



# GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO  
Governor of Guam

JOSHUA F. TENORIO  
Lt. Governor of Guam

IRVIN L. SLIKE  
General Manager



May 30, 2023

**REQUEST FOR INFORMATION**  
**GSWA-RFI001-23**  
**TO DETERMINE PUBLIC INTEREST FOR PROVIDING WASTE**  
**TRANSFER & RECYCLING PROCESSING SERVICES FACILITY**

**Questions and Concerns received from Core Tech Intl on May 18, 2023**

1. In order to understand the final contract form, we would like to request a copy of the existing contracts between GSWA and Mr. Rubbishman or the transfer station and related transportation services, and between Layon Landfill (Green Group, Herzog) and Mr. Rubbishman.

**Response:** Current Hauler-Only Transfer Station Facilities, Operation, and Waste Transport contract is attached as Appendix 1. The Layon Landfill Operator activities are not related to the proposed scope and is not provided.

2. Based on some news articles, the contracts between GSWA, Mr. Rubbishman, and Green Group, Herzog expire in 2026, while the RFI calls for operations to begin in 2027. What is GSWA's transition plan for the period between the end of the contract and the start of the new transfer station's operations?

**Response:** The Hauler-Only Transfer Station Facilities, Operation, and Waste Transport contract expires July 29, 2028, so the transition can occur within a year's time.

3. How many tons and/or cubic yards of MSW and recycling material is currently generated by GSWA customers? What is the current load that is being processed by the Mr. Rubbishman transfer station?

**Response:** In FY2022, the total MSW generated by GSWA customers is 26,875.36 tons, and total recycling material generated by GSWA customers is 1472.57 tons. The total MSW processed at the Hauler Only Transfer Station is 84,830.56 tons, and the total recycling material processed is 1472.57.

4. If it is not feasible to recycle one/some of the recyclable materials listed in the RFI (fiber, cans, plastics, glass), will the Contractor be allowed to dispose of that material as MSW without sorting and weighing it separately? Some potential issues that may



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make recycling impractical are difficulty in sorting (e.g. differentiating tin cans, which are not accepted at certain sites, from aluminum cans, which are accepted) and finding a site to accept the material (e.g. only GSWA accepts glass, but it is limited to residential glass). Also, will GSWA allow the Contractor to return glass to them for recycling?

**Response:** Yes, those materials can be disposed of at Layon. It will be weighed but not charged. Any material that will be collected as recyclable may encounter negative market conditions, therefore landfill disposal may occur.

5. Will GSWA designate which facilities the Contractor can deposit recycled waste such as metal, wood, cardboard, etc.?

**Response:** Yes, we can provide facilities that are currently accepting those materials. In the future, the contractor may propose other facilities and GSWA may concur with the request.

6. The RFI requires that the Contractor be able to transfer approximately 300 tons per day of MSW (approximately 98,000 tons per year), which must be received and processed on the same day; however, the RFI also requires that the processing facility be constructed to process up to 600 tons per day. If the Contractor is only able to transfer 300 tons per day and each day's load must be processed on the day it is received, does the processing facility still need to be able to process up to 600 tons per day?

**Response:** GSWA requires a Hauler Transfer Station facility to have the capacity to handle up to 600-tons of waste per day and to keep trailers and trucks available when needed. This requirement is in place to ensure that, in the event of an unforeseen circumstance such as a natural disaster, the facility can effectively manage an increased volume of waste beyond usual quantities and mitigate any potential disruptions in the waste management process.

7. Will a processing facility that plans to recycle a greater variety or volume of material, rather than disposing of it as MSW, be rated more favorably by GSWA?

**Response:** Yes, that would be of interest to GSWA, and would be one of many considerations in the evaluation.

8. If the Contractor is a JV, will the track record of each individual member qualify to be considered the Contractor's experience?



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**Response:** Individual accomplishments of the team members will be considered, however the performance of those individuals working as a group under the same organization would be given greater credence.

9. Based on a historical average, could GSWA please provide an estimate of how many cubic yards of MSW it takes to yield a weight of 1 ton (i.e. the conversion rate between the weight and volume of MSW)?

**Response:** A normal transfer trailer normally transports about 18 to 20 tons according to historical records.

Irvin L. Slike,  
General Manager



11-0836

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN**

**Receiver – Gershman, Brickner & Bratton, Inc., in its capacity as Receiver for the  
Solid Waste Management Division of the Department of Public Works**

**Government of Guam  
542 N. Marine Corps Drive  
Tamuning, Guam 96913**



**AND**

**Guahan Waste Control, Inc.  
299 Rojas Street  
Tamuning, Guam  
Post Office Box 24747  
GMF, Guam 96921**

**TO PROVIDE HAULER-ONLY TRANSFER STATION FACILITIES, OPERATION OF THE  
HAULER-ONLY TRANSFER STATION, AND WASTE TRANSPORTATION SERVICES**

COME NOW the undersigned and hereby agree to amend the above-titled Agreement  
as follows:

WHEREAS the Parties have determined that, in the interest of safety, it is desirable to have a vehicle with a "wide load" sign and rotating yellow lights on its rooftop escort every one of Contractor's tractor/Transport Trailer rigs through a portion of Route 4 between the public park in Ipan Talofofo and the turnoff to the Layon Landfill; and

WHEREAS the Contractor has contracted with a subcontractor to provide the vehicle escort services for a fixed monthly charge (the "Monthly Charge") of \$9,000.00 per month for the first year of services; and

WHEREAS the Receiver/SWMD has agreed that the Monthly Charge for the vehicle escort services shall be reimbursed by the Receiver/SWMD and that Contractor shall additionally be paid an administrative fee equal to 10% of the Monthly Charge and a Gross Receipts Tax equivalency;

NOW THEREFORE the Parties agree as follows:

1. The Contractor shall ensure that each of its Transport Trailer/tractor rigs is escorted by a vehicle with a "wide load" sign and rotating yellow lights on its rooftop escort every one of Contractor's tractor/Transport Trailer rigs through that portion of Route 4 between the public park located in Ipan Talofofo on the east side of Route 4 (referred to as Base Location #1 in the agreement between the Contractor and its subcontractor) and the roadway where the Contractor's Transport Trailer/tractor rigs turn off Route 4 to the Layon Landfill (referred to as Base Location #2 in the agreement between the Contractor and its subcontractor).

2. The Receiver/SWMD agrees that the Monthly Charge incurred by the Contractor for such vehicle escort services may be added as an authorized additional cost in the Contractor's invoice for the applicable Billing Period along with an administrative fee equal to 10% of the Monthly Charge and a GRT equivalency of 4% of the Monthly Charge and administrative fee. The Monthly Charge for the first year of vehicle escort services commencing on September 1, 2011 is \$9,000, resulting in an administrative fee of \$900 and a GRT equivalency of \$396. The Receiver/SWMD agrees to pay all such undisputed additional costs together with the Contractor's invoice for said Billing Period and to resolve disputed additional costs as set forth in the Agreement.

CFDRAU-4015

11-0836

3. The Receiver/SWMD shall not be entitled to any credit for any of the liquidated damages that the Contractor is allowed to claim as an allowable credit against sums due to the vehicle escort services subcontractor under the terms of their contract, as these liquidated damages are intended to compensate the Contractor for the estimated damages it incurs whenever the vehicle escort services subcontractor fails to show up promptly at the beginning of a workday and the Contractor is forced to make other arrangements for vehicle escort services. Instead, if other arrangements for vehicle escort services are successful and the service is actually provided in accordance with this amendment, the Receiver/SWMD agrees to pay the Contractor the monthly charge that the Contractor would have paid to its subcontractor absent such default and credit for liquidated damages.

4. This Amendment may be terminated by the Receiver/SWMD upon thirty (30) days advance written notice to the Contractor that the vehicle escort services are no longer required.

5. The Receiver/SWMD agrees that the vehicle escort services required by this amendment shall be provided for a period of one year and reserves the right to require that vehicle escort services be continued after one year on a month to month basis. The Receiver/SWMD shall continue to be required to reimburse the Contractor for such services accordance with the terms of this amendment.


6. Except as modified by this Amendment No. 1, all terms, covenants, and conditions of the Agreement shall remain in full force and effect.


Dated as of the date first written above.

CONTRACTOR

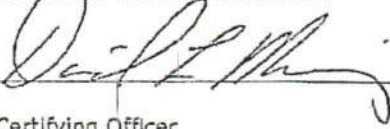
  
\_\_\_\_\_  
GUAHAN WASTE CONTROL, INC.  
A Guam corporation  
Name:  
Its:

APPROVED AS TO FORM AND LEGALITY:


  
\_\_\_\_\_  
LEONARDO RAPADAS - J. Basil O'Malley Jr.  
Attorney General of Guam, Acting  
11-0836  
APPROVED:

  
\_\_\_\_\_  
RAYMOND S. TENORIO  
Acting Governor of Guam

CERTIFIED FUNDS AVAILABLE:

  
\_\_\_\_\_  
Certifying Officer  
GERSHMAN, BRICKNER & BRATTON, INC.  
In its capacity as Receiver of the Solid  
Waste Management Division, Department  
of Public Works, Government of Guam

GOVERNMENT OF GUAM

  
\_\_\_\_\_  
GERSHMAN, BRICKNER & BRATTON, INC.  
In its capacity as Receiver of the Solid  
Waste Management Division, Department  
of Public Works, Government of Guam

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STATION AGREEMENT RE Q&C-0000.DOC







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FEB 20 2012  
Bureau of Budget and  
Management Research  
12-0208

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN**

Receiver - Gershman, Brickner & Bratton, Inc., in its capacity as Receiver  
for the Guam Solid Waste Authority  
Government of Guam  
542 N. Marine Corps Drive  
Tamuning, Guam 96913

AND

Guahan Waste Control, Inc.  
299 Rojas Street  
Tamuning, Guam  
Post Office Box 24747  
GMF, Guam 96921



**TO PROVIDE HAULER-ONLY TRANSFER STATION FACILITIES, OPERATION  
OF THE HAULER-ONLY TRANSFER STATION, AND WASTE TRANSPORTATION  
SERVICES**

COME NOW the undersigned and hereby agree to amend the above-titled Agreement as follows:

WHEREAS, the above Parties entered into the above-titled Agreement in May 2011; and

WHEREAS, the Guam Solid Waste Authority ("GSWA") was created as an autonomous agency by the enactment of Public Law 31-20 into law on April 18, 2011 and is the successor in interest to the Guam Department of Public Work's Solid Waste Management Division;

WHEREAS, the Receiver/GSWA has entered into a contract with the Naval Facilities Engineering Command Marianas ("NAVFAC") making NAVFAC a customer of the GSWA; and

WHEREAS, a condition of the GSWA contract with NAVFAC is that no Solid Waste brought by NAVFAC or its agents to the Hauler-Only Transfer Station in properly licensed Vehicles may be rejected, but that NAVFAC shall instead pay the reasonable additional costs incurred for sorting out Excluded Waste from the Solid Waste so delivered and for Disposal of all such Excluded Waste; and

WHEREAS, the Contractor and the Receiver/GSWA have agreed to handling charges for the sorting out and Disposal of Excluded Waste brought to the Hauler-Only Transfer Station by either NAVFAC or agents of NAVFAC, with the exception of Hazardous Waste, Hazardous Waste and Industrial Waste;

RECEIVED

APR 12 2012

DISTRICT COURT OF GUAM  
HAGATNA, GUAM

CF00312-1155

RECEIVED  
FEB 29 2012  
Office of the Attorney General of Guam  
Civil/Solicitor Division

NOW THEREFORE the Parties agree as follows:

1. The following new definitions are hereby added to Section 1.01 of the Agreement:

'Asbestos Waste' means Asbestos Containing Material ("ACM") including all removed ACM, as well as disposable items used during asbestos removal work, such as plastic sheeting and disposable coveralls, respirators and cleaning rags. Asbestos Containing Material is any material, object, product, or debris that contains asbestos. Asbestos is the fibrous form of mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos), tremolite, or any mixture containing one or more of the mineral silicates belonging to the serpentine or amphibole groups.

'NAVFAC' means the Naval Facilities Engineering Command Marianas.

2. The following new Section 2.03(e) is hereby added to the Agreement:

(e) Limited Right to Reject NAVFAC Solid Waste. Notwithstanding the provisions of Subsections (a) and (b) of this Section 2.03, the Contractor shall only be permitted to reject Solid Waste delivered by NAVFAC or its agents to the Facility if: I) the Solid Waste contains Asbestos Waste, Hazardous Waste or Industrial Waste; or II) acceptance of such Solid Waste is not allowed under the Contractor's Permits or Applicable Law. With the exception of Solid Waste that the Contractor is allowed to reject under this subsection (e), the Contractor shall accept all Solid Waste delivered by NAVFAC or its agents, sort out all Excluded Waste contained in such Solid Waste, and arrange for Disposal of the same. To the extent that the Excluded Waste is present in more than trace amounts in Solid Waste delivered by NAVFAC, the provisions of Article II, Section 2.01(e)(iii) of the Agreement may be suspended by the Contractor. In such cases, the Contractor shall allow such Solid Waste to be dumped from the Vehicle in which it was transported as soon as, in the judgment of the Contractor, the efficient operation of the Facility permits. As provided in Section 4.03(d), the Contractor is authorized to include the charges for such sorting and Disposal as additional cost items on its invoice for the applicable Billing Period at the rates prescribed in Schedule 9.

3. The following new Section 4.02(d) is hereby added to the Agreement:

(d) Additional Charge for Excluded Waste Required to Be Accepted at the Facility. In the event that the Contractor is required to accept delivery of Solid Waste containing Excluded Waste in accordance with the requirements of Section 2.03(e), the Contractor shall be permitted to include as additional cost items on its invoice for the applicable Billing Period those additional charges for such services at the rates prescribed in Schedule 9. The additional charge permitted



## ASSIGNMENT AGREEMENT

This assignment agreement (hereinafter "Assignment Agreement") is entered between Receiver – Gershman, Brickner & Bratton, Inc., in its capacity as Receiver for the Guam Solid Waste Authority (hereinafter "Assignor"), and the Guam Solid Waste Authority ("Assignee").

**WHEREAS**, this Assignment Agreement assigns all rights and obligations under the Contract to provide hauler-only transfer station facilities, operation of the hauler-only transfer station, and waste transportation services ("Original Contract") entered on July 29, 2011, between Assignor and Guahan Waste Control, Inc. (hereinafter "Contractor") on and any other subsequent agreements, of whatever kind and nature;

**WHEREAS**, Assignee agrees to the assignment of rights, interests and obligations under the Original Contract;

**WHEREAS**, Contractor agrees to such an assignment and is a signatory below, and pursuant to *Article X, Section 10.01* of the Original Contract, Assignee is not prohibited from entering into this Assignment Agreement; and

**WHEREAS**, Assignor and Assignee agree that this Assignment Agreement shall take effect upon termination of the Receivership.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Assignment and Assumption.** The Assignor hereby transfers and assigns to the Assignee, and the Assignee hereby acquires from the Assignor all of the Assignor's rights and interests in and to the Original Contract, of whatever kind or nature, and the Assignee hereby assumes and agrees to perform all obligations, duties, liabilities and commitments of the Assignor under the Original Contract and any subsequent written agreements, of whatever kind or nature.
2. **Retention of Obligations.** The Assignor shall not be liable with respect to all of the Assignor's obligations, duties, liabilities and commitments under the Original Contract.
3. **Effectiveness.** This Assignment Agreement shall be effective as of the date first set forth above.
4. **Governing Law; Binding Effect.** The interpretation, effect, and validity of this Assignment Agreement shall be governed and construed in accordance with the laws and regulations of Guam and U.S. federal law, if applicable. Any court action shall be exclusively in Guam.
5. **Counterparts.** This Assignment Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which shall be deemed to be an original copy of this Assignment Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement. Delivery of such counterparts by facsimile or electronic mail shall be deemed effective as manual delivery.



*[Signature page follows]*

IN WITNESS WHEREOF, the Assignee, Assignor, and Contractor have executed this Assignment Agreement, which is to take effect on the date the Receivership terminates.

**ASSIGNOR:**

Receiver – Gershman, Brickner &  
Bratton, Inc

By: \_\_\_\_\_

Name: David L. Manning

Date:

**ASSIGNEE:**

Guam Solid Waste Authority

By: Larry J. Gast

Name: Larry J. Gast

Date: 05-01-2019

**CONTRACTOR:**

Guahan Waste Control, Inc.

By: \_\_\_\_\_

Name: **Robert A. Perron**

Date:



# GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO  
Governor of Guam

JOSHUA F. TENORIO  
Lt. Governor of Guam

IRVIN SLIKE  
General Manager



January 23, 2023

## **VIA HAND DELIVERY**

Robert Perron  
President  
Guahan Waste Control, Inc.  
299 Rojas Street  
Harmon Industrial Park  
Tamuning, Guam 96913

***Dear Mr. Perron,***

Pursuant to Amendment No. 1 of the Agreement between Guam Solid Waste Authority (GSWA) and your company for the Hauler Only Transfer Station Facilities, Operation of the Hauler Only Transfer Station, and Waste Transportation Services, the amendment may be terminated by GSWA upon thirty (30) days advance written notice to the contractor that the vehicle escort services are no longer required.

With no accidents reported in 11 years, GSWA believes that this additional requirement is no longer necessary. Therefore, this shall serve as written notice that effective February 23, 2023, Amendment no. 1 shall be terminated.

Should GWC wish to continue the use of the vehicle escort services, it may do so at the Contractor's sole cost and expense pursuant to Section 2.11 of the agreement.

If you have any questions or concerns, please contact me at 671-646-3239 or via email at [Irvin.slike@gswa.guam.gov](mailto:Irvin.slike@gswa.guam.gov).

Sincerely,

Irvin L. Slike  
General Manager





## AGREEMENT BETWEEN

**Receiver – Gershman, Brickner & Bratton, Inc., in its capacity as  
Receiver for the Solid Waste Management Division of the  
Department of Public Works  
Government of Guam  
542 N. Marine Corps Drive  
Tamuning, Guam 96913**



**AND**

**Guahan Waste Control, Inc.  
299 Rojas Street  
Tamuning, Guam  
Post Office Box 24747  
GMF, Guam 96921**

**TO PROVIDE HAULER-ONLY TRANSFER STATION FACILITIES,  
OPERATION OF THE HAULER-ONLY TRANSFER STATION, AND WASTE  
TRANSPORTATION SERVICES**



**R E C E I V E D**  
**JUN 09 2011**

Office of the Attorney General of Guam  
Civil/Solicitor Division

**R E C E I V E D**  
**11:24am**  
**MAY 31 2011**  
**Bureau of Budget and  
Management Research**

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### **SCHEDULES**

SCHEDULE 1 FACILITY IMPROVEMENTS

SCHEDULE 2 SOLID WASTE SCREENING PROTOCOL

SCHEDULE 3 INSURANCE REQUIREMENTS

SCHEDULE 4 RECORDKEEPING REQUIREMENTS

SCHEDULE 5 FORM OF LETTER OF CREDIT

SCHEDULE 6 CLOSE OUT COSTS IN EVENT OF TERMINATION

SCHEDULE 7 EMERGENCY ACTION PLAN

### **EXHIBITS**

EXHIBIT A LIST OF EXCLUDED WASTE



This Agreement is entered into on this \_\_\_\_\_ day of May, 2011, by and between Gershman, Brickner & Bratton, Inc. ("GBB"), in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works, Government of Guam ("Receiver"), and Guahan Waste Control, Inc. (the "Contractor"), a corporation duly organized under the laws of Guam.

**WITNESSETH:**

**WHEREAS**, pursuant to the March 17, 2008, Order (the "Receivership Order") of the United States District Court for the District of Guam (the "District Court") in Civil Case No. 02-00022, GBB was appointed as Receiver for the Solid Waste Management Division of the Department of Public Works, an agency of the Government of Guam ("SWMD") in order to enforce the terms of the February 11, 2004, Consent Decree issued by the District Court in that case (the "Consent Decree"); and

**WHEREAS**, the SWMD, acting through and by the Receiver ("Receiver/SWMD") has authorized and prepared specifications to procure services for the supply and operation of a Hauler-Only Transfer Station and waste transportation services for Solid Waste; and

**WHEREAS**, on July 12, 2010, the Receiver/SWMD issued a Request For Expression of Interest ("RFEI") for such Hauler-Only Transfer Station supply and operation and waste transportation services; and

**WHEREAS**, the Receiver/SWMD desires to ensure the provision of Hauler-Only Transfer Station facilities, Hauler-Only Transfer Station operation services, and waste transportation services in a reliable, cost-effective and environmentally sound manner; and

**WHEREAS**, the Receiver/SWMD, after reviewing and evaluating the response to the RFEI, has determined that the Contractor is the sole source for these services in accordance with the requirements of the Guam Procurement Law (5 G.C.A. § 5001 et seq.) and related regulations; and

**WHEREAS**, in order to effectuate the above-described goals, the Receiver/SWMD and the Contractor have negotiated in good faith and desire to enter into this Agreement; and

**WHEREAS**, the Receiver/SWMD, the Government of Guam and the Contractor have duly authorized their respective officials and officers to enter into and execute this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and of the undertakings of each Party to the other, the Parties hereto, intending to be legally bound hereby, mutually covenant, promise and agree as follows:

## ARTICLE I. DEFINITIONS AND INTERPRETATIONS

**Section 1.01. Definitions.** Unless the context clearly indicates otherwise, the terms below are defined for this Agreement as follows:

**'Acceptable Waste'** means waste that is acceptable at the Layon Landfill under the Landfill Permits and that is allowed to be processed at the Facility by the Solid Waste Facility Permit, including Household and Commercial Waste, various non-hazardous Industrial Waste, permitted special waste from healthcare-related facilities and other special waste as permitted. Wastes such as Construction and Demolition Debris, E-wastes, Green Wastes, regulated Hazardous Wastes, PCB wastes, and radioactive wastes from healthcare-related facilities, bulk liquids, liquid paints, oils, batteries and asbestos wastes are not acceptable for Disposal at the Layon Landfill and not included in this definition of Acceptable Waste.

**'Affiliate'** means any corporation, firm, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with a Party. As used herein, control means ownership, directly or through one or more Affiliates, of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby a party controls or has the right to control the Board of Directors or equivalent governing body of a corporation or other entity.

**'Agreement'** as used herein means this "Agreement to Provide Hauler-Only Transfer Station Facilities, Operation of the Hauler-Only Transfer Station, and Waste Transportation Services," together with all Schedules and Exhibits thereto.

**'Alternate Transfer Facility'** means a location the Contractor designates in the event that the Facility is unavailable where Solid Waste may be processed and Contract Waste loaded for transportation to the Layon Landfill.

**'Applicable Laws'** means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similar legally binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Entity that relates to or affects the Receiver/SWMD, the Government of Guam, the Contractor, the Facility (or any portion thereof), or the performance by a Party of its obligations hereunder.

**'Billing Period'** shall mean the time period covered by the regular and periodic invoices that the Contractor will be providing to the Receiver/SWMD as provided in Section 4.02.

**'Business Day'** means any day of any month except Sundays and official holidays of the Government of Guam as specified in 1 GCA §1000.

**'Close Out Costs'** means those costs specified in Schedule 6 that the Contractor is entitled to recover from the Receiver/SWMD in the event of termination of this Agreement prior to expiration of the Initial Term as specified in Section 9.06.



**'Commercial Operation Date'** means the first day that the Facility is able to process Solid Waste in accordance with the requirements of this Agreement, Applicable Laws, the Solid Waste Facility Permit and all other Government Approvals required for operation of the Facility and transportation of Contract Waste to the Layon Landfill.

**'Commercial Waste'** means all types of Solid Waste, except Hazardous Wastes, generated by stores, offices, restaurants, warehouses, multiple dwellings of five or more units, hotels, motels, temporary worker housing, crew quarters, campgrounds, picnic areas, and day-use recreation areas and other non-manufacturing activities, excluding Household and Industrial Wastes.

**'Construction and Demolition Debris'** (also referred to as C & D Waste) means waste resulting from construction projects, including all materials that are directly or indirectly the by-products of construction work, including, but not limited to, bricks and masonry, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics, and Demolition Waste, but the term does not include Hazardous Waste or asbestos waste.

**'Contract Date'** means the date of execution and delivery of this Agreement by the Receiver/SWMD after it has been executed by the Contractor.

**'Contract Year'** shall mean each 365-day period following the Contract Date.

**'Contract Waste'** means all waste that falls under the obligation of the Contractor under this Agreement to transport to the Layon Landfill, and may be comprised of both Acceptable Waste and Recyclable Materials that have not been separated from the Solid Waste brought to the Facility. Current projections anticipate a minimum of 80,000 Tons of Contract Waste per year and a maximum of approximately 145,000 Tons per year, while the Contractor is required to transport up to 600 Tons on any single day from the Facility to the Layon Landfill. Contract Waste does not include Solid Waste rejected by the Receiver/SWMD at the scales to the Facility operated by the Receiver/SWMD.

**'Demolition Waste'** means Solid Waste, largely Inert Waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition Waste consists of, but is not limited to, concrete, brick, bituminous concrete, wood and masonry, roofing material, steel, and minor amounts of other metals like copper. Plaster, dry wall or any other material that is likely to produce gases or a leachate during the decomposition process are not considered to be Demolition Waste. Asbestos waste is also not considered to be Demolition Waste.

**'Disposal'** means the discharge, deposit, dumping, or placing of any Solid Waste into or on any permitted facility so that such Solid Waste or any constituent thereof will not enter the environment or be emitted into the air or discharged into any waters including ground-water.

**'Environmental Laws'** means statutes, regulations, orders, directives and common law concerning public health and safety, nuisance, pollution and protection of the environment, including, without limitation, Guam Environmental Protection Agency Solid Waste Disposal Rules and Regulations (GARR: Title 22, Division 4, Chapter 23), the Solid

Waste Disposal Act (42 U.S.C. §§6901, et seq.), the Clean Air Act (42 U.S.C. §§7401, et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§1251, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601, et seq.) and similar local laws.

'Excluded Waste' means any and all Solid Waste for which the acceptance by the Layon Landfill would cause a violation of any Landfill Permits or Applicable Laws, cause substantial damage to all or any portion of the Layon Landfill or any improvements thereon or equipment used in connection therewith, or present a substantial danger to the health or safety of the public in the event of Disposal at the Layon Landfill. Excluded Waste also includes waste that is banned by the Receiver from being accepted at the Layon Landfill. This includes old corrugated containers, Green Waste, and Construction and Demolition Debris. The current list of Excluded Waste is set forth in Exhibit A.

'E-Waste' means cathode-ray tube or flat-panel computer monitors and televisions having a viewable area greater than four (4) inches, measured diagonally; desktop computers; and laptop or portable computers.

'Facility' means the Hauler-Only Transfer Station that is the subject of this Agreement. The location of the Facility is Lot Number 5166-2-6-R2, Harmon.

'First Renewal Term' means the first five (5)-year period following the Initial Term.

'Garbage' means discarded animal and vegetable wastes, and animal and vegetable wastes resulting from the handling, preparation, cooking, serving and consumption of foods, including waste materials from markets, storage facilities, handling and sale of produce such as cans, bottles and cartons, in which it was received and wrapping in which it may have been placed for Disposal, swill and carcasses of dead animals of such a character and proportion as to be capable of attracting or providing food for vectors. This does not include raw sewage or sludge related to wastewater processes.

'Government Approvals' means all licenses, certificates, Permits and approvals required from any Governmental Entity for operation or expansion of the Facility, or the performance of the Contractor's obligations under this Agreement.

'Governmental Entity' means, as appropriate, any one or several of any court of competent jurisdiction, the United States of America, the Government of Guam or any appropriate governmental entity with jurisdiction over the Contractor or the Receiver/SWMD or their activities relating to the Facility or the Layon Landfill; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the Contractor, the Facility or the operation thereof, the transfer, transportation, or Disposal of Solid Waste or any services or utilities related to any of the foregoing.

'Guaranteed Transport Trailer Capacity' shall mean the lesser of: a) 95% of the maximum weight or b) 95% of the volume capacity of a Transport Trailer; provided however, that the Guaranteed Transport Trailer Capacity as calculated above shall be further reduced to the maximum load permitted on any bridge or roadway between the

Facility and the Layon Landfill over which the Transport Trailers will be conveyed after factoring in the weight of Vehicle transporting the Transport Trailer and the weight of the Transport Trailer before it is loaded with Contract Waste.

'Guam Environmental Protection Agency' or 'GEPA' means the Agency charged with the powers and duties as indicated in 10 Guam Code Annotated, Division 2, Chapter 45 and other related chapters.

'Green Waste' means leaves, grass clippings, vegetative and garden debris, brush, including clean woody vegetative material that result from landscaping maintenance and land-cleaning operations. The term does not include stumps, roots, or shrubs with intact root balls.

'Hauler' means any business entity, governmental organization, or person which has been issued a permit to collect and transport Solid Waste in accordance with Applicable Laws.

'Hauler Procedures' means the procedures that all Haulers must follow when using the Facility. Hauler Procedures shall be established by the Receiver/SWMD in consultation with the Contractor.

'Hazardous Waste' means any material or substance which, by reason of its composition or characteristics:

(A) is Hazardous Waste as defined in the Solid Waste Disposal Act, 42 USC §6901, et seq., as amended, replaced or superseded and the regulations implementing same;

(B) is a hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601, et seq.;

(C) is material the Disposal of which is regulated by the Toxic Substances Control Act, 15 USC §2601, et seq., as amended, replaced, or superseded, and the regulations implementing same;

(D) is special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954;

(E) is Infectious, pathological or biological waste;

(F) is treated as Hazardous Waste or as a hazardous substance under Applicable Laws; or

(G) requires a Hazardous Waste or similar permit for its storage, treatment, Incineration, or Disposal.

'Household Waste' means any Solid Waste (including Garbage and trash) derived from households of single and multiple residences of up to four units.

**'Industrial Waste'** means Solid Waste generated by manufacturing or Industrial processes that is not a Hazardous Waste regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) or Guam's Hazardous Waste Management Regulations. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes/operations: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

**'Inert Waste'** means non-combustible waste that will not cause any leachate or cause any environmental concern and that is likely to retain its physical and chemical structure under expected conditions of Disposal, including resistance to biological attack and chemical attack by water that is acidic or alkaline.

**'Infectious Waste'** means:

(A) equipment, instruments, utensils and fomites of a disposed nature used in the treatment of patients or animals who are suspected by a medical professional to have or have been diagnosed as having a communicable disease and must therefore, be isolated as required by public health agencies; or

(B) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta, and excretion obtained from patients or laboratory animals) and disposal fomites attendant thereto and similar disposal materials from outpatient areas and emergency rooms; or

(C) carcass of any animal that has died from a communicable disease.

**'Initial Term'** means the term set forth in Section 5.01 of this Agreement.

**'Landfill Permits'** means all Permits required for the construction and operation of the Layon Landfill, as the same may be modified, amended and supplemented from time to time.

**'Layon Landfill', or 'Landfill'** means the Government of Guam-owned landfill located at Lot No. B-3 REM-2, Dandan Road, Malojloj, Inarajan, Guam, all other real property that may now or in the future be acquired for landfilling operations as designated by the Government of Guam, and all improvements and appurtenances thereto.

**'Minimum Monthly Charge'** means the minimum Service Charge for each Billing Period which shall be calculated by multiplying the sum of the Facility Fee, the Operations Fee, the Transport Fee and the Fuel Charge by 6,667.



**'Odor Control'** means actions to comply with all limits and requirements established by Applicable Laws and Government Approvals with respect to the control of all odor at the Facility.

**'Overdue Rate'** means the rate specified in the Guam Prompt Payment Act (5 G.C.A. §22501 et seq.).

**'Party'** means either the Receiver/SWMD or the Contractor.

**'Parties'** means the Receiver/SWMD and the Contractor.

**'Permits'** means the applicable approvals, permits, authorizations, registrations, certifications, and licenses issued by Governmental Entities required by the Contractor for the construction, operation and maintenance of the Facility, and with respect to any other obligations necessary to be carried out under this Agreement.

**'Person'** means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, or any agency, department, or instrumentality of the federal government or Government of Guam, or any other legal representative, agent or assignee.

**'Rating Service'** means an established company that rates bonds as expressed in letters ranging from 'AAA', which is the highest grade, to 'C' ("junk"), which is the lowest grade. Different rating services use the same letter grades, but use various combinations of upper- and lower-case letters to differentiate themselves.

**'Receiver/SWMD'** is a term referring to the contracting entity for the Facility. Under the terms of the Orders of the U.S. District Court of Guam appointing GBB as Receiver, "the Receiver shall have full power and authority to enforce the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and authority of the Solid Waste Management Division." After the termination of the receivership of the SWMD by the U.S. District Court of Guam, the term shall mean the Solid Waste Management Division of the Department of Public Works, Government of Guam or any successor organization designated to carry out the duties and responsibilities of the Solid Waste Management Division.

**'Receiver/SWMD Designated Facility'** means a location designated by the Receiver/SWMD under circumstances when the Facility is unavailable or in the event of an emergency need for a designated facility where Solid Waste may be delivered to be transported to the Layon Landfill.

**'Receiving Time'** means the hours of operation at the Facility when Solid Waste is received into the Facility and weighed on the Facility's scales located at the Facility's scale house. The Receiving Time will be approved by the Receiver/SWMD and be developed in coordination with the receiving hours of the Layon Landfill. The total Receiving Time for each week shall not exceed fifty three (53) hours unless otherwise agreed to in writing by the Parties, provided however, that the Parties agree that the Facility shall be not be closed on any day that the SWMD collects trash from its residential customers.

**'Recyclable Material'** means material that has been or could be recovered or diverted from the Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products, which may otherwise be produced using raw or virgin materials. Recyclable Material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the entity actually abandoning or disposing of the material.

**'Refuse'** means anything that is discarded as worthless and useless.

**'Representative'** means any Person or organization, whether in a paid or voluntary status, working in conjunction with a particular Party.

**'Rubbish'** means non-putrescible Solid Waste, including ashes, consisting of both combustible and noncombustible waste such as paper, cardboard, cans, yard clippings, wood, glass, bedding, crockery and broken or rejected matter or litter of any kind.

**'Second Renewal Term'** means the five (5)-year period following the First Renewal Term.

**'Solid Waste'** means any Garbage, Rubbish or Refuse discarded or spilled material(s), including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community and institutional activities. The term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880); or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

**'Solid Waste Facility Permit'** means the Permit issued by Guam Environmental Protection Agency for the Facility.

**'Term'** means the Initial Term of the Agreement, together with the First Renewal Term and Second Renewal Term of the Agreement to the extent that neither Party has exercised its option not to extend the Agreement as provided in Section 5.02.

**'Tipping Floor'** is the floor at the Facility where a trash collection Vehicle tips its load of Solid Waste out of the Vehicle before the Solid Waste is loaded into Transport Trailers and transported to the Layon Landfill.

**'Ton'** means a short ton of 2,000 pounds.

**'Transfer Station'** or **'Hauler-Only Transfer Station'** means a permitted or registered facility where Solid Waste is temporarily deposited by a Hauler approved by the Receiver/SWMD and prepared for transport on larger transfer Vehicles for ultimate Disposal to the Layon Landfill. In the case of Excluded Waste, including Recyclables, such waste will be transferred to another facility approved by GEPA for processing and disposition of such

waste unless the Contractor's permit authorizes the Contractor to process such Excluded Waste.

'Transport Trailers' means open top trailers, each of which shall have a manufacturer's specified gross weight rating of 80,000 pounds, into which the Contractor places the Contract Waste on the Tipping Floor and thereafter uses to transport the Contract Waste to the Layon Landfill.

'Uncontrollable Circumstance' means any act, event or condition occurring on or after the Contract Date that has had, or may reasonably be expected to have, a material and adverse effect (for this purpose, any act, event or condition or the costs of which are the result of the willful or negligent action or inaction by the Party claiming an Uncontrollable Circumstance shall not be deemed to have a material and adverse effect) on a right or an obligation of either or both the Receiver/SWMD or the Contractor under this Agreement if such act, event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing under this Agreement. Uncontrollable Circumstances shall include the following:

- (a) an act of God, landslide, lightning, earthquake, fire, typhoon, explosion, flood, nuclear radiation, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance or any similar occurrence, or a condemnation or other taking by or on behalf of any public, quasi-public or private entity;
- (b) the suspension, termination, interruption, denial or failure of renewal or continuation of any Permit, license, consent, authorization, or approval required for the provision of services to be provided under this Agreement; provided, however, that such event shall not be the result of the willful or negligent action or inaction of the Party relying thereon;
- (c) the loss of or inability to obtain any utility services, including water, sewerage, fuel oil, gasoline and electric power other than that generated by the Facility, necessary for operation of the Facility if such loss or inability is not the result of the willful or negligent action or inaction of the Contractor;
- (d) any increase in transportation time between the Facility and the Layon Landfill of more than 30 minutes for each round trip caused by construction activities, road closures and detours, traffic accidents and other delays beyond the Contractor's reasonable control; and
- (e) a public or private labor dispute relating to the collection, transportation or Disposal of Solid Waste which involves persons other than those working for (or on behalf of) the Contractor or any Affiliate or subcontractor hired by the Contractor.

Except as otherwise provided in Section 7.01, the occurrence of an Uncontrollable Circumstance shall only suspend the obligations of the Parties hereto to perform their respective obligations hereunder to the extent that such performance is impaired or prevented as a direct result of such occurrence.

'Vehicle' means every device in, upon, or by which any Person or property is or may be transported or drawn upon a public highway, or other rolling stock used in operation of the Facility.

'Violation' means any determination by a Governmental Entity, after notice to and permitted contest by the Receiver/SWMD, the Government of Guam or the Contractor, that the Facility is in violation of or not in compliance with any portion of its Permit or Applicable Laws under its jurisdiction; however, an alleged violation shall not constitute a Violation until a final decision is rendered in any permitted contest.

**Section 1.02. Interpretation.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.

(c) No approval, consent or acceptance required to be given or made by any Person or Party hereunder shall be unreasonably withheld.

(d) All references herein to particular articles or sections without reference to a specific document are reference to articles or sections of this Agreement.

(e) The captions and headings herein are solely for convenience of reference and shall not constitute part of this Agreement nor shall they affect its meaning, construction or effect.

(f) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement in its entirety and not the particular article or section of this Agreement in which they appear, and the term "hereafter" means after the Contract Date of this Agreement, and the term "heretofore" means before the Contract Date of this Agreement.

(g) The word "including" means "including but not limited to."

(h) All schedules and exhibits to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made part of this Agreement.

(i) Any payment due hereunder on or before a non-Business Day shall be due and payable on the first succeeding Business Day.

**SECTION 1.03. Ambiguities.** The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or schedules and exhibits hereto.



## ARTICLE II. CONTRACTOR'S OBLIGATIONS

### Section 2.01. Operation and Maintenance of Facility.

(a) General. For and in consideration of the sums to be paid herein by the Receiver/SWMD, the Contractor agrees to provide a Hauler-Only Transfer Station (the "Facility") to the Receiver/SWMD, operate the Facility, and transport Contract Waste from the Facility to the Layon Landfill, all as provided in this Agreement.

(b) Facility Control. At all times during the Term of this Agreement, the Contractor shall own or otherwise have control of the Facility. The Contractor shall cause Facility at all times during the Term of this Agreement to be properly zoned and permitted to lawfully enable the Facility to be used for the purposes contemplated by this Agreement and to comply with all Applicable Laws and Government Approvals.

(c) Design, Permitting, Financing, Acquisition and Construction of Required Improvements to the Facility. The Contractor shall have sole responsibility for the design, permitting, financing and construction of required improvements to the Facility. Facility improvements shall be designed and constructed in accordance with the Facility Improvement Plan set forth in Schedule 1 so as to ensure that the Facility shall be capable of processing the Solid Waste anticipated under this Agreement. The Contractor shall use its best efforts to cause the Facility to achieve the Commercial Operation Date on or before August 31, 2011. The Facility shall be designed and constructed in accordance with all Applicable Laws and Government Approvals, and shall include fencing, signs, security, fire protection, radiation detection equipment, communications equipment, and similar safety measures. The Contractor shall bear all costs of design, permitting, financing, and construction of the required Facility improvements and the related equipment, including costs of design, engineering, consulting, permitting, utilities, interconnections, materials, labor, damages, fines and penalties. If the Commercial Operation Date is later than 120 days from the date this Agreement is signed by all of the signatories listed at the end of this Agreement, except to the extent the Commercial Operation Date is delayed due to an Uncontrollable Circumstance encountered by the Contractor or the fault of the Receiver/SWMD, the Contractor shall pay to the Receiver/SWMD as and for liquidated damages an amount equal to \$1,000.00 per Business Day, payable in arrears not later than thirty (30) days following the day after the scheduled Commercial Operation Date until the Commercial Operation Date is achieved. Interest at the Overdue Rate shall accrue on the amount due each day after its due date.

(d) Facility Costs. The Contractor shall acquire, at its own cost and expense, all machinery, equipment, rolling stock, furniture, electronic equipment, computers, software, databases and other equipment, labor, and supplies necessary or appropriate for performing the Contractor's obligations under this Agreement.

(e) Operation of Facility. On and after the Commercial Operation Date, the Contractor shall operate the Facility and conduct the waste transportation services:

- (i) In a safe and sound manner;
- (ii) in a manner that permits processing of Solid Waste and delivery of Contract Waste at all times during the Receiving Time;
- (iii) in a manner that will permit weighing, delivery and exiting of Vehicles delivering Solid Waste to the Facility in not more than fifteen (15) minutes after issuance of a weight slip by SWMD employees located at the Facility's scale house; provided, however, that the time limit will be extended to account for delays attributable to Haulers bringing Excluded Waste to the Facility; and
- (iv) as required by this Agreement, Applicable Laws, the Solid Waste Facility Permit and all other Permits and Government Approvals applicable to the Contractor's performance of its obligations under this Agreement.

The Contractor shall be responsible for maintaining and renewing all licenses, the Solid Waste Facility Permit and all other Permits and Government Approvals required for operation of the Facility and providing the waste transportation services in effect at all times and operating the Facility in accordance with Applicable Laws, the Solid Waste Facility Permit and all other Permits and Government Approvals.

(f) Installation of Weighing Facilities. The Contractor shall acquire, install and maintain, at its sole cost and expense, all scales and weighing facilities. There are two separate sets of scales to be installed and weighing operations to be performed at the Facility. The Receiver/SWMD shall operate the first set of scales to weigh all Haulers, near or at the entrance of the Facility to enable the Receiver/SWMD to invoice the Haulers for tipping fees and the Contractor to calculate the Service Charge for each Billing Period. The Contractor shall operate the second set of scales to weigh the Contractor's Transport Trailers for the purpose of tracking the daily quantity of Contract Waste transported from the Facility to the Layon Landfill, as well as ensuring that the Transport Trailers do not exceed the legal weight for transportation of Contract Waste on the public roadways connecting the Facility to the Layon Landfill.

(g) Weighing, Identification, Inspection of Vehicles. Vehicles not complying with the Hauler Procedures may be turned away from the Facility by the Receiver/SWMD. Vehicles carrying exclusively Recyclable Materials shall bypass the scale house and any such Vehicles shall not be required to pass over the first set of scales operated by the Receiver/SWMD, as no tipping fees or Service Charges shall be imposed on Vehicles transporting exclusively Recyclable Materials to the Facility.

(h) Transportation of Waste From Facility to Layon Landfill. The Contractor shall maintain at all times during the Term of this Agreement facilities and equipment (including Transport Trailers, or contractual arrangements for the same) and transportation arrangements reasonable and sufficient to transport all Contract Waste delivered to the Facility to the Layon Landfill.

**Section 2.02. Obligation to Process Solid Waste and Transport Contract Waste.**

(a) General. The Contractor shall (except to the extent otherwise provided in Section 2.03 hereof) process Solid Waste delivered to the Facility by a Hauler during the Receiving Time for which a weight slip is issued by the Receiver/SWMD, and transfer into Transport Trailers and transport all Contract Waste to the Layon Landfill, all in accordance with Applicable Laws, Permits and Government Approvals. The Contractor shall have no obligation to determine whether a Hauler is in good standing with the Receiver/SWMD.

(b) Cooperation in Operation of Weighing Facilities. The Receiver/SWMD shall operate the weighing facilities at the entrance to the Facility and maintain logs for the purpose of determining the tipping fees to be charged to Haulers and recording the flow of Solid Waste received at the Facility in accordance with Section 3.02, and for purposes of determining the Service Charge set forth in Section 4.01. The Contractor shall assist the Receiver/SWMD in these activities by:

- i) assuring that each Vehicle carrying Solid Waste entering the Facility is weighed at the SWMD scale house and that no Solid Waste is unloaded from any Vehicle onto the Tipping Floor unless a weight slip issued by the Receiver/SWMD scale house employees is first presented to the Contractor;
- ii) Identifying each Hauler delivering Excluded Waste to the Facility, including the date and the time of each delivery; and
- iii) informing the Receiver/SWMD whenever Solid Waste brought to the Facility contains an unusually high percentage of Recyclable Materials, including providing the Receiver/SWMD with the identity of the Hauler delivering such Recyclable Materials to the Facility.

(c) Odor Control/Litter. The Facility shall be designed, constructed, and operated to limit odors from escaping the Facility, with a goal that no odors should be able to be detected outside the boundaries of the Facility. The Facility shall be kept free and clear of litter and debris at all times to the greatest extent practicable and its Tipping Floor washed down each day at the end of operations. The whole of the Tipping Floor and the loading area above the Transport Trailers shall be under roof. The two (2) sides of the Tipping Floor shall be enclosed. The rear of the Tipping Floor shall be partially enclosed from the roof down to a point that is at least

one (1) foot below the top level of the Transport Trailers. The front of the Tipping Floor where Vehicles enter the Tipping Floor need not be enclosed.

(d) Performance Requirements. The Contractor shall operate the Facility to meet the following performance requirements throughout the Term of this Agreement:

- (i) the Contractor will process at the Facility all Solid Waste;
- (ii) the Contractor will accept and load the Guaranteed Transport Trailer Capacity of Contract Waste onto the Transport Trailers at the Facility, excluding the last two Transport Trailers each day which may by necessity be carrying partial loads to the Layon Landfill;
- (iii) the Facility shall not be closed during any Contract Year for scheduled outages at any time during the Receiving Time excluding outages caused by an Uncontrollable Circumstance; and
- (iv) unavailability of the Facility during any Contract Year due to unscheduled (forced) outages will not exceed one percent (1%) of Receiving Time, excluding outages caused by an Uncontrollable Circumstance.

**Section 2.03. Contractor's Right to Reject Deliveries of Solid Waste and Responsibility for Spillage.**

(a) Contractor's Rejection Rights. The Contractor may reject deliveries of Solid Waste delivered to the Facility under the following circumstances:

- (i) Solid Waste is delivered to the Facility at hours other than the permitted Receiving Time or in violation of the Hauler Procedures for use of the Facility;
- (ii) Solid Waste that the Contractor is unable to process as a result of the occurrence of an Uncontrollable Circumstance or the fault of the Receiver/SWMD;
- (iii) Solid Waste is delivered to the Facility in excess of the 600-Ton daily maximum for Contract Waste to the extent that the Facility is unable to process such additional Solid Waste; or
- (iv) If necessary to protect any Person or property located at, on, near or in the vicinity of the Facility.

(b) Contractor's Rejection Obligations. The Contractor shall promptly notify the Receiver/SWMD of any Solid Waste rejected pursuant to Section 2.03(a) above including the identity of each Hauler.



(c) Other Obligations Not Affected by Contractor's Right to Reject. The provisions of Section 2.03(a) above shall only apply to the Contractor's right to reject Solid Waste and shall not abrogate any of the Contractor's other rights or obligations (including the payment of damages) under the terms of this Agreement.

(d) Spillage. In the event of a spill, leak or loss of Solid Waste at the Facility or during transport of Contract Waste to the Layon Landfill, the Contractor shall immediately arrange for the cleanup of the same. Such cleanup shall be at the Contractor's sole cost and expense. The Contractor shall be responsible for any resulting fines, assessments, penalties or damages resulting there from, and the Contractor shall indemnify and hold harmless the Receiver/SWMD from any liability in connection with the foregoing.

Section 2.04. Deliveries of Excluded Waste. The Contractor shall follow the screening protocol set forth in Schedule 2 to identify the Excluded Waste set forth in Exhibit A and prevent it from being delivered to the Layon Landfill. As part of the required screening protocol:

(a) A digital video camera(s) will be positioned to view the Tipping Floor and the tops of the Transport Trailers for the presence of any Excluded Waste. A video recording shall be made of operations on the Tipping Floor. The purpose of the video recording is to aid the Contractor and the Receiver/SWMD in identifying Haulers delivering Excluded Waste to the Facility. The video recordings of each day's operations at the Facility shall be maintained for at least three (3) days thereafter.

(b) Vehicles with identified Excluded Waste shall be reported to the Receiver/SWMD by the Contractor and a record shall be maintained of such deliveries. If, despite the best efforts of the Contractor, the Hauler delivering Excluded Waste to the Tipping Floor cannot be identified, the Contractor shall follow the procedures set forth in the screening protocol attached hereto as Schedule 2.

(c) If the identity of the Hauler delivering such Excluded Waste to the Facility can be determined, the Contractor shall instruct such Hauler to remove such Excluded Waste from the Facility at such Hauler's own cost and expense and report any non-compliance with such instructions to the Receiver/SWMD. In such event, the Receiver/SWMD shall use its reasonable efforts to cause such Hauler to comply with such instructions. If the identity of the Hauler of the Excluded Waste cannot be determined, the Contractor shall be responsible for transportation and delivery of Excluded Waste to an acceptable disposal site and for Disposal of such Excluded Waste. If the Contractor cannot determine the identity of the Hauler bringing the Excluded Waste to the Facility, then the cost of transportation and Disposal of the Excluded Waste shall be shared equally between the Contractor and the Receiver/SWMD. Under no circumstances shall the Contractor load Excluded Waste onto Transport Trailers for transport to and Disposal at the Layon Landfill, except by mutual agreement of the Receiver/SWMD and the Landfill Operator, and only if the Layon Landfill is permitted to receive such Excluded Waste under Applicable Laws

and Government Approvals. The foregoing may include public health emergencies whereby appropriate regulatory agencies of a Governmental Entity allow certain types of Excluded Waste to be disposed at the Layon Landfill as an exception to the normal practices allowed in the Layon Landfill's Operating Permit.

(d) During the Receiving Time, the Contractor shall notify the SWMD staff of the reasons for the exclusion of the waste and the SWMD will exclude said Hauler/waste from the Facility. At the option of the Receiver/SWMD, the Receiver/SWMD may station a representative on the Tipping Floor to monitor the exclusion of waste. When the Receiver/SWMD monitor is present, waste shall not be excluded unless the Receiver/SWMD monitor concurs with the Contractor's decision to exclude the waste.

#### Section 2.05. Insurance.

(a) Required Coverage. From and after ten (10) days prior to the Commercial Operation Date and throughout the Term of this Agreement, the Contractor shall, at its sole cost and expense, maintain with responsible insurers licensed to do business in Guam, at a minimum, the insurance required to be provided under the provisions of this Section 2.05 and shall comply with all terms and conditions relating thereto set forth in Schedule 3 of this Agreement.

(b) Certificate of Insurance. At least ten (10) days prior to the Commercial Operation Date, the Contractor shall provide the Receiver/SWMD with a then-current certificate of insurance that evidences compliance with the requirements of this Section 2.05 and Schedule 3. The required types of insurance and minimum insurance coverage are specified in Schedule 3. Thereafter, new or renewal certificates shall be delivered at least thirty (30) days prior to expiration of the current policy or policies. If the Contractor fails or neglects to obtain or to maintain any insurance that it is required to provide or to furnish to the Receiver/SWMD satisfactory evidence of coverage of any such policy, the Receiver/SWMD may purchase such insurance on the Contractor's behalf on ten (10) days' prior written notice. All payments of premiums made by the Receiver/SWMD shall be recoverable from the Contractor upon being billed therefor, together with interest thereon at the Overdue Rate; the Receiver/SWMD may deduct unpaid amounts from the Service Charge otherwise payable to Contractor.

(c) Prior Notice of Nonrenewal or Material Change In Policies. Thirty (30) days prior to cancellation of or material change in or notice of nonrenewal with respect to any of the policies of insurance required as listed in Schedule 3, the Contractor shall give notice to Receiver/SWMD, by registered mail, return receipt requested. The certificate(s) of insurance provided to the Receiver/SWMD shall include the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail thirty (30) days' prior written notice to the certificate holder named to the left." All such notices shall name the Contractor, the Receiver/SWMD, and identify this Agreement. All policies except for the Workers Compensation shall be endorsed to include the

Receiver/SWMD, the Receiver, and the Government of Guam as additional insureds. All policies shall require that the Contractor will pay all defense claims and any judgments entered herein. It is expected that all policies will be issued on an occurrence basis. The Receiver/SWMD may waive or modify any requirement stated herein if the Receiver/SWMD, in its sole judgment and discretion, deems it would be in its best interest of the Government of Guam to do so.

(d) Duty to Obtain Substitute Policy. If at any time any of the Insurance policies required under this Agreement shall be or become unsatisfactory to the Receiver/SWMD, as to form or substance required under Schedule 3, or if a company issuing any such policy shall be or become reasonably unsatisfactory to the Receiver/SWMD, the Contractor shall, upon notice to that effect from the Receiver/SWMD, within thirty (30) days obtain a new policy, submit the same to the Receiver/SWMD for approval, and submit a certificate evidencing such insurance as hereinabove provided. Upon failure of the Contractor to furnish, deliver, and maintain such insurance as herein provided, this Agreement, at the election of the Receiver/SWMD, may be forthwith declared suspended, discontinued, or terminated. Failure of the Contractor to take out and maintain any required insurance shall not relieve the Contractor of any liability under this Agreement or any other contract. All policies required above shall contain a thirty (30)-day notice of cancellation or non-renewal clause, and shall require the insurer to immediately notify the Receiver/SWMD of any intent either to cancel or not renew the Insurance policy or policies required of the Contractor under this Section 2.05.

(e) Insurance Companies. The Contractor shall use an insurance company that meets or exceeds the requirements as stated in Schedule 3 of this Agreement. The Receiver/SWMD, in its sole judgment and discretion, if it considers it appropriate to do so, may allow the Contractor to utilize and insure with an insurer having a rating less than what is stipulated in Schedule 3. Any such request by the Contractor must be forwarded to the Receiver/SWMD for its review and approval. The Contractor shall only use an insurance company or companies authorized to underwrite insurance risks for the specific line(s) of coverage in Guam or surplus line coverage if coverage is unavailable from a Guam licensed insurer.

**Section 2.06. Visitation and Inspection of the Facility.**

(a) Visitation and Inspection. The Receiver/SWMD, at its sole cost and expense, shall have the right (along with its Representatives) to visit and to accompany visitors through the Facility during normal business hours in order to observe, and to permit others to observe, the various services that the Contractor performs under this Agreement. The Contractor shall have the right to control the manner in which such visit or inspection is conducted so that the same does not disrupt the Contractor's operations at the Facility or compromise the safety of any Person.

(b) Inspection. The Receiver/SWMD may, at its sole cost and expense, and with the full cooperation of the Contractor after providing reasonable notice, inspect

the Facility to determine whether the Contractor complies with its obligations under the terms of this Agreement. The Contractor shall not be entitled to any additional compensation for participating in such inspections.

(c) Compliance with Hauler Procedures. In connection with such inspections or visitations, the Receiver/SWMD shall, on its own behalf, and on behalf of its Representatives, comply and cause its Representatives and visitors to comply, with the Hauler Procedures and the Contractor's procedures. Each Person inspecting or visiting the Facility shall be required to sign a statement agreeing:

- (i) to assume the risk of the inspection or visitation, but not the risk of injury due to the intentional or negligent acts or omissions to act of the Contractor; and
- (ii) not to disclose or use (consistent with Applicable Laws) any confidential information of the Contractor, to the extent such information has been identified as being confidential, throughout the Term of this Agreement; provided, however, that neither the Receiver/SWMD nor its agents and Representatives shall be held liable for any damage or injury which may result from any disclosure that might occur by any Person (other than the Receiver/SWMD, its officers, members, employees, and agents) inspecting or visiting the Facility.

**Section 2.07. Record Keeping and Reporting.**

(a) The Contractor shall, at its sole cost and expense, prepare and maintain the records required in Schedule 4 of this Agreement. Financial records and other records designated in Schedule 4 shall, to the extent permitted under Applicable Law, be deemed confidential and not be subject to disclosure to the Receiver/SWMD except as reasonably required to establish the Contractor's compliance with the terms of this Agreement. Under no circumstances shall the Contractor's financial data or other confidential records be deemed to be "public writings" that are subject to disclosure to the public under Applicable Laws, and the Receiver/SWMD shall not incorporate any such financial data or confidential records into any document that could be deemed to be a "public writing" subject to disclosure to the public.

(b) The Contractor shall provide all monthly reports required in Schedule 4 electronically and in such a form so that they can be downloaded and integrated into the Receiver/SWMD's electronic record keeping. The monthly reports required in Schedule 4 shall not be deemed confidential.

(c) Both the Receiver/SWMD and the Contractor shall provide for the retention and storage of all records related to the transactions described in this Section 2.07 for a period of at least seven (7) years following the termination of the Agreement, except as herein modified.



**Section 2.08. Hauler Procedures.**

(a) The Receiver/SWMD shall develop Hauler Procedures to apply to every Hauler delivering Solid Waste to the Facility. The Hauler Procedures shall be developed in consultation with the Contractor. The Receiver/SWMD may establish additional Hauler Procedures that are not inconsistent with this Agreement or Applicable Laws, and which shall apply equally to all Haulers delivering Solid Waste to the Facility, upon thirty (30) days' prior written notice thereof to the Contractor; provided, however, that such additional Hauler Procedures may be implemented earlier than upon thirty (30) days' prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of the SWMD's employees and the Haulers delivering Solid Waste to the Facility. The Contractor shall not give any instruction(s) to any Hauler using the Facility that conflicts with the then-current Hauler Procedures unless required for compliance with the Solid Waste Facility Permit. The Contractor shall provide reasonable assistance to the Receiver/SWMD in enforcing the Hauler Procedures, but in no event shall the Contractor be responsible for assuring that Haulers comply with such procedures.

(b) The Receiver/SWMD may require the Contractor to refuse to receive Solid Waste from any Hauler who repeatedly or intentionally or by negligent action violates the Hauler Procedures. Except in situations that the Receiver/SWMD reasonably determines to be exigent, the Receiver/SWMD shall provide the Contractor with prior written notice of its intent to refuse deliveries from any Hauler of Solid Waste in accordance with its policies for exclusion of Haulers from the Facility.

(c) The Contractor may implement and enforce its own reasonable procedures for the delivery of Solid Waste to the Facility; provided, however, that any such procedures shall be lawful, reasonable and uniformly applied to all Haulers delivering Solid Waste to the Facility, and shall not conflict with the Hauler Procedures. Any such procedures shall be posted at the Facility in clear view of all Haulers using the Facility.

(d) The Receiver/SWMD agrees to comply with all of the Contractor's reasonable procedures. In no event shall the terms of payment and the rights and obligations of the Parties pursuant to this Agreement be altered by the terms of any of the Contractor's procedures.

**Section 2.09. Vehicles and Equipment.** The Contractor shall be responsible for providing Vehicles and equipment of such type and in such quantity as are required to fulfill its obligations under this Agreement. The Contractor shall also be responsible for the operation, maintenance, and repair of all such Vehicles and equipment, in accordance with the manufacturer's specifications and Applicable Laws and regulation, and in a manner sufficient to ensure that such Vehicles and equipment are in good working order and are capable of providing all of the required combined services set forth in this Agreement.

**Section 2.10. Transport and Delivery of Contract Waste.** The Contractor shall be responsible for transport to and delivery at the Layon Landfill of all Contract Waste delivered to the Facility pursuant to this Agreement.

**Section 2.11. Costs of Operations.** Unless the Receiver/SWMD is expressly obligated under this Agreement to pay for a particular item of cost, all of the obligations of the Contractor under this Agreement shall be at Contractor's sole cost and expense.

**Section 2.12. Ownership of Contract Waste.** Upon each Transport Trailer departing the Facility, the ownership of and title to all Contract Waste contained therein shall immediately transfer from the Hauler to the Contractor. The Contractor shall thereafter bear the sole responsibility and liability for the Disposal of such Solid Waste. Upon delivery to the Layon Landfill, title for such waste shall transfer to the Receiver/SWMD.

**Section 2.13. Indemnification by the Contractor.** The Contractor shall agree to indemnify, defend, and hold harmless the Receiver/SWMD, the Government of Guam, and their respective officers, agents, contractors, subcontractors, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, because of bodily injury, sickness, disease or death, sustained by any Person or Persons, or injury or damages to, or destruction of, any property directly or indirectly arising out of, relating to, or in connection with the obligations of the Contractor under this Agreement, whether or not due or claimed to be due, in whole or in part, to the active, passive or concurrent negligence or fault of the Contractor, its officers, agents, servants, or employees and any other Person or Persons and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false, or fraudulent. In connection therewith, the Contractor shall pay the Receiver/SWMD any expenses incurred as a result of the Contractor's failure to fulfill any obligation in a professional and timely manner under this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement. This shall include further but not be limited to the following:

- i) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of the Contractor, its officers, employees or agents, including its subcontractors or independent contractors, in connection with their performance; and
- ii) Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees or agents, including its subcontractors or independent contractors, to observe Applicable Laws, including, but not limited to, labor laws and minimum wage laws.

### **ARTICLE III. RECEIVER/SWMD'S OBLIGATIONS**

**Section 3.01. Receiver/SWMD's Delivery Obligations.**

(a) **Obligation to Deliver Solid Waste.** Commencing on the Commercial Operation Date, the Receiver/SWMD shall deliver to the Facility during the Receiving Time, all Solid Waste collected by the Receiver/SWMD, and shall use reasonable efforts to cause to be delivered to the Facility during the Receiving Time, all Solid Waste collected by all Haulers, except as provided in Schedule 2 or that is otherwise approved by the Receiver to be transported directly to the Layon Landfill by a Hauler. The Receiver/SWMD makes no representation or commitment with respect to the minimum number of Tons of Solid Waste that will be delivered during any period of time. The Contractor represents that it has reviewed applicable historical Solid Waste generation and collection data, and the Receiver/SWMD makes no representation that such data are or will be representative of the types or quantities of Solid Waste that will be generated or collected in the future.

(b) **Obligation for Excluded Waste.** The Contractor shall be responsible for removal or Disposal of all Excluded Waste that enters the Facility as provided in Section 2.04 above, or if such Excluded Waste is composed of Recyclable Materials, then all or a portion of the Recyclable Materials may instead be directed toward beneficial use in the sole discretion of the Contractor. The Receiver/SWMD shall assist the Contractor in identifying Excluded Waste and share the cost of Disposal as provided in Section 2.04.

(c) **Obligation for Screening Solid Waste Containing Radiotative Materials.** The Receiver/SWMD has required the Contractor to install and maintain in good working order a radiation detector at the scale house for the purpose of screening incoming loads of Solid Waste for radioactive materials, and the Receiver/SWMD shall be solely responsible for monitoring such radiation detector.

**Section 3.02. Weighing Facilities.** The Receiver/SWMD shall operate weighing facilities at the Facility's scale house located at the entrance to the property and shall track and maintain logs for determining and recording each Vehicle delivering Solid Waste to the Facility and make such documentation reasonably available to the Contractor regarding, among other things:

- a) the total tonnage of Solid Waste that is delivered to the Facility during each Billing Period;
- b) the time, date and weight of each delivery by each Hauler authorized to use the Facility for purposes of calculating the Service Charge and tipping fee; and
- c) the identity of Haulers entering the Facility each day to aid in determining which Hauler(s) may have brought Excluded Waste to the Facility,

**Section 3.03. Inspection of Vehicles.** The Receiver/SWMD shall prohibit any Hauler from entering the Facility under an account with the Receiver/SWMD if that account is deemed by the Receiver/SWMD as delinquent and past due or if the Hauler has been banned from using the Facility because of unsafe actions at the Facility, or is not in good standing (e.g., out of compliance with the Hauler Procedures). Vehicles carrying exclusively

Recyclable Materials shall bypass the scale house and any such Vehicles shall not be required to pass over the first set of scales operated by the Receiver/SWMD, as no tipping fees or Service Charges shall be imposed on Vehicles transporting exclusively Recyclable Materials to the Facility. The Receiver/SWMD shall aid the Contractor in its responsibility to screen loads by causing scale house staff to ask the drivers of the incoming Vehicles what type of material is in the Vehicle to be unloaded at the Facility. In the event that the material is said to be Excluded Waste, the scale house attendant shall instruct the driver of the said Vehicle not to enter the Facility and shall not issue a weight slip for said Vehicle.

**Section 3.04. Flow of Traffic Entering Facility.** The Receiver/SWMD shall regulate the flow of traffic through the Facility scale house without prejudice to the Hauler or origin of the Solid Waste. In addition, the Receiver/SWMD shall establish appropriate requirements in its procedures for access to the Facility by Haulers (including requirements for insurance, prepayment/payment, etc.); provided, however, that such requirements shall not contradict any provision, right, or obligation of the Contractor under this Agreement.

**Section 3.05. Collection of Tipping Fees from Haulers.** The Receiver/SWMD shall be responsible for calculating, invoicing, and collecting tipping fees on Haulers delivering Solid Waste to the Facility. Such tipping fees shall inure to the benefit of the Receiver/SWMD. The Parties acknowledge and agree that Contractor, in addition to operating the Facility, is also a Hauler, and, in its capacity as a Hauler, shall be obligated to pay tipping fees for delivering Solid Waste to the Facility on the same basis as other Haulers. Despite this, tipping fees owed by the Contractor shall not be deemed to be "amounts which are owed by the Contractor to the Receiver/SWMD under the terms of this Agreement" for the purposes of Section 9.02(b).

**Section 3.06. Indemnification by the Receiver/SWMD.** The Receiver/SWMD and the Government of Guam shall agree to indemnify, defend, and hold harmless the Contractor and its respective officers, agents, contractors, subcontractors, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, because of bodily injury, sickness, disease or death, sustained by any Person or Persons, or injury or damages to, or destruction of, any property directly or indirectly arising out of, relating to, or in connection with the obligations of the Receiver/SWMD under this Agreement, whether or not due or claimed to be due, in whole or in part, to the active, passive or concurrent negligence or fault of the Receiver/SWMD, its officers, agents, servants, or employees and any other Person or Persons and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false, or fraudulent. Furthermore, the Receiver/SWMD shall pay any expenses incurred as a result of the Receiver/SWMD's failure to fulfill any obligation in a professional and timely manner under this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement. This shall include but not be limited to the following:

- a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of the Receiver/SWMD, its officers, employees and agents, including its subcontractors or

independent contractors, in connection with the obligations of the Receiver/SWMD under this Agreement; and

b) Any claims, damages, penalties, costs and attorney fees arising from any failure of the Receiver/SWMD, its officers, employees and agents, including its subcontractors or independent contractors, to observe Applicable Laws.

## ARTICLE IV. ESTABLISHMENT AND PAYMENT OF MONTHLY FEE

### Section 4.01. Service Charge.

(a) General. On and after the Commercial Operation Date and for each Billing Period thereafter during the Term of this Agreement, the Contractor shall charge and be entitled to collect from the Receiver/SWMD the Monthly Fee set forth in Section 4.02(a) for all Solid Waste delivered by all Haulers to the Facility for which a weight slip is issued by the Receiver/SWMD.

(b) Service Charge. The Service Charge shall equal the fee for providing the Facility ("Facility Fee"), the fee for operating of the Facility ("Operations Fee"), the fee for transportation of Contract Waste from the Facility to the Layon Landfill ("Transport Fee"), and the cost of fuel ("Fuel Charge") to be calculated as follows:

$$SC = (FF + OF + TF + FC) \times \text{Waste Tons}$$

- i. Service Charge = SC
- ii. Facility Fee = FF
- iii. Operations Fee = OF
- iv. Transport Fee = TF
- v. Fuel Charge = FC
- vi. Waste Tons = Solid Waste

The Service Charge shall be based on the following fees:

Components of the Service Charge	Fee Per Ton
Facility Fee	\$2.50
Operations Fee	\$10.54
Transport Fee	\$15.11
Fuel Charge	\$1.93

If the Service Charge for any month is less than the Minimum Monthly Charge, then the Receiver/SWMD shall instead pay the Minimum Monthly Charge in lieu of the calculated Service Charge for such month. However, in any month in which the unavailability of the Facility is more than the amount allowed in the performance standard specified in Section 2.02(d), the Contractor shall be

compensated using the calculated Service Charge without regard to the Minimum Monthly Charge.

In the event that the Receiver/SWMD makes any changes to the list of Excluded Waste set forth in Exhibit A after the Contract Date, the Service Charge shall be adjusted to compensate the Contractor for all additional documented and reasonable costs incurred as a result of such changes.

The Operations Fee and the Transport Fee, shall be adjusted on each anniversary of the Operation Commencement Date by the Adjustment Factor pursuant to Section 4.05.

**Section 4.02. Invoices and Payments.** Each Invoice to the Receiver/SWMD from the Contractor shall specify for the applicable Billing Period the weight of all Solid Waste delivered to the Facility for processing and the calculation of the Service Charge.

(a) The "Monthly Fee" for any Billing Period in a Contract Year shall be an amount equal to the greater of: i) the Minimum Monthly Charge in effect; or ii) the Service Charge in effect multiplied by the Tons of Solid Waste delivered to the Facility, less any waste rejected at the scales operated by the SWMD without the issuance of a weight slip, during such Billing Period.

(b) For each Billing Period, the Receiver/SWMD shall pay (or cause to be paid) the Monthly Fee to the Contractor in accordance with this Section 4.02 for the performance by the Contractor of its obligations under this Agreement.

(c) The Contractor shall invoice the Receiver/SWMD for the Monthly Fee for each Billing Period on or after the first day of the succeeding Billing Period. The Monthly Fee shall be due and payable by the Receiver/SWMD in immediately available funds within sixty (60) days following the receipt of such invoice. If directed by the Contractor in writing, the Receiver/SWMD shall make payments of the Monthly Fee directly to an escrow agent or other depository set forth in such written notice.

**Section 4.03. Mandatory Dispute Resolution Procedure.** The Receiver/SWMD and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request in writing that the Government of Guam issue a final decision within sixty (60) days after receipt of the written request, and such request shall be hand delivered to Receiver/SWMD. If the Government of Guam does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the Parties, then the Contractor may proceed as though the Government of Guam had issued a decision adverse to the Contractor. The Government of Guam shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt. The Government of Guam's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision in the manner



provided by law. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with Applicable Laws. The Contractor shall comply with the Government of Guam's decision and proceed diligently with performance of this Agreement pending final resolution of an appeal of any controversy arising under, or by virtue of, this Agreement, except where the Contractor claims a material breach of this Agreement by the Government of Guam. However, if the Government of Guam determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Government.

This Section 4.03 shall not in any way be interpreted to preclude the Contractor from immediately suspending performance under this Agreement as provided in Section 4.04. The Parties are required by 5 G.C.A. §5003 to act in good faith in the performance of this Agreement. Any attempt by the Receiver/SWMD to dispute the Minimum Monthly Charge, less any reduction permitted by the terms of Section 4.01(b), shall be deemed an act of bad faith and constitute a material breach and shall not constitute a valid controversy for purposes of this Section 4.03. If the Contractor is ordered to proceed notwithstanding a material breach, the same shall be deemed to be an Uncontrollable Circumstance and the Contractor shall have the right to proceed under Section 7.01.

Section 4.04. Suspension of Performance in Event of Non-payment. Upon receiving the Contractor's complete monthly invoice, the Receiver/SWMD shall have sixty (60) days to pay the invoice. If the invoice remains unpaid for more than thirty (30) days beyond its due date, after deduction of amounts properly disputed by the Receiver/SWMD in good faith, the Contractor shall have the right to suspend its performance under this Agreement until all undisputed past due amounts and disputed amounts determined to be due and payable are paid in full. The Receiver/SWMD shall not have the right to terminate this Agreement solely be reason of the Contractor's suspending performance in accordance with this Section 4.04.

Section 4.05. Adjustment Factor. Upon each anniversary of the Commercial Operation Date and throughout the Term of this Agreement, the Operations Fee and the Transport Fee shall be adjusted by the Adjustment Factor as follows: Fifty nine percent (59%) of the Operations Fee and twenty-five percent (25%) of the Transport Fee specified in Section 4.01(b) shall be adjusted by the Employment Cost Index ("ECI") published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). Seventy-five percent (75%) of the Transport Fee specified in Section 4.01(b) shall be adjusted by the Producer Price Index for the same period for construction machinery and equipment published by the BLS.

The values of indices to be used for each Operating Year in calculating the Adjustment Factor shall be the values of the indices for the month or (in the case of an index calculated on a quarterly basis) the quarter immediately preceding an anniversary of the Operation Commencement Date.

The fuel charge is based on a 50-mile round trip for a fully loaded Vehicle (22.5 tons of waste) requiring 10 gallons of fuel (i.e. 5 miles per gallon) at a cost of \$4.16 per gallon. Either Party to the Agreement may require, not more often than every 180 days, a review of

the fuel required for each "fully loaded" Vehicle (i.e. including a Transport Trailer loaded to the Guaranteed Transport Trailer Capacity). The review shall be conducted at the expense of the Party requiring the review. The review shall be conducted by an independent third party, acceptable to the Parties, using a properly maintained "fully loaded" Vehicle in good working order to validate the mileage and miles per gallon. The review shall be based on three round trips with the Vehicle "fully loaded" and shall be observed by representatives of the Parties. The mileage and miles per gallon used in calculating the fuel charge for subsequent Billing Periods, shall be changed to the average values obtained from the review.

The price of fuel shall be adjusted monthly to reflect the actual cost of fuel, based on the documented price of fuel purchased by the Contractor during the Billing Period plus the Guam Gross Receipts Tax and all other applicable taxes, to the Contractor. Upon ninety (90) days prior written notice to the Contractor, the Receiver/SWMD shall have the option to purchase and provide the fuel for the Contractor's tractors used to convey Transport Trailers to the Lanyon Landfill. In such event:

1. the Fuel Charge shall be removed as a component of the Service Charge;
2. the Contractor shall permit the distributor providing such fuel to locate a fuel storage tank at the Facility; and
3. the Contractor shall ensure that all fuel provided by the Receiver/SWMD is used exclusively for conveying the Transport Trailers to the Lanyon Landfill.

## ARTICLE V. TERM

Section 5.01. Initial Term. The Initial term of this Agreement (the "Initial Term") shall commence on the Commercial Operation Date, and shall expire on (i) 11:59 p.m. on the date that is the day before the seventh (7<sup>th</sup>) anniversary of the Commercial Operation Date, or (ii) the date this Agreement is terminated pursuant to Article IX or otherwise as permitted herein.

Section 5.02. Renewal Term. The Term of this Agreement shall be extended beyond the Initial Term until (i) 11:59 p.m. on the date that is the day before the fifth (5<sup>th</sup>) anniversary of the day following the end of the Initial Term, or (ii) the date this Agreement is terminated pursuant to Article IX or otherwise as permitted herein (the "First Renewal Term") and the Term of this Agreement shall be extended beyond the First Renewal Term until (i) 11:59 p.m. on the date that is the day before the fifth (5<sup>th</sup>) anniversary of the day following the end of the First Renewal Term, or (ii) the date this Agreement is terminated pursuant to this Agreement or otherwise as permitted herein (the "Second Renewal Term"); provided, however, either Party may give written notice of its decision not to extend this Agreement. Such notice of a decision not to extend the Term of this Agreement must be delivered, in writing, to the other Party at least one (1) year prior to the scheduled expiration of the Initial Term in the case of a decision by either Party not to extend the Agreement for the First Renewal Term and at least one (1) year prior to the scheduled expiration of the First Renewal Term in the case of a decision by either Party not to extend the Agreement for the Second Renewal Term. All other terms and conditions of this

Agreement will remain the same during the Renewal Term unless stated otherwise herein or otherwise agreed by the Contractor and the Receiver/SWMD in writing in connection with the renewal.

## ARTICLE VI. SECURITY FOR CONTRACTOR'S OBLIGATIONS

Section 6.01. Letter of Credit. The Contractor shall provide to the Receiver/SWMD a Letter of Credit as hereinafter provided as security for the performance of its obligations under this Agreement.

(a) Terms and Purpose. On the Contract Date, the Contractor shall provide security for the performance of its obligations through an irrevocable direct pay letter of credit issued to the Receiver/SWMD by a bank whose long-term debt is rated "BB" or better by a Rating Service and which is duly licensed and registered to do business in Guam (the "Letter of Credit"). The Letter of Credit shall be in the stated amount of Two Million and 00/100 Dollars (\$2,000,000.00). The Letter of Credit shall be for a term of one year, shall be continuously renewed, extended or replaced so that it remains in effect until 180 Days after the termination of this Agreement, and shall be issued substantially in the form set forth in Schedule 5. The Receiver/SWMD shall be authorized under the Letter of Credit to make one or more drawings thereon upon certification to the issuing bank that all of the drawing conditions described in subsection (b) of this Section 6.01 have occurred. The Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to thirty (30) days of its expiration. The Letter of Credit shall serve as security for the performance of the Contractor's obligations under this Agreement, and the stated amount thereof shall in no way limit the amount of damages to which the Receiver/SWMD may be entitled for any Contractor Event of Default hereunder.

(b) Conditions to Drawing. It shall be a condition to the right of the Receiver/SWMD to draw on the Letter of Credit delivered pursuant to this Section 6.01, other than a draw based on a failure to renew, extend or replace the Letter of Credit or based on a bankruptcy-related event, that:

(i) The Receiver/SWMD has given the Contractor written notice that an Event of Default has occurred and attached a copy of its good faith calculation of the damages that the Receiver/SWMD has suffered as a result of such Event of Default and which the Receiver/SWMD shall have the right to draw, or has given a notice of termination based on such Event of Default, in which case the Receiver/SWMD shall have the right to draw the entire stated amount of the Letter of Credit if the Contractor has not cured the Default within the permitted time to do so in this Agreement; and

(ii) The Contractor has been afforded an adequate opportunity to present to the Receiver/SWMD evidence disputing the Receiver/SWMD's assertion that an Event of Default has occurred and its calculation of damages, that the Contractor has exhausted all of its administrative and judicial appeal rights, and that a final determination of damages has been made.

(c) Duties Upon Final Determination. After the Contractor has been afforded an adequate opportunity to dispute the assertion by the Receiver/SWMD that an Event of Default has occurred and the Receiver/SWMD's calculation of damages, the Contractor has exhausted all of its rights to administrative and judicial review of the same and a final determination of damages has been made, the Receiver/SWMD, if applicable, shall amend its demand for payment to reflect the amount that was ultimately determined to be due and owing in such final determination after all appeals have been exhausted. The Contractor shall then provide notice to the bank that provided the Letter of Credit that the Contractor does not contest the demand for payment as amended.

Section 6.02. Cost of Providing Security for Performance. The cost and expense of obtaining and maintaining the Letter of Credit required under this Article VI as security for the performance of the Contractor's obligations hereunder shall be borne by the Contractor without reimbursement from the Receiver/SWMD.

## ARTICLE VII. UNCONTROLLABLE CIRCUMSTANCES

### Section 7.01. Effect on Obligations.

(a) Relief from Performance. Each Party shall be excused for the failure to perform its obligations with respect to the Facility if such failure results from the occurrence of an Uncontrollable Circumstance; provided, however, that except as provided in Section 7.01(c) below, an Uncontrollable Circumstance will not excuse a Party from its obligation to make a payment under this Agreement. Each Party shall seek diligently and in good faith to perform its obligations notwithstanding the occurrence of an Uncontrollable Circumstance and to overcome an Uncontrollable Circumstance as soon as practicable. Any date by which the Contractor or the Receiver/SWMD is required to perform an obligation under this Agreement, except the obligation to make any payment when due hereunder, shall be extended to the extent of any delay caused by an Uncontrollable Circumstance, but in no event shall the Term of this Agreement be extended as a result thereof. In the event that an Uncontrollable Circumstance or any combination of the same results or will result in the Contractor incurring additional costs in a total amount \$500,000 or more during the Term of this Agreement, then the Contractor shall be permitted to terminate this Agreement in exchange for waiving its rights to Close Out Costs provided in Section 9.06. The Contractor shall provide one hundred eighty (180) days prior written notice of termination to the Receiver/SWMD, including specifying both the additional costs incurred by the Contractor up to the date of the notice and the additional costs

that the Contractor reasonably anticipates it will incur during the remaining Term of the Agreement. In such event, the Receiver/SWMD may rescind such termination by agreeing to an equitable adjustment to the Service Charge in an amount equal to the total amount specified by the Contractor in its notice of termination. Should the Receiver/SWMD so elect, then the lesser of (i) the stated amount of costs stated in the Contractor's termination notice and (ii) the documented actual additional costs incurred by the Contractor, shall be deemed to be undisputed and added to the Monthly Fee due in the next Billing Period following the Receiver/SWMD's election to rescind the Contractor's termination notice by paying the amounts required herein and thereby continuing the Agreement. To the extent that such additional costs represent a recurring charge that will be incurred during the remaining Term of the Agreement, then the Contractor and the Receiver/SWMD must agree to a mutually acceptable adjustment to the monthly Service Charge and Minimum Monthly Charge retroactive to the date of the termination notice in order for the termination to be rescinded and the Agreement to be continued.

(b) Unavailability of Facility; Alternate Transfer Facility and Receiver/SWMD Designated Facility. To the extent that, during any Contract Year, as a result of Uncontrollable Circumstances the Contractor is unable to and is excused under this Agreement from processing all or any portion of the Solid Waste at the Facility, the Contractor shall use all reasonable efforts to identify an Alternate Transfer Facility to receive deliveries of the Solid Waste not capable of being received at the Facility at no additional charge to Receiver/SWMD. If an Alternate Transfer Facility is identified that is satisfactory to the Receiver/SWMD, the Receiver/SWMD may elect to deliver Solid Waste to such Alternate Transfer Facility or to the Receiver/SWMD Designated Facility at the Receiver/SWMD's choice. To the extent the Receiver/SWMD delivers Solid Waste to the Alternate Transfer Facility and the Contractor otherwise performs under this Agreement, the Receiver/SWMD shall pay the Monthly Fee as if no Uncontrollable Circumstance had occurred. If the Alternate Transfer Facility is not acceptable to the Receiver/SWMD, the Receiver/SWMD may deliver such Solid Waste to either the Receiver/SWMD Designated Facility or, directly or indirectly, to the Layon Landfill. If the Receiver/SWMD delivers such Solid Waste to the Receiver/SWMD Designated Facility, the Receiver/SWMD may elect to have the Contractor perform its transportation obligations for Contract Waste from the Receiver/SWMD Designated Facility to the Layon Landfill. If the Receiver/SWMD so elects, the Receiver/SWMD shall pay the Transport Fee component of the Service Charge to the Contractor, adjusted to account for any differences in the Contractor's cost due to any change in the distance the Contract Waste is transported, as if no Uncontrollable Circumstance had occurred. If the Contractor fails to provide such transportation services, the Receiver/SWMD shall arrange for other transportation from the Receiver/SWMD Designated Facility to the Layon Landfill and is not obligated to pay the Transport Fee to the Contractor.

(c) Reinstatement of Delivery of Solid Waste. The Receiver/SWMD shall reinstate (or shall cause reinstatement of) deliveries of Solid Waste to the Facility as promptly as reasonably practicable following receipt from the Contractor of written notice that the Facility is able to resume processing of such Solid Waste, unless this

Agreement shall have been previously terminated, as provided herein, or shall have expired in accordance with its terms.

**Section 7.02. Notice of Uncontrollable Circumstance.** The Contractor shall provide written notice to the Receiver/SWMD within a reasonable time which shall not be later than five (5) Business Days of the actual knowledge of the Contractor that an Uncontrollable Circumstance exists; provided, however, that this notice requirement shall be waived in the event the Uncontrollable Circumstance is the subject of a declaration of emergency by the Governor of Guam. Such notice shall at a minimum set forth the following (to the extent then known or available, or if not, as soon as practicable thereafter; a separate notice shall provide the details that were unable to be provided in the first notice):

- (a) a description of the Uncontrollable Circumstance that has occurred; and
- (b) the effect, if any, of such Uncontrollable Circumstance on the Contractor's performance or other obligations under this Agreement; and
- (c) the estimated date when the Facility will be able to resume processing of Solid Waste, unless this Agreement shall have been previously terminated, as provided herein, or shall have expired in accordance with its terms.

## **ARTICLE VIII. COVENANTS AND REPRESENTATIONS**

**Section 8.01. Representations and Warranties of Each Party.** Each Party represents and warrants to the other as to the Contract Date (and such representations and warranties as of the Contract Date shall survive the termination or expiration of this Agreement) as follows:

(a) Each Party is duly organized and existing in good standing and each is duly qualified and authorized to enter into and perform the obligations set forth in this Agreement.

(b) The execution and performance of this Agreement:

- (i) has been duly authorized by all required corporate, administrative, judicial or other approvals of such Party;
- (ii) does not require any consent or approval not otherwise previously obtained; and
- (iii) will not violate any judgment, order, law or regulation applicable to such Party or any provisions of such Party's charter, enabling legislation, ordinances or resolutions.

(c) The execution of this Agreement and the performance of all obligations set forth herein do not conflict with, and will not, with the passage of time or the giving of notice, constitute a breach of or Event of Default under any charter,



enabling legislation, ordinances or resolutions of the Party, or any contract, indenture, mortgage, bond, instrument or Applicable Laws to which the Party is subject or by which such Party is bound. This Agreement has been duly executed and constitutes a legal, valid and binding obligation of each Party and is enforceable in accordance with its terms, except to the extent that the enforcement thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of principles of equity.

(d) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the Party, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Party of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Party in connection with the transactions contemplated hereby.

**Section 8.02. Additional Representations of the Receiver/SWMD.** The Receiver/SWMD further represents to the Contractor as of the Contract Date (and such representations and warranties as of the Contract Date shall survive the termination or expiration of this Agreement) that:

- (a) The Receiver/SWMD is duly authorized to carry on the governmental functions and operations contemplated by this Agreement, and the Receiver/SWMD has the power, authority and legal right to enter into and perform its obligations set forth under this Agreement.
- (b) The execution, delivery and performance of this Agreement by the Receiver/SWMD:
  - (i) has been duly authorized by applicable order of the U.S. District Court for the District of Guam;
  - (ii) is authorized under all Applicable Laws; and
  - (iii) has been (or will be, prior to the Contract Date) approved as to form and legality by the Attorney General of Guam and counter-signed by the Governor of Guam.

**Section 8.03. Covenants of Each Party.** Each Party covenants to and with the other (and such covenants shall survive the termination or expiration of this Agreement) that:

- (a) such Party will not take any actions or omit to take any actions the effect of which would limit the ability of such Party to perform its obligations under the terms of this Agreement except to the extent mandated by Applicable Laws; and

- (b) such Party shall take such actions as shall be required to maintain its corporate or legal existence and the continuation of its operations throughout the Term of this Agreement.

Section 8.04. Additional Covenant of the Contractor Regarding Permits. The Contractor has all Permits and other Government Approvals required for the Facility and to carry out its obligations under this Agreement and shall promptly notify the Receiver/SWMD of any action or proposed action of which it has knowledge or the occurrence of any event of which it becomes aware which would or could lead to the revocation or suspension of any Permit or other Government Approval.

## ARTICLE IX. DEFAULTS AND TERMINATION

Section 9.01. Events of Default. Events of Default and applicable remedies therefor are set out in this Article IX.

Section 9.02. Events of Default by the Contractor. The following shall constitute Events of Default on the part of the Contractor unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Receiver/SWMD:

- (a) persistent and repeated failure by the Contractor to timely perform any material obligation under the terms of this Agreement, and the continuance of such persistent and repeated failure for a period of fifteen (15) days after written notice thereof has been provided by the Receiver/SWMD specifying such failure and requiring that such condition be remedied coupled with the Contractor's failure to either cure the default or initiate and diligently pursue reasonable actions to cure such default;
- (b) failure to pay amounts which are owed by the Contractor to the Receiver/SWMD under the terms of this Agreement within sixty (60) days following the receipt of written notice from the Receiver/SWMD that amounts are due and payable, giving due regard to the provisions of Section 4.03 hereof;
- (c) the Contractor's being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver trustee, or liquidator for a substantial part of its property;
- (d) a bankruptcy winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by the Contractor, under the laws of any jurisdiction or against the Contractor, if the Contractor does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) days of the institution of such proceeding;
- (e) any action or answer by the Contractor approving of, consenting to, or acquiescing in, any such proceeding; or

- (f) the event of any distress, execution, or attachment upon the property of the Contractor that substantially interferes with its performance under this Agreement.

**Section 9.03. Events of Default by the Receiver/SWMD.** The following shall constitute Events of Default on the part of the Receiver/SWMD unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Contractor:

- (a) a persistent and repeated failure by the Receiver/SWMD to timely perform any material obligation under the terms of this Agreement and the continuance of such persistent and repeated failure for a period of sixty (60) days after written notice thereof has been provided by the Contractor specifying such failure and requiring that such condition be remedied coupled with the Receiver/SWMD's failure to either cure the default or initiate and diligently pursue reasonable actions to cure such default, and the demand for final decision pursuant to Section 4.03 may be included in such written notice;
- (b) failure to pay or credit amounts which are owed by the Receiver/SWMD to the Contractor under the terms of this Agreement within sixty (60) days following the time same becomes due and payable, giving due regard to the provisions of Section 4.03 hereof;
- (c) the Receiver/SWMD being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver (not including the appointment of the Receiver herein), trustee or liquidator for a substantial part of its property;
- (d) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by the Receiver/SWMD under the laws of any jurisdiction or against the Receiver/SWMD, if the Receiver/SWMD does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) days of the institution of such proceeding;
- (e) any action or answer by the Receiver/SWMD, approving of, consenting to, or acquiescing in, any such proceeding; or
- (f) the levy of any distress, execution or attachment upon the property of Receiver/SWMD that substantially interferes with its performance under this Agreement.

**Section 9.04. Remedies of Receiver/SWMD.**

- (a) The Receiver/SWMD and the Contractor agree that the sole remedies for the occurrence of an Event of Default under the terms of Sections 9.02(a) and (b) hereof shall be either:
  - (i) a suit seeking performance by the Contractor of the provisions of this Agreement, including the performance by the Contractor of its obligations hereunder and its obligations to make payment of any and all payments, credits or adjustments which are provided under the terms of this Agreement, and such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance or with respect to any default for which payments, credits or adjustments are not provided under the terms of this Agreement, a suit seeking payment of damages at law or liquidated damages as set forth in this Agreement; or
  - (ii) termination of this Agreement and a suit seeking payment of damages.
- (b) The occurrence of an Event of Default described under Section 9.02(c) hereof shall not require prior notice of default by the Receiver/SWMD as hereinabove provided, but shall give the Receiver/SWMD the unilateral right to terminate this Agreement and file a Proof of Claim for its damages. To the extent that it does not limit any of the rights and remedies available to a debtor in a bankruptcy proceeding, the Contractor shall use its best efforts to ensure the continuous operation of the Hauler-Only Transfer Station.
- (c) This Section 9.04 shall survive termination of this Agreement.

**Section 9.05. Remedies of the Contractor.**

- (a) The Receiver/SWMD and the Contractor agree that the remedies for the occurrence of an Event of Default under the terms of Section 9.03(a) or Section 9.03(b) hereof shall be:
  - (i) a suit seeking performance by the Receiver/SWMD of the provisions of this Agreement, including the performance by the Receiver/SWMD of its obligations hereunder and its obligations to make payment of any and all payments, credits or adjustments which are provided under the terms of this Agreement, and such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance; or
  - (ii) termination of this Agreement and a suit seeking payment of damages.
- (b) The occurrence of an Event of Default described under Section 9.03(c) hereof shall not require prior notice of default by the Contractor as hereinabove

provided but shall terminate this Agreement forthwith. An Event of Default described in Section 9.03(c) hereof may be waived by the Contractor if the Contractor determines, in its sole discretion, that the Receiver/SWMD will be able to perform its obligations pursuant to the terms of this Agreement and that adequate assurances for such performance have been made.

(c) In addition to the remedies specified above, the Contractor shall have the right to suspend performance as provided in Section 4.04 and the right to terminate this Agreement as provided in Section 7.01 provided that the preconditions contained in these respective sections have been satisfied.

(d) This Section 9.05 shall survive termination of this Agreement.

Section 9.06. Close-Out Costs Payable to Contractor in Event of Termination. In the event of termination of this Agreement before the Initial Term for any reason other than the default of the Contractor or the Contractor's exercise of the termination right specified in Section 7.01, the Contractor shall recover from the Receiver/SWMD the Close Out Costs specified in Schedule 6.

Section 9.07. Pendency of Disputes. Notwithstanding anything contained in this Agreement to the contrary, if there shall be a dispute concerning the right of either Party to terminate this Agreement, both Parties shall continue to perform their respective obligations hereunder as if this Agreement were in effect and both Parties' rights shall continue in effect until such dispute is resolved and any appeals permitted hereunder are exhausted.

Section 9.08. Exclusivity of Remedies. The remedies provided to the Receiver/SWMD and the Contractor pursuant to Section 9.04, Section 9.05 and Section 9.06, respectively, shall together be the exclusive remedies available to the Parties under this Agreement.

Section 9.09. No Consequential or Punitive Damages. In no event shall a Party be liable to the other, or obligated in any manner to pay to the other, for any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Agreement, or the material falseness or inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

## ARTICLE X. MISCELLANEOUS

Section 10.01. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

Section 10.02. Assignment Consent Required. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties hereto. Except for the rights of money due to the Contractor under this

Agreement, neither this Agreement nor any of the rights and obligations of the Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of the Receiver/SWMD, which consent shall not be unreasonably withheld. Any such assignment or transfer shall not release the Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO THE CONTRACTOR UNDER THIS AGREEMENT MUST BE SENT TO THE ATTENTION OF THE RECEIVER/SWMD.

Section 10.03. Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement; provided, however, that any actions taken in furtherance of the above obligations shall not involve the assumption of obligations other than those which are provided for in this Agreement. In the event any conflict is discovered between the terms of the Agreement, the Schedules and Exhibit, and Applicable Laws, the Parties shall cooperate in good faith to make appropriate revisions to resolve all such conflicts.

Section 10.04. Cooperative Efforts. Each Party hereto agrees to exercise all reasonable efforts to cooperate in obtaining any regulatory approvals required in order to effectuate the terms of this Agreement. In this regard, each Party agrees that the other Party shall be provided the opportunity to review and comment upon all draft documents and applications submitted to Governmental Entities relating to any Permits or authorizations for which the cooperation of the other Party has been requested.

Section 10.05. Relationship of the Parties. Except as otherwise provided herein, no Party shall have any responsibility whatsoever with respect to services which are to be provided or contractual obligations which are to be assumed by the other Party; and nothing in this Agreement shall be deemed to constitute either Party as a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

Section 10.06. Notices. Except as otherwise expressly provided by Applicable Laws, any and all notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed duly served and given when (i) hand delivered, (ii) delivered by nationally recognized overnight courier, or (iii) on the third Day after it is deposited in the United States mail, first-class postage prepaid, return receipt requested:

- (a) If to the Receiver/SWMD, personally delivered to the Receiver/SWMD, or alternatively when mailed as set forth above, to:

Solid Waste Management Division  
642 North Marine Corps Drive  
Tamuning, Guam 96913

With a copy to:  
Office of the Attorney General of Guam  
287 West O'Brien Drive  
Hagåtña, Guam 96910



- (b) If to the Contractor, personally delivered to Contractor, or alternatively when mailed as set forth above, to:

Guahan Waste Control, Inc.  
299 Rojas Street  
Harmon Industrial Park  
Tamuning, Guam

Post Office Box 24747  
GMF, Guam 96921

With a copy to:  
Blair Sterling Johnson & Martinez, P.C.  
238 Archbishop Flores Street (Suite 1008)  
Hagåtña, Guam 96910  
Attn: Richard L. Johnson, Esq.

Either Party may by notice given, as set forth above, direct that notices or communications be sent to a different address. Notwithstanding any provision of this Section, any report to be given by the Contractor to the Receiver/SWMD shall be given by electronic mail to the Receiver in addition to the means of delivery set forth herein.

**Section 10.07. Modification of Agreement.** This Agreement may be modified only by written amendment executed by all Parties hereto.

**Section 10.08. Waiver.** The waiver by either Party of a default or of a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**Section 10.9. Severability.** In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

**Section 10.10. No Liability of Officers and Employees.** No officer, elected official, agent, representative, principal, shareholder, member, or employee of the SWMD, the Government of Guam, the Receiver, or the Contractor shall be held personally liable under any provision of this Agreement or as a result of its execution or attempted execution, or as a result of any breach or alleged breach hereof; provided, however, that all Persons shall remain responsible for their own criminal acts.

**SECTION 10.11. Receiver/SWMD Rights as Governmental Entity; No Liability of GBB.** The Contractor acknowledges and agrees that the Receiver/SWMD is a Governmental Entity

and as such has certain rights, powers and duties that may affect the Contractor's rights or obligations under this Agreement. The Contractor agrees that no action or failure to act by the Receiver/SWMD acting in its governmental capacity shall be construed as a breach or default by the Receiver/SWMD under this Agreement, nor shall any such action excuse the Contractor from performance of its obligations under this Agreement. The Contractor acknowledges and agrees that GBB, and its employees, associates, and agents acting in GBB's behalf, are acting solely in GBB's capacity as the Receiver, and, that the Receivership Order provides: "The Receiver is responsible solely to this court. The Receiver shall not be personally liable for any act done in compliance with this Order. No suit shall be filed against the Receiver without the consent of the court." Notwithstanding the foregoing, the Government of Guam, the SWMD, and any successor organization designated to carry out the duties and responsibilities of the SWMD, shall remain responsible for the obligations contained within this Agreement.

**Section 10.12. Third Party Beneficiaries.** It is not intended that this Agreement make any Person or entity a third party beneficiary hereof, notwithstanding the fact that Persons or entities other than the Receiver/SWMD and the Contractor may be benefited thereby.

**Section 10.13. Non-Discrimination.** It is the policy of the Receiver/SWMD not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, the Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the Receiver/SWMD's contracted programs or activities, on the grounds of such Person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any such Person be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the Receiver/SWMD or in the employment practices of the Receiver/SWMD's contractors. Accordingly, all Persons entering into contracts with the Receiver/SWMD shall, upon request, be required to show proof of such nondiscrimination and to post notices of non-discrimination in conspicuous places that are available to all employees and applicants.

**Section 10.14. Contingent Fees.** The Contractor hereby represents that the Contractor has not been retained by or retained any Persons to solicit or secure a contract from the Receiver/SWMD upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with the Receiver/SWMD and the Government of Guam.

**Section 10.15. Gratuities and Kickbacks.** 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 or 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 of a contract or subcontract or to any solicitation or proposal therefor. 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 a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with the Receiver/SWMD and the Government of Guam.

Section 10.16. Restriction against Sex Offenders. The Contractor warrants that no person providing services on behalf of the Contractor or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the Contractor relative to this Agreement. If any person employed by the Contractor and providing services under this Agreement is convicted subsequent to the date of this Agreement, then the Contractor warrants that it will notify the Receiver/SWMD of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the Receiver/SWMD shall give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the Receiver/SWMD, and the Contractor shall notify the Receiver/SWMD when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the Receiver/SWMD, then the Receiver/SWMD in its sole discretion may suspend this Agreement temporarily.

Section 10.17. Venue. Any action between the Parties arising from this Agreement shall be maintained in the courts of Guam.

Section 10.18. Governing Law. The validity, construction and effect of this Agreement, and any and all extensions and modifications thereof, shall be governed by the laws of Guam.

Section 10.19. Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 10.20. Counterparts. This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original.

11-0473 f.

**Section 10.21. Entire Agreement.** This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the Parties.

Dated as of the date first written above.

CONTRACTOR



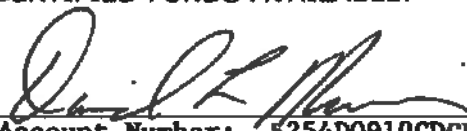
**GUAHAN WASTE CONTROL, INC.**

A Guam corporation

Name:

Its:

**CERTIFIED FUNDS AVAILABLE:**

  
**Account Number:** 5254D0910CDCE01230

**Certifying Officer**

**GERSHMAN, BRICKNER & BRATTON, INC.**

In its capacity as Receiver of the Solid Waste Management Division, Department of Public Works, Government of Guam

**GOVERNMENT OF GUAM**



**GERSHMAN, BRICKNER & BRATTON, INC.**

In its capacity as Receiver of the Solid Waste Management Division, Department of Public Works, Government of Guam

**APPROVED AS TO FORM AND LEGALITY:**

SB  
DLC  


**LEONARDO RAPADAS**

Attorney General of Guam

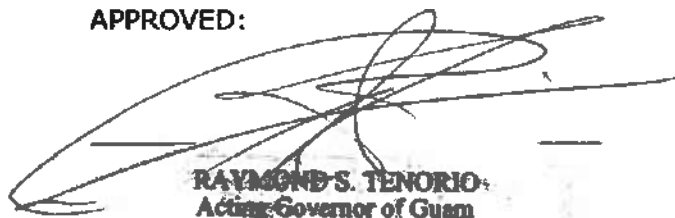
**CLEARED PER  
BBMR'S REVIEW**

  
**BENITA A. MANGLONA,**

**BBMR Director**

**DATE:** 6/7/11

**APPROVED:**

  
**RAYMOND S. TENORIO**  
Acting Governor of Guam

**RECEIVED**  
**JUN 09 2011**

Office of the Attorney General of Guam  
Civil/Solicitor Division

## **SCHEDULE 1**

### **FACILITY IMPROVEMENT**

In preparation for the Transfer Station Agreement, Guahan Waste Control, Inc. is planning for the following purchases and Facility upgrades:

- Install concrete in all areas of Facility where Vehicles will travel or park
- Enclose Tipping Floor on three (3) sides; the side where Transport Trailers will be loaded will be covered to below the height of the Transport Trailer
- Purchase and install weigh scale acceptable to Receiver/SWMD to include software
- Install scale house with bathroom
- Purchase and install scales (2) to weigh Transport Trailers
- Purchase proper equipment to load Transport Trailers
- Purchase and have available proper number of Transport Trailers to haul Contract Waste to Layon Landfill
- Ensure tractors are available to haul Transport Trailers to Layon Landfill
- Install retaining wall on south side of property
- Install camera system above the Tipping Floor, Transport Trailers and at the scale house overlooking incoming Vehicles
- Install radiation detector in scale house area

## **SCHEDULE 2**

### **SOLID WASTE SCREENING PROTOCOL**

#### **1. INTRODUCTION**

The Contractor shall follow the Solid Waste Screening Protocol ("Screening Protocol") described below as part of routine operations at the Facility. This Screening Protocol is primarily intended to reduce the possibility of having Excluded Waste delivered to and disposed of at the Layon Landfill. It is also intended to minimize the amount of Recyclable Materials delivered to the Layon Landfill that could otherwise be diverted for beneficial use or sale. This Screening Protocol is restricted to Solid Waste that is delivered to the Facility for screening and transportation to the Layon Landfill.

#### **2. Waste Screening Education for Deliveries to Facility**

##### **2.2 Residential Customers**

A Solid Waste screening education program will be undertaken by the Receiver/SWMD to inform its residential customers of the legal requirements for disposing of Solid Waste and the benefits of separating different types of Solid Waste and keeping Recyclable Materials out of the waste stream. The Receiver/SWMD shall prepare educational materials (such as informational flyers and booklets) and distribute them to its residential customers. Such informational materials shall describe the source separation and disposal requirements that the Government of Guam has implemented. The Receiver/SWMD shall work with its residential customers to require them to accurately characterize their waste and to sort out all Excluded Waste and Recyclable Materials they may produce.

##### **2.2 Haulers**

(a) Education. As it is important for Haulers to be able to identify Excluded Waste and Recyclable Materials, the Receiver/SWMD shall be responsible for educating Haulers as to the difference between Acceptable Waste and Excluded Waste, as well as what constitutes Recyclable Materials. The Receiver/SWMD shall educate Haulers regarding the Disposal requirements and limitations of the Facility and the proper Disposal of Excluded Waste at locations other than the Layon Landfill, with the goal of preventing Excluded Waste and Recyclable Materials from being delivered to the Facility.

Prior to startup and periodically during Facility operations, the Receiver/SWMD will conduct an educational program on the Receiver/SWMD's Hauler Procedures governing the use of the Facility for Representatives of all Haulers (including drivers), which shall include a review of the sanctions for violations thereof. Such program shall be videotaped by the Receiver/SWMD and shown to every newly licensed Hauler throughout the Term of the Agreement before such Hauler is permitted to use the Facility.

(b) Cooperation of the Contractor. The Contractor shall cooperate with the education efforts of the Government of Guam and the Receiver/SWMD. The Contractor shall post clearly visible signs at the entrance to the Facility which shall provide an illustrative list of items that constitute Acceptable Waste, Excluded Waste and Recyclable Materials. The



information on the signs shall state the sanctions that may be imposed in the event of delivery of Excluded Waste to the Facility. In addition, the Contractor agrees to cooperate with the Government of Guam by reminding Haulers of the Hauler Procedures, including the procedures relating to the delivery of Acceptable and Excluded Waste, whenever the Contractor identifies Excluded Waste in any delivery by a Hauler. The Contractor shall further cooperate with the education efforts of the Government of Guam and the Receiver/SWMD by providing the Receiver/SWMD with information on the Haulers' compliance with applicable Hauler Procedures.

### **2.3 Facility Personnel**

The Contractor shall train all of its Facility employees to identify Acceptable Waste, Excluded Waste, and Recyclable Materials. This training shall include teaching Facility employees the procedures to be followed when Solid Waste is identified as, or suspected to be, Excluded Waste. The Contractor's Facility employees shall receive training when they are hired, and training will continue by attending mandatory training sessions held by the Contractor. Attendance at these training sessions shall be documented and the records of this training shall be kept on file at the Facility.

### **3. Waste Screening at the Facility**

Waste screening shall begin when Vehicles hauling Solid Waste enter the Facility and shall be completed when Contract Waste is loaded into the Transport Trailers. Waste screening will primarily be done using visual inspection by the Contractor's Tipping Floor employees. There shall be three (3) locations where video cameras for recording waste processing operations will be located. These shall provide video records of the screening of Vehicles located at (1) the scale house at the entrance area of the Facility, (2) the Tipping Floor of the Facility, and (3) the Transport Trailers. The Contractor agrees to only process Solid Waste from Haulers who have been issued a weight slip from the SWMD scale house personnel, and the SWMD scale house personnel shall only issue such weight slips to Haulers who have shown that they are properly permitted by the Government of Guam to collect Solid Waste when activating an account with SWMD.

#### **3.1 Entrance Area Screening**

The first point of screening for Excluded Waste will be when Vehicles enter the Facility. cursory screening will be done by SWMD personnel in the entrance area while the Vehicles are in line to be weighed at the scale house. SWMD personnel have the authority to refuse any Vehicle observed to be carrying Excluded Waste entry to the Tipping Floor of the Facility. If a Vehicle is observed to be carrying a large quantity or percentage of Recyclable Materials, the SWMD personnel shall inform the Contractor and the Contractor shall make an attempt to remove as much of the Recyclable Materials as economically feasible and counsel the Hauler as to how Recyclable Materials can be removed before delivering Solid Waste to the Facility.

### **3.2 Tipping Floor Screening**

Solid Waste delivered to the Tipping Floor shall be visually screened by the Contractor's personnel before loading Contract Waste into the Transport Trailers. Video cameras mounted above the Tipping Floor and Transport Trailers shall record all operations on the Tipping Floor. The Contractor's Tipping Floor employees shall look for any Solid Waste that appears to be Excluded Waste, as well as Recyclable Materials such as tires, cardboard or white goods that may be removed and collected for recycling and remove the same as economically feasible. If the Solid Waste is observed by the Contractor's personnel to contain Excluded Waste, the Contractor's Tipping Floor employees shall separate out the Excluded Waste. The Contractor shall use its best efforts to identify the Hauler who brought the Excluded Waste to the Facility and provide this information to the Receiver/SWMD. Whenever loads appear to contain large amounts of Recyclable Materials, the Contractor shall remove Recyclable Materials as economically feasible in conformance with applicable Government of Guam recycling plans, programs, laws and regulations.

### **4. Handling Excluded Waste and Recyclables**

During Facility operations, it is anticipated that Hazardous Waste and non-hazardous Excluded Waste will occasionally be delivered to the Facility. Excluded Waste shall be isolated from Contract Waste immediately after it has been identified by either the SWMD personnel or the Contractor's personnel to the greatest extent possible. If the Excluded Waste is suspected to be Hazardous Waste, it shall be isolated and left in place until further evaluation of the waste can be done. Activities on the Tipping Floor shall be moved away from suspicious Excluded Waste while assessments are being done and decisions are being made on how to test and handle the material. The Contractor and the Receiver/SWMD shall contact the Guam Environmental Protection Agency immediately upon identifying Excluded Waste suspected to be Hazardous Waste and a contractor shall be contacted immediately by the Receiver/SWMD who is qualified to evaluate the suspected Excluded Waste and to process and remove such Excluded Waste if it is determined to be Hazardous Waste. If it is necessary to leave the Excluded Waste that is suspected to be hazardous in place at the end of the work day, such Excluded Waste will be covered with a plastic tarp or other suitable impervious material until the Hazardous Waste contractor completes its evaluation.

If the Excluded Waste is determined to be non-hazardous, then it shall be loaded into an appropriate storage container by the Contractor, and the Contractor shall arrange for removal from the Facility as soon as possible thereafter. Whenever non-hazardous Excluded Waste is identified by the Contractor, the Contractor shall contact the responsible Hauler and request the responsible Hauler remove it from the Facility provided that the Hauler can be identified. The Contractor shall contact the Receiver/SWMD should the Hauler refuse or neglect to remove the non-hazardous Excluded Waste promptly after notification by the Contractor.

In the event that the Hauler cannot be identified, it is the responsibility of the Contractor to remove the Excluded Waste, including contracting for the removal of the Excluded Waste to a facility permitted to accept such waste. The Excluded Waste shall be loaded into appropriate hauling containers by the Contractor and stored at the Facility pending removal. The Contractor shall have appropriate containers available at all times at the Facility for non-hazardous Excluded Waste. The Contractor shall temporarily store non-hazardous Excluded Waste at the Facility while it is being characterized to determine the appropriate method and location for off-site processing and Disposal. The Contractor shall contract with a company licensed to manage non-hazardous Excluded Waste to arrange for appropriate handling and Disposal.

It is also anticipated that recoverable quantities of Recyclable Material will be delivered to the Facility. If the Contractor observes a pattern of loads with recoverable quantities of Recyclable Materials being received from a particular Hauler, the Contractor

shall make an attempt to contact such Hauler to recommend remedial actions that such Hauler should take to avoid delivering these types of loads in the future. In addition, if the Contractor observes consistently high or increasingly higher amounts of Recyclable Material in loads from a particular Hauler, the Contractor shall notify the Receiver/SWMD. The Contractor shall have appropriate containers available at all time at the Facility for Recyclable Materials and shall not co-mingle Recyclable Materials separated from Solid Waste at the Facility with any other Recyclable Material.

#### **5. Removal of Excluded Waste and Recyclables**

The Contractor shall arrange to have containers of non-hazardous Excluded Waste removed from the Facility by qualified contractors and transported to facilities properly permitted for processing and Disposal of the same, with the costs to be shared equally by the Contractor and the Receiver/SWMD to the extent that the Haulers cannot be identified. The Contractor shall be responsible for contracting with a company or companies to remove Recyclable Materials from the Facility at the Contractor's own cost.

### SCHEDULE 3

#### INSURANCE REQUIREMENTS

1. **Insurance Coverage.** The Contractor shall obtain, pay for and maintain the insurance coverage listed below with respect to the operation of the Facility and furnishing of waste transportation services on and after the Commercial Operation Date.

#### COMMERICAL PROPERTY INSURANCE

ITEM	COVERAGE
<b>REAL PROPERTY</b>	
Structures	80% of value
All Direct Physical Damage	Replacement cost
Windstorm	80% of value
Earthquake	80% of value
Flood	80% of value
Transit	\$100,000
Cancellation Clause	90 Days
<b>PERSONAL PROPERTY</b>	
All machinery and equipment	Replacement cost
Installed equipment	80% of value
Equipment at other sites	80% of value
All Direct Physical Damage	Replacement cost
Windstorm	80% of value
Earthquake	80% of value
Flood	80% of value
Transit	\$100,000
Cancellation Clause	90 Days
<b>COMPREHENSIVE GENERAL LIABILITY</b>	
Bodily Injury/Broad Property Damage	\$6,000,000
Premises/Operations	
Underground Explosion & Collapse Hazards	
Personal Injury/Advertising	
Contractual	
Off road vehicles	
Independent Contractors	
Investigation/Defense costs	
Employers Legal	
Pollution how so ever caused	
Government of Guam, SWMD, and Receiver (Gershman, Brickner & Bratton, Inc.) Additional Insured	
Cancellation Clause	90 Days
<b>AUTOMOBILE LIABILITY</b>	
All Owned Autos	\$2,000,000 per occurrence combined single limit
Hired Autos	
Non-owned Autos	
Specifically Described Autos	
<b>WORKERS' COMPENSATION INSURANCE</b>	
Statutory Guam Law	
Other States, if necessary	
Longshoreman, if necessary	

ITEM	COVERAGE
<b>BOILER AND MACHINERY INSURANCE</b>	
Explosion	Cost of Machinery
Mechanical Breakdown	Cost of Machinery
Sudden Tearing Apart	Cost of Machinery
Testing	Cost of Machinery
Cancellation Clause	90 Days

**TRANSFER and TRANSPORTATION of WASTE**

ITEM	COVERAGE
<b>COMPREHENSIVE GENERAL LIABILITY</b>	
Bodily Injury/Broad Property Damage	\$10,000,000
Automobile Liability	\$2,000,000
Premises/Operations	
Personal Injury/Advertising	
Contractual	
Off road vehicles	
Independent Contractors	
Investigation/Defense costs	
Employer's Legal	
Pollution how so ever caused	
Government of Guam SWMD, and Receiver Additional Insured	
Other Entities if necessary	
Cancellation Clause	90 Days
<b>WORKERS' COMPENSATION INSURANCE</b>	
Statutory Guam Law	
Other States, if necessary	
Longshoreman, if necessary	
Merchant Marine, if necessary	

2. **Additional Insureds.** The Contractor shall name the Receiver (Gershman, Brickner & Bratton, Inc.), the SWMD, and the Government of Guam, and their officers, officials and employees, as additional insureds (the "Additional Insureds") on all insurance policies required pursuant to this Schedule (other than the Workers' Compensation policy hereof).

3. **Insurance Certificates.** Insurance, and any renewal thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Receiver/SWMD for its approval prior to the Commercial Operation Date or, in the case of a renewal, as reasonably provided by the insurer. The certificates of insurance shall provide for 30 days prior written notice to the Receiver/SWMD of cancellation of its coverage by the insurance company, the insurance company's intent not to renew or a reduction in its coverage.

4. **Non-Recourse Provision.** All insurance policies shall provide that the insurers shall have no recourse against the Additional Insureds for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage of liability policies.

5. **Subcontractors.** The Contractor shall be responsible for ensuring that all subcontractors of the Contractor performing work that is the obligation of the Contractor under this Agreement secure and maintain all insurance coverage (including workers' compensation insurance) required by the laws of Guam in connection with their presence and the performance of such work, and the Contractor agrees that, if for any reason, its subcontractor(s) fails to procure and maintain insurance as required, all such required insurance shall be procured and maintained by the Contractor at the Contractor's expense.

6. **Specific Provisions for Workers' Compensation Coverage.** Workers' compensation insurance shall be in accordance with the requirements of the laws of Guam, as amended from time to time. The required workers' compensation insurance shall include federal longshoreman coverage, if necessary.

7. **Specific Provisions for Pollution Liability Insurance.** Coverage for pollution liability required by this Schedule shall include coverage for bodily injury sustained (including death); property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed; defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims; and losses that arise from the operation of the Facility and transportation equipment, together with all associated services. Coverage shall apply to sudden and accidental non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage.

8. **Changes in Insurance Coverage.** The Contractor shall use its best efforts to obtain such additional insurance as the Receiver/SWMD may reasonably request from time to time, provided however, that the Contractor shall be permitted to increase the Monthly Fee to include as an additional cost item a surcharge equal to 1/12<sup>th</sup> of the annual premium for such coverage.

9. **Qualifications of Insurers.** The Contractor is required to obtain the Insurance set forth herein with insurance companies that carry at least a Best's "A-" or equivalent rating. In addition, insurance may not be obtained or maintained with insurers which are not authorized and properly licensed to conduct the business of insurance in Guam.

## **SCHEDULE 4**

### **RECORDKEEPING**

The Contractor shall keep the following records:

- Financial records in accordance with generally accepted accounting principles
- Records of all fuel purchases for the Transport Trailer tractors (for purposes of the Fuel Charge component of the Service Charge)
- Records sufficient to support Service Charge adjustments in accordance with the Agreement
- Equipment inspections
- Equipment maintenance and repair
- Vehicle registration
- Daily documentation of screenings
- Trip sheets for each Transport Trailer transporting Contract Waste , Excluded Waste, and Recyclable Material off site
- Weight receipts for material diverted for beneficial use
- Personnel records
- Hauler infractions or other problems with Haulers using the Facility
- Accidents on or damage to Facility or during transport of Contract Waste, Excluded Waste, or Recyclable Material
- Records of Facility employee training

**Monthly Reports:** The Contractor shall submit, with its invoice for the Monthly Fee, the following reports both in hard copy and electronically:

<b>Report</b>	<b>Minimum Contents</b>
Transport	Summary of number of Transport Trailers hauled to Layon Landfill; amount of Tons carried per haul; round trip time;
Recyclable Material	Tons by category of Recyclable Material



## **SCHEDULE 5**

### **FORM OF LETTER OF CREDIT**

Government of Guam  
Solid Waste Management Division  
542 North Marine Corps Drive  
Tamuning, Guam 96913

Ladies and Gentlemen:

1. At the request and for the account of Guahan Waste Control, Inc., (the "Contractor"), \_\_\_\_\_ (the "Bank") hereby establishes in your favor our direct-pay irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"), in the amount of \$2,000,000.00 (the "Stated Amount"), effective immediately. Capitalized terms used but not defined herein are used as defined in the Agreement referred to below.

2. We hereby irrevocably authorize you to draw drafts on us at sight in accordance with the terms and conditions hereinafter set forth. The aggregate amount drawn hereunder shall not exceed the Stated Amount.

3. This Letter of Credit is effective immediately and will expire on \_\_\_\_\_, \_\_\_\_\_ (the "Stated Termination Date").

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us of your sight draft in an amount not exceeding the Stated Amount, representing amounts payable to you by the Contractor under and pursuant to the Agreement to Provide Transfer Station Facilities, Operation of the Transfer Station, and Waste Transportation Services dated as of \_\_\_\_\_, 2011, by and between the Contractor and Gershman, Brickner & Bratton, Inc. in its capacity as the court-appointed Receiver of the Solid Waste Management Division of the Department of Public Works-Government of Guam (the "Agreement"). Upon presentment, the Bank will confirm with the Contractor that either (a) it does not contest the demand for payment; or (b) that a final determination has not yet been made on the Contractor's contest that an Event of Default has occurred under the Agreement or that the calculation of the amount demanded is incorrect. The Bank shall only honor the demand for payment if the Contractor confirms in writing that it does not contest the demand for payment.

5. Each sight draft drawn under this Letter of Credit must bear on its face the clause "Drawn under Irrevocable Letter of Credit No. \_\_\_\_."

6. Demand for payment may be made by Receiver during the period of the Receivership and the Chief Financial Officer during a period after the Receivership is terminated under this Letter of Credit prior to the expiration hereof at any time during the Bank's business hours at its address at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Attention: \_\_\_\_\_, on any Business Day (as hereinafter defined). As used herein, the term "Business Day" means a day on which the Bank at our aforesaid office is opened for the purpose of conducting commercial banking business. We hereby agree that all sight drafts drawn under and in strict conformity with the terms of this Letter of Credit will be duly honored by us upon delivery of the sight drafts. Said amount will be paid to you by Cashier's Check, or at your option shall be credited by book entry or wire transfer to the bank account designated by you, on the same business day that confirmation is received by the Bank from the Contractor that it does not contest the demand.

7. The Stated Amount shall be reduced automatically by the amount of each drawing hereunder.

8. This Letter of Credit is transferable in its entirety (but not in part) to your successor which you certify to us has succeeded you as beneficiary and may be successively so transferred. Transfer of this Letter of Credit to such transferee shall be effected upon the presentation to us of this Letter of Credit accompanied by a certificate in the form of Attachment A, attached hereto.

9. Only you (or a transferee as provided in paragraph 8) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in a sight draft drawn hereunder, we shall be fully discharged of our obligation under this Letter of Credit with regard to that payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with regard to that payment to you.

10. Pursuant to the Parties' subsequent instructions, a new Letter of Credit for all subsequent years that the Agreement is in effect shall be issued and shall become effective on or before the last day of the preceding year as part of a series of Letters of Credit for successive one year periods until the Parties give a notice of conclusion or termination of the Agreement.

11. If the Contractor gives notice to you and to us of the Contractor's election not to renew or extend as provided in the prior paragraph and you give notice to the Contractor and to us that you desire to receive the aggregate amount of the Letter of Credit, said amount will be provided to you by Cashier's Check, or at your option book entry or wire transfer to the bank account designated by you, within thirty (30) days after the date of your notice.

12. This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Agreement).

Very truly yours,

\_\_\_\_\_  
{Bank Name}

BY: \_\_\_\_\_

Authorized Officer

**ATTACHMENT A  
TO  
LETTER OF CREDIT  
TRANSFER CERTIFICATE**

{Date}  
{Bank Name}  
{Bank Address}  
Attention:  
RE: Irrevocable Letter of Credit No. \_\_\_\_

Ladies and Gentlemen:  
For value received, the undersigned Beneficiary hereby irrevocably transfers to:

{Name of Transferee}  
{Address of Transferee}  
all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole right as the Beneficiary thereof, including sole rights to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned Beneficiary.

Such transferee is a permitted transferee under such Letter of Credit.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof and forward it directly to the transferee with your customary notice of transfer.

**SIGNATURE AUTHENTICATED**  
Bank

By:  
Name:  
Its:

Receiver  
Solid Waste Management Division

By:  
Name:  
Its:

## SCHEDULE 6

### CLOSE OUT COSTS IN EVENT OF TERMINATION

Building Modification	\$ 220,000.00
Transfer Station Equipment	\$ 200,000.00
New Transport Trailers	\$ 600,000.00
Scales	\$ 200,000.00
Scale House	\$ 20,000.00
Concreting (Scale Areas, Trailer Parking Areas)	\$ 125,000.00
Radiation Detector	\$ 10,000.00
Camera Systems	\$ 15,000.00
Total cost-capital items	\$ 1,390,000.00

**Close out costs in event of termination:**

After Year 1	\$ 1,112,000.00
After Year 2	\$ 834,000.00
After Year 3	\$ 556,000.00
After Year 4	\$ 278,000.00
After Year 5	\$ 0.00

## **SCHEDULE 7**

### **EMERGENCY ACTION PLAN TRANSFER STATION**

#### **1.0 INTRODUCTION**

It is the environmental compliance policy of Guahan Waste Control, Inc. (the "Contractor") to comply with the requirements of all Applicable Laws, regulations, Permits and orders. The primary business of the Contractor - recycling, collection and processing of Solid Waste - is elemental to the nation's commitment to pollution abatement. This Emergency Action Plan (the "Plan") has been developed to specify the emergency response procedures that shall be followed in the event of an emergency at the GWC Waste Transfer Station (the "Facility").

This Plan shall be implemented to address all emergency situations that could potentially develop while operating the Facility that could endanger public health and safety or the environment. In the event of an emergency, the first person on the scene shall notify the Contractor's Emergency Coordinator or designated alternate (see Appendix A), who in turn shall initiate a proper response to the emergency situation. After having been apprised of the emergency situation, the Emergency Coordinator shall proceed to notify all Facility employees of such situation by activating the internal communications system (if not previously activated), and aid in evacuation, if necessary. Progression of notification shall continue in sequence to any local and federal response agencies deemed appropriate by the Emergency Coordinator.

#### **1.1 SCOPE AND APPLICABILITY OF THE EMERGENCY ACTION PLAN**

The purpose of this Plan is to establish an organized, coordinated, and technically feasible course of action to be taken in responding to emergencies that may arise during the operation of the Facility. It is not the intent of this Plan to address spills of hazardous substances purchased in household consumer packaging and which may be contained in the Solid Waste brought to the Facility for processing (i.e. pesticides and insecticides, janitorial cleaners, lawn and garden products, etc.), as they would be of small enough quantities as to be easily containable. Applicability of this Plan extends to all Facility employees, invitees and visitors.

All Facility employees shall be informed of the Facility's emergency response procedures and any potential risks of fire, explosion, health, or safety hazards associated with the operation of the Facility. This Plan summarizes those hazards in Section 2.5, and defines protective measures planned for the Facility.

This Plan must be reviewed with each Facility employee prior to such employee's first day of work at the Facility and periodically thereafter to ensure a thorough understanding by



Facility employees to ensure they can competently carry out their roles as required by this Plan. Development of this Plan is in accordance with the requirements of 29 CFR 1910.38 (a).

The Emergency Coordinate and alternate specified in Appendix A of this Plan are thoroughly knowledgeable about this Plan and may be contacted at any time by Facility employees or other persons who may require additional information about the procedures or guidelines presented herein.

## **1.2 INVITEES AND VISITORS**

Invitees and visitors to the Facility shall be accompanied by a Facility employee or briefed in regards to the hazards associated with the operation of the Facility and their respective roles (if any) in the Facility's Emergency Action Plan and evacuation procedures.

In addition, all Facility invitees and visitors shall be required to comply with relevant OSHA requirements. This may involve the use of personal protective equipment ("PPE"). A limited quantity of PPE is typically available at the Facility for use by Facility invitees and visitors (such as reflective safety vests and hearing, eye and head protection).

In the event that an invitee or visitor does not adhere to the provisions of this Plan, he/she shall be requested to leave the Facility. All such incidents shall be recorded in the Facility's logbook.

## **2.0 EMERGENCY COMMUNICATION**

**Appendix A** of this Plan provides the names and telephone numbers of the Emergency Coordinator and alternate along with all agencies that may need to be contacted in the event of an emergency situation. In the event of a medical emergency, Facility employees shall take direction from the Emergency Coordinator or alternate and notify the appropriate emergency organization(s). In the event of a fire or spill, the Emergency Coordinator shall also notify the appropriate local and federal regulatory agencies.

## **2.1 PERSONNEL ROLES AND LINES OF AUTHORITY**

The Emergency Coordinator shall have primary responsibility for responding to and determining appropriate emergency response actions. This includes taking appropriate measures to ensure the safety of Facility employees, invitees, visitors and the public. Possible actions may involve evacuation of Facility employees, invitees and visitors as well as the evacuation of adjacent residents. The Emergency Coordinator is additionally responsible for ensuring that corrective measures have been implemented, appropriate authorities notified, and follow-up reports completed. An alternate may be called upon to act on the behalf of the Emergency Coordinator.

## **2.2 EVACUATION ROUTES/PROCEDURES**

In the event of an emergency situation, the Emergency Coordinator is responsible for determining when evacuation of the Facility is required. If evacuation is required, the following procedures shall be followed:

- Alert all Facility employees of the existence of an emergency situation by using an alarm system or the Facility's communications system.
- Facility employees shall shut down all equipment.
- Facility employees, invitees and visitors shall proceed to the assembly area adjacent to the Facility's main entrance gate. Once assembled, a determination as to whether there are any missing persons can be made.
- Once Facility employees, invitees and visitors are assembled, Facility employees shall standby to offer assistance if needed.

## **2.3 SITE COMMUNICATIONS SYSTEM**

Successful communications between the all of the Contractor's employees and the Emergency Coordinator is essential. The following communications systems shall be available whenever the Facility is in operation and whenever any of the Contractor's employees are outside the Facility on collection routes:

- Telephone
- Two-way radios
- Personal contact by Emergency Coordinator

## **3.0 EMERGENCY RESPONSE/CONTINGENCY PLAN**

This section describes contingencies and emergency planning procedures to be implemented at the Facility. Potential situations that could require implementation of the emergency response procedures set forth in this Plan include the following:

- General Emergencies
- Fire / Explosion
- Hazardous Waste Contamination
- Spills
- Medical Emergency Requiring First Aid
- Natural Disasters

## **3.1 GENERAL EMERGENCIES**

The Emergency Coordinator or alternate shall follow the procedures outline below in the event of any emergency situation:



- Investigate the emergency to determine its seriousness.
- Activate the Contractor's communication system to notify all Facility employees of an imminent or actual emergency situation.
- Seek medical attention for any injured persons.
- Contact designated agencies for any necessary assistance.
- Direct the Facility's Emergency Response Team to begin to eliminate or minimize the emergency situation.
- Notify local agencies if the emergency situation presents a potential threat to surrounding areas.
- After the emergency situation is contained, determine if the Facility must be shut down until all wastes have been cleaned up and all imminent potential dangers have been eliminated.

### **3.2 Fire / Explosion**

The Emergency Coordinator or Alternate Coordinator shall follow the following procedures in the event of any fires or explosions at the Facility:

- Investigate the fire to determine its seriousness.
- Activate the Contractor's communications system to notify all Facility employees of an imminent or actual emergency situation.
- Seek medical attention for any injured persons.
- Immediately contact the Guam Fire Department for assistance.
- Coordinate the evacuation of all Facility employees, invitees and visitors as necessary from the Facility. All evacuating Facility employees are to proceed to the nearest building exit and then walk to the assembly area adjacent to the Facility's main entrance gate. From this location, employees will be able to safely direct incoming emergency vehicles to the fire.
- Direct the Facility's Emergency Response Team to begin to eliminate or minimize the emergency situation.
- Immediately notify the Guam EPA and Solid Waste Management Division ("SWMD") of the fire.
- After the fire is contained, determine if the Facility must be shut down until all wastes have been cleaned up and all imminent potential dangers have been eliminated.
- Ensure that all Facility equipment used to contain the fire is cleaned and restored to pre-fire conditions before operations are resumed.

The first step in fire control is prevention. Health and safety training will focus on Facility operations that can cause fires, and identify mechanisms to identify fire hazards, control fires, and notify the Facility's Coordinator or alternate. A fire could be caused by, for

example, waste material delivered in a smoldering condition, incompatible materials delivered in a waste load, or an electrical equipment malfunction.

Facility employees shall be alert to incoming loads of Solid Waste that show evidence of smoke, char, chemical containers, etc. Loads that appear to be smoking or are charred shall be segregated for special management within the Facility. Indoor management of charred loads is the preferred method due to the fact that the building identified for this purpose will be constructed of fire resistant materials, and the potential for spreading, via wind-blown material, is therefore mitigated. Water hoses and fire extinguishers shall be positioned on or near the Facility's Tipping Floor to control "hot" loads. Unloading of other Vehicles may be temporarily suspended, or confined to a separate area of the Tipping Floor, until a "hot" load is confirmed to be under control. Additional measures or fire prevention and control shall include:

- Training of all Facility employees on fire prevention and control;
- Prominent posting of emergency response contact numbers (fire department, police, ambulance) throughout the Facility; and
- Placing fire extinguishers on all mobile equipment and at various locations throughout the Facility.

As previously stated, the primary effort for fire control shall be prevention. However, in the unlikely event of a fire, Facility employees shall initially attempt to extinguish or contain the fire to the greatest extent possible using readily available multi-purpose fire extinguishers. If this effort is unsuccessful, Facility employees shall contact the Guam Fire Department. A water line and hose shall be available on the Tipping Floor to assist in controlling and extinguishing any fires that cannot be contained using fire extinguishers, should they occur. Adequate hose shall be available for coverage of all receiving areas and the tractor and Transport Trailer loading area. Fire extinguishers shall also be placed at several locations throughout the Facility.

### **3.3 EXCLUDED WASTES / HAZARDOUS MATERIAL CONTROL**

The Emergency Coordinator or alternate shall follow the following procedures to determine the proper action when encountering potential Hazardous Waste:

- Visually identify the nature and extent of the contamination.
- Determine if the Hazardous Waste can be safely removed from the Tipping Floor for further evaluation.
- If the Hazardous Waste cannot be safely relocated, contain the Hazardous Waste for investigation. If absolutely necessary, shut down Facility operations until safe conditions are restored.
- Transport all residuals to a facility that is approved for Disposal of that type of Hazardous Waste.

- Remove any residual contamination by washing any equipment, Tipping Floor surfaces, or containers that came in contact with the Hazardous Waste. Cleaners and solvents used shall be designed for this application, and shall be chosen so as not to constitute a Hazardous Waste if coming in contact with any Solid Waste at the Facility.
- For all non-hazardous materials, wash waters can be directed to the floor drains at the Facility for proper disposal. For Hazardous Waste, sorbents shall be used to collect any cleaning fluids. Sorbents must be disposed at facilities approved for that waste type.

During routine operations, Facility employees shall be continuously inspecting all Solid Waste during unloading for suspect materials. The likelihood of Hazardous Waste being delivered to the Facility is minimized since a majority of Solid Waste will be received from known waste generators.

Materials identified as being potentially Hazardous Waste shall be isolated from other Solid Waste and removed from the Tipping Floor as soon as practical. Depending on the characteristics of the material, special handling and disposal procedures may need to be followed to remove the Hazardous Waste from the Facility.

If "hot" waste is found in a waste delivery Vehicle, the Vehicle shall be separated from all other Vehicles and water or other extinguishing agent (i.e. foam, soil, etc.) shall be applied. After the water or extinguishing agent is applied, Facility employees shall observe the condition of the "hot" waste, and continue to extinguish as necessary to completely cool or extinguish any potential or actual fire.

When the "hot" waste is removed from the Vehicle, it shall be kept away from all other Vehicles and all other Solid Waste. Extinguishing agents shall be applied to the "hot" or burning waste.

After the concern for "hot" waste has been addressed, the cooled waste, to the extent it constitutes Contract Waste, shall be loaded into a Transport Trailer and transported to the Layon Landfill for Disposal.

If unauthorized Hazardous Waste or PCB waste is found at the Facility, the Guam EPA and the SWMD shall be immediately notified of the incident.

### **3.4 SPILLS**

Liquid waste shall be prohibited at the Facility. The potential for a spill is therefore minimized. In the unlikely event of a spill at the Facility, Facility employees shall initiate the following emergency spill response procedures to protect the public health and safety and the environment.

**I. The first Facility employee becoming aware of a spill shall assess the substance spilled and its hazard potential as follows:**

- A. Determine the hazards associated with the spill.**
  - Assess the quantity of substance spilled.
  - Assess the extent of the area affected.
  - Assess the source of the spill.
  - Notify the Guam EPA and the SWMD of the incident.
- B. If Facility employees cannot safely and effectively control the spill or if any injuries have occurred that require medical assistance, the Emergency Coordinator or alternate shall be notified. The Emergency Coordinator shall coordinate appropriate spill response procedures.**

**II. Secure Spill Response and Personal Protective Equipment**

- A. If Facility employees cannot control the spill and the Emergency Coordinator has been notified, Facility employees shall commence safe evacuation of the area as warranted and direct the off-site response services to the location of the spill.**
- B. If the spill can be safely and effectively controlled by Facility employees, then the Emergency Response Team shall:**
  - Secure the area; and
  - Obtain appropriate spill response equipment and personal protective equipment.

**III. Contain and Eliminate Spill Source**

- A. Facility employees responding to a spill shall:**
  - Contain the spill to prevent entry to a storm sewer, ditch, or sanitary sewer using floor *dry*, sorbent pads, or sand; and
  - Seal or stop the source of the spill.

**IV. Mitigate and Clean Up Spill**

- A. Facility employees responding to a spill shall:**
  - Collect the spilled material by the appropriate manner and place it into secure containers.

- Decontaminate all areas or surfaces that came into contact with the spilled material.
- Dispose of the spilled material in a manner that fully complies with applicable local and federal regulations.

**V. Addressing leachate from Vehicles:**

When Vehicles loaded with Solid Waste arrive at the Facility, Facility employees shall examine them for integrity. If any leachate is observed to be leaking from any Vehicle, Facility employees shall take immediate steps to contain the liquid within the Vehicle and to clean up the liquid. A spill cleanup kit will be kept at the Facility at all times, to be available to clean up leachate coming out of the Vehicle. If leachate continues to come out of the Vehicle after the initial cleanup is done, Facility employees shall move the Vehicle into the designated building so that Solid Waste can be unloaded and the leachate can be removed from the Vehicle. After the Vehicle is moved into the designated building, the leachate shall be directed to the building's floor drains so that it can be collected and temporarily stored in the leachate tank.

**3.5 MEDICAL EMERGENCIES REQUIRING FIRST AID**

Facility employees shall respond to medical emergencies requiring first aid as directed by the Emergency Coordinator or alternate. While the initial reaction by Facility employees to an emergency situation shall concentrate on preventing the spread of any fire/explosion, or spill/leak situation that occurs, immediate emergency medical attention shall also be provided to any injured persons, if applicable. Any possible sources of ignition shall be removed from the incident area, if this can be done without risk, and vehicular traffic may need to be suspended and Facility operations ceased until the fire or incident can be safely contained and controlled.

First Aid stations shall be located throughout the Facility that contain basic emergency supplies for the care of individuals who may experience an injury or exposure to Hazardous Waste while at the Facility. It is expected that all Facility employees will use common sense and call immediately for outside professional assistance if a serious injury has occurred. Emergency phone numbers are to be posted throughout the Facility if assistance should be required. In addition, the route to the Guam Memorial Hospital should be familiar to all Facility employees.

No Facility employee has been assigned any specific emergency medical or rescue duties. During a medical emergency, Facility employees may perform necessary basic life saving techniques, i.e. CPR, stopping blood flow, moving victim to a safe place, etc. If the same does not pose a threat to the other Facility employees, however, no Facility employee is required to perform any of these functions. As with all emergencies, the Emergency Coordinator shall be informed immediately.

### **3.6 NATURAL DISASTERS**

In the event of a natural disaster, i.e. flooding, tornado, typhoon, etc., the Emergency Coordinator or alternate shall be responsible for monitoring news broadcasts to stay up-to-date on the latest developments and to determine the appropriate action to be taken by those Contractor's employees who are outside the Facility on collection routes. These responses may include:

- Moving Facility employees, invitees and visitors to interior rooms, away from all windows, for protection from destructive winds.
- Sending Facility employees home, if evacuation is recommended by local officials.
- Coordinating actions necessary for the Contractor's employees who are outside the Facility on collection routes such as returning to the Facility, seeking immediate shelter, etc.

### **4.0 PERSONAL PROTECTIVE EQUIPMENT**

The following list of safety equipment should be used as appropriate for Facility employees, invitees and visitors:

#### **Hardhats**

All persons, including Facility employees, invitees and visitors, must wear an approved hardhat when the Facility is in operation and all other times when conditions warrant.

#### **Safety Glasses**

Safety glasses shall be worn at all times when the risk of eye injury exists. Facility employees shall decide on their own when such risk exists, except for the following situations where the wearing of safety glasses shall be mandatory:

- Whenever anyone is on the Facility's Tipping Floor.
- Whenever anyone is working in, on, or around equipment.
- Whenever anyone is using tools or machinery requiring eye protection.

#### **Gloves**

As the scope of work where gloves are required will vary, it will be the decision of the individual Facility employees when the use of gloves will be necessary, provided however, that any Facility employee sorting or handling Solid Waste or Recyclable Material must wear gloves.

## **Fluorescent Vests**

The use of fluorescent vests shall be mandatory anytime Facility employees are used in either of the following capacities:

- Spotters.
- Paper or Litter Pickers.

## **Hearing Protection**

Disposable earplugs shall be made available to all Facility employees. The Contractor shall determine whether or not hearing protection is mandatory or optional.

## **5.0 PERSONAL PROTECTIVE EQUIPMENT**

In an emergency situation, the Emergency Coordinator is the individual responsible for determining when evacuation of the Facility is required. If evacuation is required, the following procedures will be followed:

- Alert all Facility employees;
- Remove equipment from building (if appropriate);
- Shut down all mobile equipment; and
- Assemble Facility employees, invitees and visitors at the designated assembly area adjacent to the Facility's main entrance gate.

## **6.0 POST EMERGENCY PLAN**

Immediately after an emergency situation, the Emergency Coordinator must make arrangements for the temporary storage and Disposal of any recovered wastes, water, or any contaminated materials resulting from the incident. An evaluation of the incident shall be carried out as soon as time permits to prevent any future accidents.

The Emergency Coordinator shall complete the Incident Investigation Form promptly after every incident. All emergency response equipment used must be cleaned and made fit for reuse, or replaced as necessary, so that the equipment will be available when Facility operations resume in order to ensure that each item is in proper working condition.

This Plan shall be altered, as necessary, in the event of a change in Facility design or operation, in order to assure continued safe operation of the Facility.

## **7.0 TRAINING**

At a minimum, all Facility employees are required to be trained to recognize the potential hazards of operating the Facility, the provisions of this Plan and the role of the Emergency Coordinator with respect to emergency response actions.

Facility employees shall be trained initially prior to work assignments and annually thereafter or as this Plan is modified to ensure their continued familiarity with the provisions of this Plan.



## APPENDIX A

### EMERGENCY CONTACT NUMBERS

ORGANIZATION	CONTACT	PHONE NO.
Emergency Coordinator	Jeff Sablan	(671) 898-1958
Alternate Coordinator	Jesse Terlaje	(671) 898-9557
Guam Department of Public Health & Social Services		(671) 735-7205
Ambulance	N/A	911
Police	N/A	(671) 472-8911
Fire	N/A	911
SWMD		(671) 649-3777
Hospital	N/A	(671) 647-2330
Poison Control	N/A	911
National Response Center	N/A	(671) 475-1658/9
Guam EPA		(671) 475-1658
US EPA Region No. 9		(415) 947-8000
Centers for Disease Control	N/A	(800) 232-4636
Unitek Environmental Guam		(671) 565-3151

## APPENDIX B

### INCIDENT INVESTIGATION REPORT

Date of Incident: \_\_\_\_\_

Time of Incident: \_\_\_\_\_

Type of Incident/Accident: \_\_\_\_\_

\_\_\_\_\_

Was there a spill or release of petroleum product or chemical? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, explain the type and amount.

\_\_\_\_\_

Describe the accident as it occurred (How did it happen?):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Names and information of person(s) involved:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Were there any injuries? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, explain the extent and nature of injury or injuries:

\_\_\_\_\_

\_\_\_\_\_

What action was taken, if any, to prevent future occurrences?

\_\_\_\_\_

\_\_\_\_\_

## **EXHIBIT A**

### **LIST OF EXCLUDED WASTE**

1. Corrugated cardboard boxes and containers, also known as OCC
2. Vegetative, yard and organic wastes, such as leaves, grass clippings, tree prunings, large cut waste timber and stumps
3. Untreated wood, including construction and demolition lumber and shipping/moving crates and pallets
4. Inert materials, including concrete, concrete blocks, bricks, rocks and other bulky material
5. Mixed loads containing one or more of the above materials

## **Determination to Justify Sole Source Procurement for Services of a Commercial Transfer Station**

**Whereas**, the Guam Procurement Law at 5 GCA Section 5214 authorizes sole source procurement without competition when, under regulations promulgated by the Procurement Policy Office, the head of a purchasing agency determines in writing that there is only one source for the required supply, service or construction item; and

**Whereas**, Gershman, Brickner & Bratton, Inc. (GBB), in its capacity as Receiver for the Solid Waste Management Division of the Government of Guam (SWMD) serves in the capacity as the head of the purchasing agency for the SWMD; and

**Whereas**, the procurement regulations further provide at 2 GAR Division 4 Section 3112 the circumstances which could necessitate sole source procurement; and

**Whereas**, Gershman, Brickner & Bratton, Inc. ("GBB") is the Receiver appointed by the U.S. District Court of Guam in *U.S. v. Government of Guam*, Civil Case No. 02-00022 regarding closure of the Ordot landfill and the opening of a new landfill, and was ordered to "assume all of the responsibilities, functions, duties, powers and authority" of the SWMD; and

**Whereas**, as a part of its duties as Receiver, GBB must secure the services of a commercial transfer station, a facility that will consolidate waste collected by the SWMD and private waste haulers, into large loads for transport to the Layon Landfill; and

**Whereas**, a commercial transfer station must be located within five (5) miles of the SWMD and hold a valid permit for such a facility from the Guam Environmental Protection Agency (GEPA); and

**Whereas**, the information available to the Receiver indicated that only one such facility, holding a valid permit from GEPA, presently exists on Guam; and

**Whereas**, to ensure that there are no other qualified facilities on Guam currently, or that could reasonably be expected to be permitted by GEPA in time to meet the need for this facility which must be available by mid-2011, GBB issued a Request for Expressions of Interest (RFEI) soliciting interest from qualified organizations to provide commercial transfer station services; and

**Whereas**, the RFEI was widely advertised on Guam and available to all interested parties on the Receiver's website; and

**Whereas,** only one response to the RFEI was received and it was from Guahan Waste Control, Inc., the facility already known to the Receiver as a properly permitted and located facility; and

**Whereas,** sole source procurement is justified because the timely procurement of these services is a requirement of an essential element of the Consent Decree and, after extensive efforts, it has been determined that there is only one such qualified facility on Guam;

**Whereas,** by contracting for this service instead of building a new facility, the Government of Guam will avoid duplication infrastructure that already exists on Guam and save several million dollars in capital funding;

**Now, therefore,** the Receiver hereby determines that the SWMD, subject to negotiation of an acceptable contract, is justified in entering into a sole source contractual arrangement with Guahan Waste Control, Inc.

**In witness whereof,** the undersigned certifies to the truth of this procurement determination on the date indicated below.

  
Receiver

Date: 5/19/2011