an estimate of the total project cost with the financial offset request, for GWA’s timely review and approval. If the estimated cost is less than the SDC assessment (in accordance with Exhibit C, Schedule I of the GWA SDC Implementation Guidelines) then the developer will be required to pay the difference to GWA prior to GWA’s approval of the building permit application.
- B. Upon completion of the project, the developer shall submit actual costs for GWA’s review and approval. If the actual cost is less than the SDC assessment, the developer shall pay the difference to GWA prior to GWA’s approval of the development’s occupancy permit application.
- C. GWA and the developer execute an agreement that clearly identifies the scope of offsite improvements prior to GWA’s approval of a building permit application.
- D. The developer shall be responsible for
  - i. all Federal and Government of Guam permitting requirements and
  - ii. all payments for the improvement construction including permitting, materials, and contractor fees.



- E. GWA may require the developer to provide a 100% bond for the project, per SDC Implementation Guidelines Section 17.
- F. All offsite improvements shall meet GWA design, material, construction, testing, engineering, and inspection requirements. The offsite improvements shall be covered under a Department of Public Works building permit. GWA may require the developer to employ a construction manager who shall, upon completion of construction, submit a construction report to GWA for review and approval.
- G. The offsite improvement construction shall be completed and the assets accepted by GWA prior to GWA's approval of the development's occupancy permit.
- H. In the case of phased development, the agreement shall identify offsite improvements required to be completed, placed into service, and accepted by GWA prior to occupancy permit approval for each phase of the development.

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>PETITION FOR APPROVAL OF</b>	)	<b>GWA DOCKET NO. 17-12</b>
<b>GWA’S AMENDED SYSTEM</b>	)	
<b>DEVELOPMENT CHARGE</b>	)	
<b>IMPLEMENTATION GUIDELINES</b>	)	<b>ORDER</b>
<b>AND FINANCIAL OFFSET POLICY</b>	)	
_____	)	

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the Petition for approval of the Amended System Development Charge Implementation Guidelines, filed by the Guam Waterworks Authority (“GWA”) on September 7, 2017 (the “Petition”).

On March 28, 2018, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that include his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

**DETERMINATIONS**

On July 22, 2008, GWA filed a petition for the PUC to approve GWA’s proposed water and wastewater system development charges and accompanying rules (“SDC”). Petition to Establish a System Development Charge, GWA Docket 08-08 (July 22, 2008). The SDC Implementation Guidelines were adopted pursuant to the PUC’s January 29, 2010 Order issued in GWA Docket 08-08. That Order also required GWA to establish a policy for GWA to provide credits or offsets to developers provided that certain conditions were met.

**A. Petition for Approval of SDC Implementation Guidelines Update and SDC Financial Offset Policy**

GWA submits that since the adoption of the SDC Implementation Guidelines, public laws were passed in 2013 that affect payment deadlines for residential construction, and that require an Affordable Housing SDC. For instance, Public Law 32-075 shifted “the collection of the System Development Charge from the building permit stage to the occupancy permit stage.” P.L. 32-075, p. 2 (Nov. 27, 2013). The intent was to “negate the need for developers to front the cost of the SDC far in advance of the sale of the house, thus lowering the cost of development, while still ensuring that GWA receives the full amount necessary to protect existing ratepayers from the impact of new development.” *Id.* The law further provided that an amortized SDC would be made “available for all customers building a single family dwelling, regardless of income.” *Id.* at 2-3.

As a result, updates to the SDC Implementation Guidelines were required. According to GWA, it has spent nine (9) months revising its SDC Implementation Guidelines (also referred to herein as the “Update”).

**B. Revised System Development Charge Implementation Guidelines**

Revisions to the SDC Implementation Guidelines include the following. The Update creates an exception that SDCs owed for single family dwelling may be paid prior to occupancy, as opposed to prior to issuance of a building permit.<sup>1</sup> The Update also clarifies that SDCs shall be determined based on the number of meters as well as service

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<sup>1</sup> Exhibit A, p. 6.

units.<sup>2</sup> Further, the Update indicates that GWA can require a bond for any capital improvement or facility expansion.<sup>3</sup> The Update also includes a provision that GWA may terminate water or wastewater service in the event of non-payment of an amortized SDC.<sup>4</sup>

Significantly, the Update establishes the “Affordable Housing System Development Charge,” which includes language from P.L. 32-075, codified under 12. G.C.A. § 12116.5(i). This particular revision provides guidelines for GWA’s Affordable Housing SDC. The guidelines reflect Guam law as it relates to who qualifies for an Affordable Housing SDC, what type of proof is required to qualify, and grievance procedures. The guidelines related to the Affordable Housing SDC also provide that GWA must review the Median Household Income for Guam “at least once every five years.”<sup>5</sup>

While the Update still includes the requirement that all SDC revenues must be placed in a special restricted fund, revisions include the requirement that GWA provide the PUC with a “full accounting of the receipts and expenditures into and from the [Island Water and Sewer Infrastructure Development] Fund shall be filed annually” for the PUC’s “review and approval.”<sup>6</sup> Also, any financial offsets requested by developers will require the approval of GWA’s General Manager, pursuant to the new SDC Financial Offset Policy.<sup>7</sup>

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<sup>2</sup> Exhibit A, p. 7.

<sup>3</sup> Exhibit A, pp. 10-11.

<sup>4</sup> Exhibit A, p. 12.

<sup>5</sup> Exhibit A, p. 12.

<sup>6</sup> Exhibit A, p. 2.

<sup>7</sup> Exhibit A, p. 3.

**C. SDC Financial Offset Policy for Developers**

With regard to the proposed SDC Financial Offset Policy, this policy serves to provide developers with an SDC financial offset by constructing any off-site water and/or wastewater infrastructure.<sup>8</sup> Under this policy, developers may avail of a financial offset, which will include costs associated with the design and construction of any “Sanitary Sewer Facility Expansion or Water Facility Expansion” as defined under the SDC Implementation Guidelines.<sup>9</sup>

Further, as stated in the SDC Implementation Guidelines, the following do not qualify for an SDC offset: the dedication of rights-of-way or easements; the construction of improvements by the developer on private property; and line extension costs or other agreed upon privately funded costs that are required under GWA rules or regulations or Guam law to accommodate development.<sup>10</sup> This policy further provides instructions on how developers can apply for an SDC offset under the guidelines.<sup>11</sup> These instructions include the developer’s submission of engineering plans, total project costs, and financial offset request; as well as GWA’s review of such offset application.<sup>12</sup> The guidelines further include GWA’s acceptance of the improvement, as well as an instruction related to phased development.<sup>13</sup>

Based on the record before the Commission, the ALJ found that the proposed revisions to the SDC Implementation Guidelines and new SDC Financial Offset

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<sup>8</sup> Exhibit B, p. 1.

<sup>9</sup> Exhibit B, p. 2.

<sup>10</sup> Exhibit B, p. 2.

<sup>11</sup> Exhibit B, pp. 2-3.

<sup>12</sup> Exhibit B, pp. 2-3.

<sup>13</sup> Exhibit B, p. 3.

Policy had undergone careful scrutiny. GWA has engaged in working sessions with the ALJ to assist the PUC's review of these policies. The ALJ therefore found that approval of these two policies would allow GWA to better implement an SDC system as required by statute. Accordingly, the ALJ determined that the SDC Implementation Guidelines and SDC Financial Offset Policy submitted to the PUC for its approval should be granted.

The Commission hereby adopts the findings made in the March 28, 2018 ALJ Report, and therefore, issues the following:

### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby GRANTED and that the revised SDC Implementation Guidelines and SDC Financial Offset Policy submitted to the PUC as "Exhibit A" and "Exhibit B" are APPROVED.

2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

**SO ORDERED** this 29<sup>th</sup> day of March, 2018.

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**JEFFREY C. JOHNSON**  
Chairman

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**ROWENA E. PEREZ**  
Commissioner

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**JOSEPH M. MCDONALD**  
Commissioner

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**FILOMENA M. CANTORIA**  
Commissioner

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**MICHAEL A. PANGELINAN**  
Commissioner

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**PETER MONTINOLA**  
Commissioner

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**ANDREW L. NIVEN**  
Commissioner

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