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*Attorney for the Guam Solid Waste Authority ("GSWA")
By and through Receiver Gershman, Brickner & Bratton, Inc. ("GBB")*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

**SPECIAL REPORT
OF THE RECEIVER**

The Receiver submits this Special Report in response to the June 8, 2018 Order (ECF 1813), to provide the Court with a report addressing the status of the following: (1) the gas mitigation project and the Receiver's update to the Post-Closure Plan to address this issue, (2) the procurement of the services of a Trustee and Independent Engineer, (3) the upgrades to the transfer stations, (4) the Post-Closure Care Fund and (5) the projects to close Cells 1 and 2 and construct a new cell.

Respectfully submitted this 14th day of June, 2018.

/s/ Vanessa L. Williams
VANESSA L. WILLIAMS, ESQ.

Special Report of the Receiver

Responding to the Court's Order dated June 8, 2018

Civil Case No. 02-00022

United States of America v. Government of Guam
Guam Solid Waste Management Division

Prepared for:



U.S. District Court of Guam

Submitted by:



SOLID WASTE
MANAGEMENT
CONSULTANTS
R E C E I V E R

Gershman, Brickner & Bratton, Inc.
2010 Corporate Ridge Drive, Suite 510
Mclean, Virginia 22102

June 14, 2018

Printed on recycled paper

Civil Case No. 02-00022
United States of America v Government of Guam

Guam Solid Waste Authority

This Special Report of the Receiver will respond to the Court's Order dated June 8, 2018. We will also provide the Court with a brief update on financing to be followed by a more detailed but separate report in the coming weeks outlining the resolution of the financing issues we see developing.

In its Order the Court directed that the Receiver provide updates on the status of (1) the gas mitigation project; an update to the Post-Closure Plan to address this issue (with photographs, if available); (2) the procurements of the services of a Trustee and Independent Engineer, (3) the upgrades to the transfer stations (with photographs, if available); (4) the Post-Closure Care Fund and (5) the projects to close Cells 1 and 2 and construct a new cell.

1. The Ordot Dump landfill gas mitigation plan and update to the Post-Closure Plan for the Ordot Dump Closure Facility post-closure care plan.

As this Court will recall, this project was made necessary by decisions made years ago that resulted, for reasons unknown, to allow waste to be disposed and buried on the periphery of the Ordot Dump instead of being placed in the main waste pile of the Dump. The project is now underway and entails primarily the construction of underground piping from gas extraction wells to the flare where the gas is to be collected and controlled combustion will occur. Work initiated on March 30, 2018 with a contractual deadline of June 13, 2018 for work to be completed and then begin the initial two-week testing to confirm performance of the system. Initial procurement delays of the welding equipment have put the project behind schedule by approximately two weeks. The anticipated completion of construction work by the contractor is July 20, 2018. Following this a two-week period of performance testing is needed, results will be submitted to US EPA for review and acceptance as part of the overall Post-Closure Plan acceptance criteria. We believe this can all be accomplished within 90 days but the Receiver will ultimately have to defer to USEPA on the time-frame they will require to address this issue.



IAN Corp. receiving field training for pipe fusing weld from McElroy Manufacturing. (5/23/2018)



The welded 8-inch pipe (looking north). (5/25/2018)

In addition to the gas mitigation effort underway, several issues on the Post-Closure Plan remain pending and include US EPA review and acceptance of the Gas Mitigation O&M Plan, Pilot Testing Results, Gas Mitigation Design, Groundwater Statistical Analysis, Final Soil Gas Characterization

Plan, Soil Gas Results and Gas Condensate Sampling and Review along with several amendments required of US EPA to the Post-Closure Plan before it is final and include a Post-Closure report for Dededo Transfer Station, Role/Responsibilities of the Independent Engineer, updated Post-Closure Cost Estimate, any new Standard Operating Procedures of the new Post-Closure Operator, and leachate management upgrade and root-cause analysis.

2. The procurements of the services of a Trustee and Independent Engineer.

The procurement documents are prepared and can be issues quickly for both the Trustee and the Independent Engineer. The documents are submitted as **Exhibit A** (Independent Engineer) and **Exhibit B** (Trustee Services). The Receiver continues to recommend that these procurements be on a schedule that puts the services in place with a reasonable but limited overlap that will coincide with the termination of the Receivership.

The goal should be a minimum overlap between the end of the Receivership and the initiation of these services to ensure that any period of time GSWA is required to pay for the services of both the Receiver and these new contractors simultaneously, is minimized. When the Court determines it is appropriate to proceed with the Transition the Receiver will immediately initiate the procurement process to acquire the services of the Trustee and the Independent Engineer. Should the procurement take longer than the time available, the Receiver will provide these services during any interim period necessary to complete these procurements and allow the Trustee and Independent Engineer to assume their responsibilities.

3. The upgrades to the transfer stations.

Final work to upgrade the transfer stations is now complete as of March 30, 2018. Both Agat and Malojloj Residential Transfer Stations are fully functional and receive residential waste in a safe, fully compliant facility. These facilities are now modern and environmentally compliant for the first time. They equal or exceed comparable facilities anywhere.



Malojloj Residential Transfer Station – Administration Building



Malojloj Residential Transfer Station – customer drop-off area

Additional and unanticipated expense resulted at the Malojloj site when evidence of historically significant archaeological findings were unearthed. Following the protocols of the Guam Historic Preservation Office, these sites and findings were preserved causing the site itself to require reconfiguration in order to achieve a compliant facility and the historic preservation required by Guam Law. The cost of these unanticipated expenses was approximately \$100,000.00.



Agat Residential Transfer Station – Administration Building



Agat Residential Transfer Station – Customer drop-off areas

Finally, the Dededo Residential Transfer Station that Governor Calvo closed has undergone an environmental closure. The work is complete, and the site is environmentally safe. To the best of our knowledge, however, no progress has been made on cleanup of the adjacent site contaminated by PCB's.



Former Dededo Residential Transfer Station – post clean-up

Recently GEPA is finalizing the draft permit review process, for both Malojoj and Agat Transfer Stations with the initiation of a 45-day public review period after which formal five-year operating permits should be issued for both facilities.

4. The Post-Closure Care Fund.

The Post-Closure account is fully established and on the date of this report has a balance of \$5,507,548.41. It remains on course to be fully funded on the original schedule approved by the Court¹.

As we informed the Court in our most recent report, we have now appointed a permanent Post-Closure Operator. Payments to the contractor and other post-closure expenses will be paid from the account going forward.

5. Projects to close Cells 1 and 2 and construct a new cell.

Since mid-May the contractor for the new Cell design, Geo-Logic Associates, working as a subcontractor to GHD, has held weekly design coordination meetings to advance the 90% design with a revised schedule to have the design complete and ready for the DPW

¹ November 2023.

Building/Construction permitting process in early July. To the Receiver's knowledge, Mr. Martin has left it to the design consultant vendor to execute a timeline that provides a permit application package to GEPA and DPW permitting by early July however a revised schedule has not yet been developed to reflect these adjustments. Following an anticipated 30 days of review the permit should be expected to be issued. GEPA should technically review the permit in this period to sign-off on the Building Permit. Concurrently the procurement process should be initiated in July/August although a schedule has not been established, to the Receiver's knowledge, with a goal of having a contractor on board to be ready to procure long lead materials by October 2018. It is also unclear as to whether GSWA has considered Owner purchase of construction materials to help speed the construction schedule. Proper leadership is essential to the success of this project. Without it the entire solid waste system will come to a grinding halt creating an environmental and economic crisis in Guam.

It is also important to involve GSWA's current Landfill Operations contractor to play a major role in the execution of new cell development. Their input is important when developing the construction sequencing plan as there are new utilities and haul roads, and site management must be coordinated so that landfilling operations can continue uninterrupted as the new cell is being constructed. The Landfill Operator had been involved early on in the development of the design and review of 50% design plans, however we understand it has been several months since the Operator was last included in design meetings or provided with progress updates. The Operator has not been presented with any construction sequencing plans at this stage and it is imperative to do so.

Finally, money for timely payment of all costs associated with the new cell must be available. An increase in the estimated cost of the project and cost pressures from other areas make it necessary to acquire a temporary source of financing to assure the continuous availability of funds. This can all be accomplished we believe within the funding constraints of the Receiver's approved financing plan. In a subsequent Special Report, the Receiver will outline its recommendations for achieving this result.

We thank the Court for its consideration of our views in this matter.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing is true and correct.

Dated this 14th day of June 2018.

A handwritten signature in black ink, appearing to read "David L. Manning", written over a horizontal line.

David L. Manning
Receiver Representative

EXHIBIT

“A”



SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER

REQUEST FOR PROPOSALS
FOR
INDEPENDENT ENGINEER SERVICES
FOR
POST CLOSURE CARE AT ORDOT CLOSURE FACILITY
PROJECT NO.: RECEIVER- RFP001-18

RFP Submittal Deadline:

4:00pm

Month, 2018

Contract Administrator:
(Email address)

David L. Manning

dmanninggbb@gmail.com

PREPARED BY:

Gershman, Brickner & Bratton, Inc. (GBB), in its capacity as RECEIVER for the Guam Solid Waste Authority (GSWA) of the Government of Guam

RFP NUMBER: RFP001-18

REQUEST FOR PROPOSALS FOR:

Operation and Maintenance of the Ordot Dump Closure Facility

PROPOSAL DUE DATE: Month Day, 2018

PROPOSAL DUE TIME: 4:00 p.m. (ChST)

CONTACT: Christopher Lund

542 North Marine Corps Drive

Tamuning, Guam 96913

Electronic Submissions:

E-mail: clund@gbinc.com

Telephone: 703-853-7806

PRE-PROPOSAL CONFERENCE:

Month Day, 2018 @ 9:00 a.m. (ChST)

GSWA Building, 2nd Floor

542 North Marine Corps Drive

Tamuning, Guam 96913

Sealed proposals, one (1) original and five (5) numbered copies (total of 6), subject to the terms and conditions of this RFP, will be received in the **Guam Solid Waste Authority Offices, 542 North Marine Corps Drive, Tamuning, Guam 96913** before the due date and time shown above. **Proposals must be submitted in a sealed envelope or other appropriate package, addressed to the RECEIVER and have RFP001-18, due date, and company name clearly marked on the outside envelope.** Late proposals will be returned to the Proposer unopened. Proposals may be withdrawn at any time prior to the completion of evaluation by the RECEIVER/TRUSTEE and selection of a Proposer for negotiations.

The undersigned agrees, if the proposal is accepted, to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of this proposal shall be 180 calendar Days.

Company Name and Address	Company's Authorized Agent
	Signature
	Name and Title (Typed or Printed)
Federal ID Number (TIN) or SSN and Name	
Telephone No.	Date

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**INDEPENDENT ENGINEER SERVICES
ORDOT DUMP CLOSURE
PROJECT NO.: RECEIVER-RFP001-18**

REQUEST FOR PROPOSALS

1.0 INTRODUCTION/PURPOSE OF THE RFP

The purpose of this Request for Proposals (RFP) is to procure the services of a qualified Independent Engineer (IE) to support the Trustee appointed by the District Court of Guam in its oversight of the Post Closure Care of the Ordot Dump Closure Facility pursuant to the Post Closure Care Plan for the Ordot Dump Closure Facility and the Consent Decree (Federal Court Case CV02-00022). Gershman, Brickner & Bratton, Inc. (GBB), in its capacity as Receiver (RECEIVER) for the Guam Solid Waste Authority (GSWA) is soliciting Proposals from qualified engineering firms for these services. The RECEIVER intends to contract with an independent third-party firm(s), hereinafter referred to as Consultant or Proposer.

DEFINITIONS

The use of the term "Consultant or Proposer" throughout this document means individual proprietorship, partnership, Limited Liability Company, corporation or joint venture. This Contract will be an indefinite delivery, indefinite quantity (IDIQ) Contract for professional services.

Contract - as used herein means the Contract to provide Independent Engineer third party monitoring services of the ORDOT DUMP CLOSURE FACILITY Post Closure Care operations, maintenance and monitoring, together with all Appendices attached thereto and Amendments.

Independent Engineer – A Licensed Professional Engineer, or Engineering Firm, licensed in the Territory of Guam having no involvement in or connection to the Ordot Closure design and construction, Post Closure Plan (PCP) development, and PCP implementation. The Independent Engineer should not be the person or firm or have any connection to the persons or firms who designed or constructed the Ordot Dump Closure Facility, prepared the PCP, or who implements the PCP. A conflict of interest statement is required to be submitted in proposals to this RFP.

Ordot Dump Closure Facility - Ordot Closure Facility means the landfill closure facilities, equipment and property located on the site properties of the Ordot Dump on Dero Drive located in the Municipalities of Ordot-Chalan Pago and Asan, Guam and all other real property specifically acquired for the closure (see Attachment D) or in the future may be acquired for Post Closure Care operations as designated by the RECEIVER/TRUSTEE, and all improvements and appurtenances thereto.

Post Closure Care - shall mean operation, maintenance, reporting, and monitoring activities at the Ordot Closure Facility as required by the Post Closure Plan approved by Guam EPA and EPA.

The Contract will include an authorization for specific task orders that will be negotiated as either fixed rate or firm fixed-price based on rate schedules to be provided upon request of the RECEIVER/TRUSTEE, which are subject to audit, compensation and reimbursement based on the Contract and all applicable GovGuam and Federal Regulations. The RECEIVER/TRUSTEE may assign the Consultant individual projects for completion or may assign specific tasks.

The term of this Independent Engineer services Contract is for a 5-year period commencing from the date of Contract signing with the RECEIVER/TRUSTEE option to renew bi-annually, for two (2) additional 2-year periods but not to exceed four (4) additional years at the same terms and conditions period with

an option to extend the Contract as necessary, at the same terms and conditions. Significant aspects of the work for which the Consultant will provide Independent Engineer services are highly specialized. Firms not having all the requisite experience to provide Independent Engineer services for an aspect of the work may compensate for any lack of needed experience by partnering with a firm with the requisite experience. This RFP seeks proposals from firms properly licensed to do business on Guam and firms who are otherwise qualified and interested in performing the services and demonstrate to the RECEIVER/TRUSTEE's satisfaction the qualifications and capacity to become properly licensed to do business on Guam without causing delay to the work required under the Contract.

Like most other jurisdictions, Guam's law requires that engineering firms be properly licensed in Guam in order to provide these services.

1.1 Background

Guam is a United States Territory with an area of 210 square miles in the Western Pacific Ocean. Guam has a population of approximately 170,000, and it is the largest and southernmost island of the Mariana Islands. The primary civilian Municipal Solid Waste ("MSW") Disposal site in Guam is the Layon Landfill which opened in 2011 to replace the Ordot Dump. The Ordot Dump has existed at least since World War II and has been cited for Violation of the Clean Water Act (33 U.S.C. §1251, et. seq.).

The Government of Guam entered into a Consent Decree with the United States Environmental Protection Agency ("USEPA") on February 11, 2004, to close the Ordot Dump, cease all discharges into the Lonfit River, open a new Municipal Solid Waste landfill, and develop and implement Recycling and Hazardous Waste management strategies to reduce the volume of materials going into the landfill ("the Consent Decree Projects").

As Receiver, GBB has 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 Guam Solid Waste Authority (GSWA), and any and all departments or other divisions of the Department of Public Works insofar as they affect the Government of Guam's compliance with the Consent Decree.¹

In January 2014, construction began on the Ordot Dump closure system, and the construction was completed on March 1, 2016. The Ordot Closure Facility (or Ordot Facility or Facility) occupies approximately 96 acres and consists of:

- 43.5 -acre closure cover system over delivered and deposited waste
- Four stormwater management ponds, with associated engineered inlet and outlet control structures
- Leachate collection and removal system consisting of:
 - Perimeter leachate collection and leachate interceptor lines
 - Three steel/glass lined 16,000-gallon leachate storage tanks with associated pump station and controls
 - Leachate forcemain providing discharge from tanks to GWA flow meter

¹ On April 18, 2011, the Guam Legislature passed the Guam Solid Waste Authority Act ("the Act"). The Act named the Guam Solid Waste Authority ("GSWA"), an autonomous agency, as the successor of the Solid Waste Management Division (SWMD), a sub-entity of the Department of Public Works. The legislation provided that the SWMD shall continue in existence as an autonomous, public corporation to be referred to as the Guam Solid Waste Authority (GSWA). In an order dated September 2, 2011 Accordingly, the Court extended to the Receiver, full power and authority over GSWA, to the full extent of its previously granted authority over SWMD.

- Gas Collection and Control System (GCCS)
 - 26 vertical extraction wells
 - 13 horizontal collectors
 - Flare Station
- 10 perimeter groundwater monitoring wells
- 18 perimeter gas monitoring wells
- Soil Gas Mitigation System consisting of 10 vertical soil gas wells and 4 horizontal soil gas collectors and associated piping, valves and manifold
- One standby power generation system
- 7,120 linear feet of security fencing (encompassing 57 of the 96 acres) enclosing all major Facility systems with six Vehicle and 14 personnel gates for access and maintenance

Currently the RECEIVER is in the process of procuring a qualified contractor to operate, maintain, monitor, report, and maintain compliance with the Post Closure Care Permit, and its conditions, issued by the Guam Environmental Protection Agency.

It is the intent of the RECEIVER to contract with a qualified Consultant who can provide the independent engineering and related services to assist the Trustee in its review of the work of the Operator of the Ordot Dump Closure Facility and any other contractors employed by the Trustee or Operator, in the necessary work to maintain and operate the facility in full compliance with the Post Closure Plan for the Ordot Dump Closure Facility while meeting or exceeding generally accepted industry standards for the quality of said work. These services include, but not limited to multi-disciplined monitoring and review of Operator compliance reports, invoices, deliverables and post closure performance under the Ordot Post Closure Care Permit.

In order for the Consultant to be considered qualified, the firm or project team must possess technical expertise, experience and necessary qualifications, listed below, of a third party, with responsible charge, to avoid conflicts of interest and ensure third party independence.

- A. Is a registered civil engineer in the Territory of Guam
- B. Is not employed by, or subcontractor of, the entity responsible for the design of the Ordot Closure System; and
- C. Is not employed by, or subcontractor of an entity or its subsidiary, parent, or other similarly related entity under common control that owns or operates the Ordot Closure Facility.

Interested Proposers are invited to submit a proposal in accordance with the requirements of this RFP.

The complete RFP is available at the following Internet addresses:

<http://guamsolidwastereceiver.org/> and <http://www.guamsolidwasteauthority.com/>

1.2 Departure from Guam Procurement Law

In the Receivership Order, the Court gives the RECEIVER the authority to enter into contracts. The US. District Court's Order specifically provides: "In awarding any future contracts, the Receiver shall follow the procedures required in Guam's statutes and regulations, unless, in the best judgment of the Receiver, such compliance would unreasonably delay the progress in meeting the mandates of the Consent Decree."

Guam Law has very limited procurement provisions for the use of a Request for Proposals (RFP). These provisions do not allow for the full consideration of the complex issues that are critical to the selection of Independent Engineer.

In the experience of the Receiver, the use of an RFP that considers all of the technical, operational, environmental, and financial issues associated with the operation of a complex facility such as the Ordot Closure Facility is essential to obtaining these services without the serious risk of unreasonable delay which, in the Receiver's judgment, would accompany the use of the procurement processes authorized by Guam Law.

After due consideration, the RECEIVER/TRUSTEE has concluded that this procurement requires the use of an RFP, therefore the RECEIVER/TRUSTEE is invoking the authority granted by the Receivership Order to depart from Guam Law for the issuance of this RFP and the award of a contract pursuant to the best evaluated proposal received pursuant to this RFP.

1.3 Project Location

The Ordot Dump Closure Facility is located on Dero Road within the municipality of Ordot Chalan Pago with a portion in the municipality of Asan.

1.4 Available Information

The following documents are available for review through the Guam Solid Waste Authority Web site under procurements - <http://www.guamsolidwasteauthority.com/procurement.html>, GSWA001-18:

- Request for Proposals Document – Operator for Ordot Facility Post Closure Care
- Ordot Dump Post Closure Plan

2.0 SCOPE OF WORK

The work of the Independent Engineer is to assess the completeness and quality of the work performed by the Operator of the Ordot Dump Closure Facility. The Independent Engineer shall review the Post-Closure Plan and the Operator's Agreement and periodically assess the work performed and deliver to the Trustee and the District Court through the Trustee, an opinion as to the completeness of said work and its determination of whether the work is completed to acceptable industry standards as to the quality of the work. Upon the request of the Trustee, the Independent Engineer shall also provide an assessment of the charges billed by the Operator pursuant to the Operator's Agreement and the reasonableness of any hourly amounts billed by the Operator for work billable on an hourly basis under the Operator's Agreement.

The work of the Operator is divided into two categories of work: (1) routine services and (2) non-routine services as set forth in the Agreement to Operate the Ordot Facility.

2.1 Specific Work Detail – Routine Services. On a periodic basis, but not less than quarterly, the Independent Engineer shall review all routine services performed, assessing the completeness of the services performed, the timeliness of the services performed and the quality of said work. In assessing the quality of the work the Independent Engineer shall determine and confirm to the Trustee that the work meets or exceeds generally accepted engineering standards and the requirements of the Operator Agreement. If any of the work does not meet generally accepted engineering standards and the requirements of the Operator Agreement, the Independent Engineer shall identify said work together with an assessment of any damages to the Ordot Dump Closure Facility or permit violations that have resulted. The Independent Engineer shall also identify any routine services that were not completed or not completed in a timely manner as required by the Operator Agreement and

shall inform the Trustee, and through the Trustee the District Court, of such together with an assessment of any reason for the omissions or delays together with an assessment of any damages to the Ordot Dump Closure Facility or permit violations that have resulted or could result.

2.2 **Specific Work Detail – Non-Routine Services.** Upon request of the Trustee, the Independent Engineer shall evaluate the need for Non-Routine services and recommend, if such services are determined to be needed, whether the non-routine services should be provided by the Operator or obtained through competitive bidding. In either case, the Independent Engineer shall assist the Trustee in specifying the scope of such non-routine services, in obtaining any needed design or other specialized services with respect to said Non-Routine Services and in evaluating the results of any competitive bidding conducted to obtain said services. The Independent Engineer shall monitor the progress of any Non-Routine Services provided and assess the completeness of the services performed, the timeliness of the services performed and the quality of said work. In assessing the quality of the work the Independent Engineer shall determine and certify to the Trustee that the work meets or exceeds generally accepted engineering standards and the requirements of any Task Order or contract for said services.

2.3 **Quarterly Reporting.** Within 30 days of the end of any calendar quarter, the Independent Engineer shall file a report with the Trustee assessing the Operator's compliance with its obligations under the Operator Agreement and the Ordot Dump Closure Facility's Post-Closure Plan. The report shall fully describe, based on on-site inspections as to dates and areas inspected, tests performed and other means of inspection employed by the Independent Engineer, the adequacy of the Operator's activities, the completeness of the Operator's work and any deficiencies detected together with the implications of any deficiencies for the long-term compliance with the Post-Closure Plan and any regulatory implications or permit violations indicated as a result of said deficiencies. The report shall be in such form as the Trustee may reasonably require and said report shall be included in reports of the Trustee filed with the District Court.

D. Provide Recommendations:

When necessary or upon request by the TRUSTEE, Independent Engineer shall provide recommendations, regarding solutions to Closure Facility operational, maintenance or compliance monitoring problems, as well as other technical and vegetation issues at the site. The recommendations shall include a clear description of the issue, existing condition, and recommended solution(s) that is consistent with the Post Closure Plan and applicable Federal and Guam Law and Regulation. The recommendations shall include the certifying signature of the licensed Independent Engineer.

E. Work Documentation: Independent Engineer shall maintain a continuous log of the work performed including:

- Observation of on-site inspections;
- Copies of reports reviewed or reference reports to determine compliance and completeness;
- A description of the materials and tools utilized during each site visit.

- A sign-in form that will be executed by the Closure Operator Facility supervisor verifying the Independent Engineer was at the Facility on the stated date;
- A completed operations checklist;
- Photographs may be required for documentation of completed Conditions of Approval; and
- Any other information Independent Engineer deems relevant.

J. Other Work: Independent Engineer shall provide information to the RECEIVER/TRUSTEE on any issues or potential problems and advise the RECEIVER/TRUSTEE of possible alternatives for resolutions to issues and/or potential issues that may arise.

In the event non-compliance is observed, the Independent Engineer shall record such observance in Work Documentation and reports, and shall immediately notify the RECEIVER/TRUSTEE in writing within seven business days and send a copy of this notification to Ordot Closure Facility Operator. In addition, the Independent Engineer shall orally inform the RECEIVER/TRUSTEE and the Operator if the matter could potentially be a health and safety issue and/or need immediate attention.

The RECEIVER/TRUSTEE shall supervise the Contract for the Independent Engineer procured pursuant to this RFP to ensure delivery of the services and deliverables required under the Contract and any such discretionary services and deliverables as the Receiver/Trustee requires and is authorized to receive under the Contract. Such supervision shall not relieve the Independent Engineer of its professional obligations under the Contract.

- 2.1.2 Independent Engineer and any Sub-contractor(s) shall attend meetings, conferences, and/or hearing pertinent to their given scope of work as requested by RECEIVER/TRUSTEE.
- 2.1.3 Independent Engineer may be requested to assist the T RECEIVER/TRUSTEE in preparing responses to technical issues and inquiries received by the US District Court of Guam or parties to the Consent Decree.
- 2.1.4 At the conclusion of this Contract, or its early termination pursuant to the provisions of this Agreement, the Independent Engineer, shall submit a final report to the RECEIVER/TRUSTEE within 30 days of the contract termination or completion date. This final report shall contain or describe the following:
- A. Copies of all information, documents, reports, materials, and efforts originated and prepared for the TRUSTEE pursuant to this Agreement by Independent Engineer or its subcontractors not already provided to the RECEIVER/TRUSTEE;
 - B. Copies or a full description and status of any item described in item A of this section that are incomplete at the time of the Contract's termination;
 - C. Any databases or electronic format of files related to this project and Contract.
- 2.1.10 Independent Engineer shall maintain complete and accurate records with respect to all costs incurred under the Contract, including the records supporting the cost proposal used to enter into the Contract. All of the aforementioned records shall be clearly identifiable. Independent Engineer shall make available to the representative of RECEIVER/TRUSTEE all such books and records, and the right to examine and audit the same, and to make transcripts or copies. Independent Engineer shall maintain and allow inspection of all said books, data, documents, proceedings, and activities related to this Contract for a period of three years from the date of final payment under this Contract. Independent Engineer shall maintain said records in a manner which will indicate actual time and allowable costs with respect to all work performed hereunder as required by the RECEIVER/TRUSTEE.

3.0 INDEPENDENT ENGINEER ORGANIZATION

The Consultant shall not proceed with any work until the RECEIVER/TRUSTEE provides the Notice to Proceed (NTP) letter to the Consultant.

The RECEIVER/TRUSTEE directly handles project management and monitoring of the Consultant. The Independent Engineer will contractually report to the RECEIVER/TRUSTEE. The day-to-day management of the Consultant Contract will be by the RECEIVER/TRUSTEE.

The Consultant will maintain a working office in Guam where all work (with the exception of specialized material testing) will be performed to enable the RECEIVER/TRUSTEE to inspect, review and discuss project progress, compliance with Guam and Federal policies and requirements, and other requirements to further the prosecution of the work with the least delay.

The Consultant must comply with and follow all provisions of the Territory and federal laws as required (i.e., Professional Engineering License, Certificate of Authorization must be registered in Guam under 22 GCA Chapter 32, "The Professional Engineers, Architects and Land Surveyors Law"). A copy of the Certificate of Authorization (COA) issued by the Professional Engineers, Architects and Land Surveyors Board (PEALS Board) shall be included in the proposal. If the Consultant does not have one for Guam, they must provide equivalent documentation they presently have and demonstrate to the RECEIVER/TRUSTEE satisfaction, that they can obtain one in Guam by the time the work begins.

The Consultant must be able to mobilize as soon as possible from the NTP. This mobilization timeframe shall be identified in the proposal. Failure of Consultant to mobilize in this time frame may result in the RECEIVER proceeding to the next qualified Proposer.

All records and documents, electronic or hardcopy, produced by the Consultant become the property of the Government of Guam.

4.0 MINIMUM PROPOSAL CONTENT AND MANDATORY REQUIREMENTS

A Proposer must provide information to indicate that it has the experience, capabilities and personnel necessary to provide the services requested in the RFP.

Specifically, the Proposer must:

- Have knowledge and experience derived from the performance of Independent Engineer Third Party services per current industry standards of practice under the Resource Conservation and Recovery Act (RCRA).
- Be financially capable to carry out the tasks of the Contract (refer to RFP Section IV, Subsection 10).
- Have or be able to establish a local project office in Guam.
- Have or be in the process of obtaining a local business license at the time of Notice of Award.
- Have, or be able to obtain, a Certificate of Authorization and Responsible Managing Employee approved by the PEALS Board for Independent Engineer.
- Have or obtain proper insurance for the work to be performed prior to execution of contract (See Attachment B).
- Have sufficient qualified personnel to conduct the Scope of Work.

PROPOSAL REQUIREMENTS AND CONTENTS

Proposals submitted for this project are to follow the outline described below and must address all requested information. Any additional information that the Proposer wishes to include that is

not specifically requested should be included in an appendix to the proposal. Proposers are encouraged to keep the proposals brief and to the point, but sufficiently detailed to allow evaluation of the project approach. Six (6) copies of the proposal must be submitted.

The Proposal consists of both a technical proposal portion and fee proposal portion.

Technical Proposal

In a sealed envelope, submit the Technical Proposal as a separate sealed document to your Fee Proposal; provide six (6) hardcopies of the following information.

Cover/Transmittal Letter - Letter is to be signed by a member of the organization having the authority to negotiate and execute contracts on behalf of the Proposer.

Section 1 Project Understanding and approach to the work (5 pages maximum)

Provide a narrative description of the project based on your understanding of the Scope of Work and information gathered about the project. Include any issues that you believe will require special consideration for this project. Identify strengths that your firm may have related to this project. RECEIVER/TRUSTEE will utilize this narrative description as a part of its assessment of Proposer's understanding of all aspects of the project.

Section 2 Project Team (5 pages maximum)

Include a one-page organization chart listing all key project team members. In addition, the following items shall be addressed:

- Identify all key members' roles, availability, qualifications, and responsibility for the project. Full resumes for all key members shall be provided within an appendix.
- Any subconsultants shall be identified along with tasks assigned to them Identify years of experience in Independent Engineer related roles.
- Identify any member(s) of the team who failed to remain on a project through completion of a contract during the past five (5) years and provide an explanation.

Section 3 Detailed Scope of Work (10 pages maximum)

Provide a detailed description of the tasks and duties required to implement this Scope of Work, from review of operations, to maintenance, to compliance monitoring and reporting. Provide a listing of all assumptions made (by work task). Identify any steps required that have not been specifically identified in the scope of work. Also, identify any unique approaches or strengths that your team may have related to this project. Provide the maximum hours required for each task.

Section 4 Services Schedule (2 pages maximum)

Include a services schedule showing all key service milestones. A preliminary monthly and annual schedule is required. Include a list of all assumptions used in developing the schedule for the Scope of Work presented in Section 3, but not limited to the following:

- Invoice Review/Monitoring Tasks
- Monthly Invoice Report Deadlines
- Inspection Deadlines
- Final Reporting on Conditions of Invoice Approval/Acceptance of Operator Deliverables and coordination with Trustee

The schedule included may be on 11"x17" size sheets.

Section 5 Construction Monitoring (4 pages maximum)

Describe how any construction undertaken by the Operator or other contractor will be monitored during such construction.

Section 6 Related Experience (5 pages maximum)

Describe recent experience as an Independent Engineer, Third Party monitor or other similar experience. Specifically include any work related to leachate controlled municipal solid waste landfills, RCRA remedial actions, landfill closure as a corrective action, and post closure care monitoring/inspection. Include references with names, addresses, and phone numbers.

Section 7 Independent Engineer Monitoring and Reporting Example Documentation

Submit examples, or portions thereof, of previously generated monitoring and reporting documents for landfill, closure, or other multidiscipline projects, and associated field forms and project forms for reporting work progress and certification documentation. This can also include examples of progress reports, daily field reports, photo-documentation, etc. Material can be presented in pdf format on compact disk submitted with Proposal.

Section 8 Conflicts of Interest (1 page maximum)

.Proposers submitting a Proposal must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm relative to the services to be provided under the Contract. The RECEIVER/TRUSTEE asks Proposers to provide mitigation plans clearly addressing the potential conflicts and suggesting remedies to remove potential biases or impaired objectivity in performing the IE services. Potential conflicts and their mitigation will form part of the basis in evaluation of Proposers.

If a Proposer has no conflicts of interests, a statement to that effect shall be included in the Proposal.

Section 9 No Proprietary Information (1 page maximum)

Proposers submitting a Proposal in response to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the RECEIVER/TRUSTEE once submitted.

Section 10 Financial Statements (pages as necessary)

Proposers shall submit their annual financial statements, for the last three (3) fiscal years, including company financial statements and cash flow summaries reviewed or audited by a Certified Public Accountant. If the organization has been in business for a period of less than three (3) years, Proposer may be required to submit a detailed business plan in addition to any pertinent information that would allow the RECEIVER/TRUSTEE to evaluate the sufficiency of financial resources and the ability of the business to successfully perform the services enumerated in the RFP. Unless otherwise stated, such requests would be made after the submission of the Proposal and prior to award of a Contract.

Section 11 Insurance (1 page maximum)

Provide a summary of the Proposer's insurance coverage. Minimum limits and types of insurance that are required to be maintained throughout the term of the project are identified in Attachment A.

Section 12 Litigation History (pages as necessary)

Provide a description of all litigation involving the Proposer within the last seven (7) years where the Proposer has been or is a defendant or plaintiff in a lawsuit related to Proposer's services.

Section 13 Signature (1 page maximum)

Proposals by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer duly authorized to sign). The corporate address and state of incorporation must be shown above the signature.

Proposals by partnerships must be executed by a partner whose title must appear on the line below the signature together with evidence of authority binding all partners unconditionally to the terms and conditions of the proposal. The partnership's address and state where articles of co-partnership are filed must be shown above the signature.

If this proposal is made by a limited liability company (LLC) or liability company (LC), the name and address of the LLC or LC shall be shown, together with the names and addresses of the partners or officers. If the proposal is made by an LLC or LC, it must be acknowledged by one of the authorized principals thereof.

Fee Proposal

In a sealed envelope, submit the Fee Proposal as a separate document to your Technical Proposal; provide six (6) hardcopies and one (1) electronic copy (MS Excel format) of a cost proposal individually listing the cost for each task and sub-task identified in the proposed Scope of Work. SPECIAL NOTE – Provide a fee proposal for only the Ordot Closure Construction phase of Independent Engineer services. At a minimum, include a line item cost estimate for each task and sub-task outlined in the Scope of Work in Section II above. The spreadsheet shall be in a format that will permit RECEIVER/TRUSTEE to determine the key project team member(s) proposed for each task and sub-task and the number of management, engineering, technical,

drafting and support personnel hours, cost per hour for each project team member and total cost Proposal for each task. The hourly rate, name of team member and staff classification shall be included in the column headings of the spreadsheet. When work on a scope item will be performed by sub-consultants, please indicate the firm, total sub-consultant fee for the task, and total sub-consultant hours proposed.

Identify all other costs to be billed to the project including project expenses - Mobilization, Equipment, Transportation, Per Diem; the Consultant shall include in his cost proposal all charges for mobilization of personnel, equipment, testing equipment, cameras, mobile telephone, any communications equipment deemed necessary (copy machine, field radios, portable computer, etc.), rental automobiles, and/or per diem for the field personnel. A field computer, mobile telephone, copy machine (with enlarging/reduction capabilities), tape recorder, and pager are considered to be mandatory communications equipment and all Consultants must include these provisions in their Proposals. (No mark-ups on expenses will be allowed).

All Proposers are subject to the Guam Gross Receipts Tax (GRT) as part of complying with "applicable law". Therefore, it shall be included as a line item on the cost sheet. Include any proposed mark-up for sub-consultant fees. Include a copy of the proposed rate schedule(s) to be used throughout the duration of the project, including any adjustments that are predicted to occur during the life of the project.

5.0 GENERAL CONDITIONS

General Information

- a. **Pre-proposal Conference/Teleconference.** A pre-proposal conference will be held as stated in Section VI. PROPOSAL SCHEDULE at the Conference Room, Division of Guam Solid Waste Authority, Second Floor. All interested firms are encouraged to participate either in person or via telephone (see Section VI).
- b. **Proposals Due Date.** Sealed proposals in six (6) complete copies shall be submitted no later than the date and time stated in Section VI. PROPOSAL SCHEDULE. Proposals will not be accepted after that time. The RECEIVER/TRUSTEE reserves the right to seek new proposals when such is reasonable and in the best interest of the RECEIVER/TRUSTEE.
- c. **Indemnity.** Consultant agrees to indemnify, save harmless and defend the Owner, Gershman, Brickner & Bratton, Inc. as RECEIVER, and TRUSTEE and their respective officers, employees, agents, representatives, successors and assigns from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of the Contract or any negligent act or omission or willful misconduct of the Consultant, or its officers, employees or agents, or

subcontractors. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Owner.

- d. **Proposal Valid.** Proposals submitted in response to this RFP must remain valid for a minimum of 180 days, and Proposer must make this declaration in its Proposal cover transmittal letter.

Inquiries/Clarifications Regarding Proposal Process

To ensure fair consideration for all Proposers, the RECEIVER/TRUSTEE prohibits any Proposers to communicate with any department or employee during the submission process, or any employee of the RECEIVER. Inquiries/clarifications relative to the interpretation of the RFP and /or the proposal process shall be sent in writing prior to the date and time stated in Section VI. PROPOSAL SCHEDULE to:

David L. Manning
Receiver Representative
542 N. Marine Corps Drive
Tamuning, Guam 96913
Email: dmanninggbb@gmail.com
(615) 830-1200 phone

All questions received prior to the Pre-Proposal Conference or at the Pre-Proposal Conference will be answered at the pre-Proposal Conference or in an addendum to this RFP, and a copy of responses (addendum) will be provided to all registered parties attending the Pre-Proposal Conference. Include the RFP page and paragraph number reference that applies to each question.

Additionally, the RECEIVER/TRUSTEE prohibits communications, subsequent to the submission of Proposals, initiated by a Proposer with any RECEIVER/TRUSTEE official or employee evaluating or considering the Proposals prior to the time a selection has been made, except as initiated by the appropriate RECEIVER/TRUSTEE official or employee, in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposals. Communications so initiated by a Proposer may be grounds for disqualifying the offending Proposer from consideration of the Proposal and/or any future proposal.

6.0 PROPOSAL SCHEDULE

The selection timetable is projected to be as follows (all dates and times listed below are in Guam Standard Time, unless specified):

REQUEST FOR PROPOSALS RELEASE	Month 1, 2018
PRE-PROPOSAL CONFERENCE / TELECONFERENCE	Month 1, 9:00 A.M.
DEADLINE FOR INQUIRIES/CLARIFICATIONS	Month 2, 2018, 4:00 P.M.
RESPONSE ADDENDUM/ REPLIES FOR INQUIRIES /CLARIFICATIONS	Month 2, 2018
DEADLINE FOR SUBMISSION OF PROPOSALS	Month 3, 2018 4:00 P.M.
INTERVIEWS (OPTIONAL – AT RECEIVER'S DISCRETION)	Month 3, 2018
ANTICIPATED LETTER OF INTENT TO AWARD	Month 3, 2018

Pre-proposal Meeting/Conference

Proposers or their representatives are encouraged to attend the Pre-Proposal Conference, which will be held on **Month , 2018** at 9:00 AM at the Guam Solid Waste Authority second floor in the Department of Public Works compound, 542 N. Marine Corps Drive, Tamuning, Guam 96913. The time for this meeting is referenced above.

Participants can call into the teleconference with the following information:

- Phone Number: 1-877-326-2337
- Conference ID: 8040967#

Any prospective Proposer having difficulty connecting to the Conference or staying connected should contact the RECEIVER contact person, Christopher Lund, ((703) 853-7806) immediately upon discovering the difficulty.

At this conference, representatives from the RECEIVER will discuss the RFP Documents, Post Closure Care Plan operations, and other items specific to this project. The RECEIVER will prepare and make available a set of conference minutes and responses to questions raised at the conference. Oral statements made during the conference but not confirmed by the minutes or responses may not be relied upon and are not binding or legally effective.

7.0 EVALUATION OF PROPOSALS

Proposals shall not be opened publicly; however, Proposals shall be opened in the presence of two (2) or more procurement officials, one (1) from the RECEIVER and one (1) from the US District Court. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of Proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each Proposer, the number of modifications received, if any, and a description sufficient to identify the service offered. The Register of Proposals shall be opened to public inspection only after award of the Contract. Proposals and modifications shall be shown only to RECEIVER personnel working with the RECEIVER having a legitimate interest in them.

- a. A Proposal Evaluation Committee (PEC) will be established by the RECEIVER to review and evaluate all Proposals submitted in response to this RFP by the deadline stated herein. All Proposals submitted will be evaluated and ranked by the criteria provided in this RFP.
- b. The PEC will first review each Proposal for compliance with the minimum proposal and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a Proposer.
- c. Proposals (interview may be part of the evaluation) will be evaluated and rated based on the criteria stated in this RFP, including but not limited to the following:
 - i. (30 points) Previous Projects/Team Experience - A record of past performance of similar work and knowledge through experience of the local conditions;

- ii. (20 points) Capacity/Project Team Organization - Ability to perform the services as reflected by the personnel capacity assigned and available for the specific tasks including subconsultants needed, and the qualifications and abilities of personnel proposed to be assigned to perform the services. Special note – It is to the benefit of the Proposer in this scoring category that the project team lead for the management of this project (if more than one firm and/or subconsultants are used) be that firm which has the Independent Engineer experience;
 - iii. (15 points) Discussion of General Approach - Quality of the Project Execution/ Management Plan for performing the required services.
 - iv. (35 points) Cost – Cost will be evaluated based on the Receiver's estimate of the hours required to perform each aspect of the required work using the hourly rates proposed for year 3 of the contract. Hourly rates shall include either specific rates for each year of the contract or be indexed to the Employment Cost Index ("ECI") published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). The proposer may propose an annual cap for the index or a percentage of the index for any annual rate increase required under their proposal.
1. Scoring and Ranking - Each member of the PEC initially evaluates the proposals separately for items i, ii, iii and at least one meeting of the PEC is held to discuss the proposals submitted in terms of the evaluation criteria. Cost will be evaluated separately using a standardized number of hours for each aspect of the required work as outlined above. Subsequent to the meeting each PEC member scores each proposal by each criteria category assessing a score, with a maximum total points in each category as indicated above. Proposer(s) with the greatest total aggregate points (up to 100) shall be rated number one (1) (i.e., highest ranked) and the Proposer(s) with the least total aggregate points shall be ranked lowest.
- d. At the discretion of the RECEIVER, the PEC may conduct interviews, prior to the ranking as part of the evaluation, with any Consultants/Proposers on a date, time and location to be determined. The RECEIVER reserves the right to interview only the most qualified. The Proposers proposed Project Manager must appear in person. A random drawing process will be used to determine the order of interviews. A digital presentation projector will be available for use by the Proposers. In addition, a phone will be made available should the Proposer need to include other proposed personnel not present.
 - e. After the conclusion of the evaluation and possible interviews, the RECEIVER shall select, in the order of their respective proposal ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable Proposals were received) deemed to be the best qualified to provide the required services.
 - f. In the interest of the RECEIVER/TRUSTEE, the RECEIVER/TRUSTEE reserves the right to initiate negotiations, award and enter into a contract with one qualified Proposer, in the order of their respective proposal ranking.
 - g. The RECEIVER reserves the following rights to:
 - i. Require presentations or make investigations of the Proposals of Proposers as it deems appropriate, including, but not limited to, a background investigation.

- ii. Request that Proposal be modified to more fully meet the needs of the RECEIVER/TRUSTEE or to furnish additional information as the RECEIVER may reasonably require for the purpose of clarifying any aspect of the proposal. Such revisions and clarifications may be requested after submission of Proposal and prior to selection. Fair and equal treatment of proposals with respect to any opportunity for discussions and/or revisions of Proposals will be accorded all proposers.
- iii. Process the selection of the successful Proposer without further discussion.

Basis of Award

The Contract for professional services will be awarded to the most responsible and responsive Proposer(s) whose Proposal(s) meet the needs of the RECEIVER/TRUSTEE.

8.0 SUBMITTAL OF PROPOSAL

The Proposers shall submit six (6) copies of the Proposals to:

Receiver – Gershman, Brickner & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: David Manning

Sealed Proposals will be received at the Guam Solid Waste Authority Office on the 2nd Floor at the address above until 4:00 pm on Friday, October 1, 2017. Proposals received after 4:00 pm shall be refused.

9.0 RFP TERMS AND CONDITIONS

The RECEIVER will not pay any costs incurred by the Proposer in preparing or submitting a Proposal. The RECEIVER reserves the right to modify or cancel, in part or in its entirety, this RFP. The RECEIVER reserves the right to reject any or all Proposals, to waive defects or informalities, and to offer to contract with any Proposer in response to any RFP. This RFP does not constitute any form of offer to contract.

10.0 CONTRACT REQUIREMENTS

- a. Contract Term: The duration of these technical services is for an initial Five (5) - year period commencing from the date of Contract signing with the TRUSTEE option to renew bi-annually, for two (2) additional 2-year periods but not to exceed four (4) additional years at the same terms and conditions period.
- b. Contract Termination:
 - i. The RECEIVER/TRUSTEE may, when in the interest of the Trust, terminate the Contract in whole or in part, for convenience by notice of not less than (60) calendar days. If the Consultant refuses or fails to perform the Contract with due

- diligence or otherwise fails to timely and reasonably satisfy the Contract provisions, or commits any other substantial breach of the Contract, the RECEIVER/TRUSTEE may notify the Consultant in writing of the non-performance or breach and if not reasonably addressed, within thirty (30) calendar days or any longer time as specified in writing by the TRUSTEE, the RECEIVER/TRUSTEE may terminate the Contract. In the event of termination in whole or in part, the RECEIVER/TRUSTEE may procure similar services in a manner and upon the terms deemed appropriate by the RECEIVER/TRUSTEE. The Consultant shall continue performance of the Contract to the extent it is not terminated and shall be liable for all reasonable costs incurred by the RECEIVER/TRUSTEE in procuring similar services.
- ii. In the event of Contract termination, the Consultant shall turn over all documents (paper and electronic) to the RECEIVER/TRUSTEE and transition the new Consultant.
 - c. Addition/Deletion: Since the Consultant's services are to be provided on an "as-required" basis, the amount of services requested by the RECEIVER/TRUSTEE may be less than presently anticipated. The RECEIVER/TRUSTEE makes no guarantee whatsoever as to the minimum amount of Consultant's services that will be required under the Contract and no fee adjustment will be made if the amount of the services requested is less than anticipated. The RECEIVER reserves the right to add to or delete any item from this RFP or resulting Contract(s) when deemed to be in the best interest of the Trust.
 - d. Payment Method and Schedules: Payments will be made by the RECEIVER/TRUSTEE after receipt and acceptance of proper invoices and normal processing time. The RECEIVER/TRUSTEE does not pay service charges or interest on late payments, except in accordance with law.
 - e. Assignment: Consultant shall not assign his Contract or any rights or obligations hereunder without the written consent of the RECEIVER/TRUSTEE. In the event of approved sub consulting, the Consultant agrees to provide the RECEIVER/TRUSTEE with written documentation relative to sub Consultant(s) employed in this Contract.
 - f. Professional Liability Insurance: Proposer shall submit certified true copy of Professional Liability Insurance of all the professionals employed by the Consultant in accordance with Attachment A with its Proposal.

Prohibition: Sex Offenders Prohibited from Employment in Agencies and Facilities of the Government of Guam

All contracts for services to agencies listed herein shall include the following provisions:

- a. Warranties that no person providing services on behalf of the contractor has been convicted of sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and

- b. That if any person providing services on behalf of the contract is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA **or an offense in another jurisdiction with, at a minimum**, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

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ATTACHMENT A – STANDARD INSURANCE REQUIREMENTS

During the term of the Contract except for Professional Liability Insurance coverage which must be maintained and apply for at least three years following Contract termination, the successful Consultant shall procure and maintain in full force and effect for the duration of said Contract, at its sole cost and expense, policies of insurance set forth herein against claims for injuries to persons or damage to property which may arise out of the work by the Consultant, his agents, representatives, employees or subcontractors.

A. General Liability

1. Commercial general liability insurance including, but not limited to, protection for claims of bodily injury and property damage, personal and advertising injury liability and product and completed operations liability.
2. Coverage shall be at least as broad as the standard Insurance Services Office Commercial General Liability form.
3. Claims-made coverage is not acceptable.
4. The limits of liability shall not be less than:

Bodily Injury: \$1,000,000 each occurrence, \$2,000,000 aggregate

Property Damage: \$1,000,000 each occurrence

Personal Injury: \$1,000,000 each occurrence, \$2,000,000 aggregate

B. Automobile Liability

1. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
2. The limits of liability per accident shall not be less than:

\$1,000,000 as a Combined Single Limit.

C. Workers' Compensation

1. Workers' Compensation Insurance, with coverage as required by the Territory of Guam (unless the Consultant is a qualified self-insurer with the Territory of Guam), and Employers' Liability Coverage.
2. Employers' Liability Coverage shall not be less than the statutory requirements.

D. Professional Liability

\$1,000,000 per claim, \$2,000,000 aggregate coverage must be maintained and apply for at least three (3) years following Contract termination.

E. Other Insurance Provisions and Miscellaneous Requirements

1. The General Liability policy shall contain the following provisions:

ATTACHMENT A
Insurance Requirements (cont'd)

- a. The RECEIVER/TRUSTEE, its officers, officials, employees, agents and volunteers shall be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied or used by the Consultant, or automobiles owned, leased, hired or borrowed by the Consultant.
- b. The policies shall contain no special limitations on the scope of coverage afforded the RECEIVER/TRUSTEE, its officers, officials, employees, agents or volunteers.
2. For any claims related to the project, the Consultant's insurance coverage shall be primary insurances as respects the RECEIVER/TRUSTEE, its officers, officials, employees, agents or volunteers. RECEIVER/TRUSTEE's insurance shall be excess of the Consultant's insurance and shall not contribute to it.
3. Any failure to comply with the reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect coverage provided to the RECEIVER/TRUSTEE, its officers, officials, employees, agents or volunteers.
4. The Consultant's Workers' Compensation and Employers' Liability policies shall contain a waiver of subrogation in favor of the RECEIVER/TRUSTEE, its officers, officials, employees, agents or volunteers.
5. Each insurance policy shall state that coverage will not be suspended, voided, cancelled by either party, reduced coverage in scope or in limits, non-renewed, or materially changed except after thirty (30) days prior written notice by mail has been given to the RECEIVER/TRUSTEE. Ten (10) days prior written notice by mail shall be given to the RECEIVER/TRUSTEE in the event of cancellation due to nonpayment of premium.
6. Upon award of a Contract, the Consultant shall furnish the RECEIVER/TRUSTEE with Certificates of Insurance and original endorsements evidencing the coverage required by this section, and any supplementary conditions. If the RECEIVER/TRUSTEE requests, the Consultant shall furnish complete certified copies of all required insurance policies, including original endorsements specifically required. Approval of the insurance by the RECEIVER/TRUSTEE shall not relieve or decrease any liability by Consultant.
7. The RECEIVER/TRUSTEE, at its discretion, may increase the amounts and types of insurance coverage required at any time during the term of the Contract by giving thirty (30) days' written notice to Consultant.
8. If the Consultant fails to procure or maintain insurance as required by this section, and any supplementary conditions, or fails to furnish the RECEIVER/TRUSTEE with proof of such insurance, the Consultant will be considered in breach of the contract.

ATTACHMENT A
Insurance Requirements (cont'd)

9. The failure of the RECEIVER/TRUSTEE to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.

F. Acceptability of Insurers Insurance is to be placed with a qualified insurer licensed to do business in the Territory of Guam.

All insurance documents are to be sent to:

Office of the Attorney General
Risk Management Division
287 West O'Brien Drive • Hagatna, GU 96910 • USA
Telephone: (671) 475-3324 Facsimile: (671) 472-2493
Email: law@guamattorneygeneral.com

With copy to RECEIVER/TRUSTEE as follows:

RECEIVER
c/o The Guam Solid Waste Authority
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Alicia Fejeran

TRUSTEE

ATTACHMENT B – PROPOSAL FORMS

PROPOSAL FORM B-1 PROPOSER INFORMATION FORM

TO:

The undersigned, as Proposer, by his/her signature represents that he/she is authorized to bind the Proposer for the amount(s) shown on the accompanying cost and compensation forms and hereby certifies full compliance with the terms and conditions, specifications and special provisions of the Request for Proposals Number 001-17 and hereby declares that this proposal is made in good faith without fraud or collusion with any person or persons proposing on the same Agreement; that Proposer has carefully read and examined the entire document including all Appendices and understands all the same and that the Proposer or representative has made such personal investigation at the Ordot Closure Facility and its facilities operations, and conditions, as is necessary to determine the character and requirements attending the execution of the proposed services for operation of the Ordot Closure Facility and related assets as described in RFP Number 001-17. The Proposer warrants that no person 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 Proposer relative to this procurement. If a Proposer is awarded a contract, and any person employed by the Proposer providing services under the resulting contract is subsequently convicted, then the Proposer warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under the resulting contract. If the Proposer is found to be in violation of any of the provisions of this paragraph, then the Government shall give notice to the Proposer to take corrective action. The Proposer shall take corrective action within twenty-four hours of notice from the Government, and the Proposer shall notify the Government when action has been taken. If the Proposer fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any resulting contract.

The Proposer acknowledges that Proposer has not received or relied upon any representations or warranties of any nature whatsoever from the RECEIVER/TRUSTEE, the Government of Guam, its agents or employees, as to any conditions to be encountered in accomplishing the work specified in RFP001-17 and that this proposal is based solely upon the Proposer's own independent business judgment.

The Proposer recognizes that Proposer will not be entitled to any additional compensation by reason of conditions being different from those anticipated, or by reason of failing to be fully acquainted with the Ordot Closure Facility site, facilities, design, permits, construction, plans and specifications, and the conditions and the work now in place or on account of interference by the RECEIVER/TRUSTEE's activities or by any other activities which affect the proposed work.

The undersigned hereby proposes and agrees that if this proposal is accepted for award of an Agreement, Proposer will contract with the RECEIVER/TRUSTEE to furnish all necessary labor, materials, equipment, machinery, tools, apparatus, supplies and other means for

Page 2 of 7

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

performing, and do all the work required to perform, the services herein specified in complete conformity with RFP Number 001-17 and the Operation Agreement to Operate the Ordot Closure Facility for the unit prices and for the calendar periods listed in this Proposal.

The undersigned also agrees that if the foregoing proposal shall be selected by the RECEIVER/TRUSTEE, Proposer will meet with the RECEIVER/TRUSTEE within such time as the RECEIVER/TRUSTEE shall designate, to negotiate the final points of the Operation Agreement to Operate the Ordot Closure Facility, and within thirty (30) Days (Sundays and legal holidays excepted) after receiving notice of such selection, use best efforts to complete negotiation on outstanding issues, if any, so as to enter into the form of Agreement attached to RFP001-17, for performing the services proposed herein, at the prices and for the time stated in this proposal and that Proposer will furnish the RECEIVER/TRUSTEE satisfactory financial security and certificates of insurance for coverage as stated in RFP001-17.

The undersigned agrees, and attaches hereto, Proposal Security in the amount of \$10,000 (Certified Check, Irrevocable, Direct Pay Letter of Credit, or Proposal Bond), to be forfeited to the Solid Waste Management Division in case of failure on the part of the successful Proposer to enter into the attached form of Agreement to do the work covered by such proposal at the pricing and within the time as stated after having been selected for negotiations, and/or in the case of failure to negotiate in good faith with the RECEIVER/TRUSTEE after being selected for negotiations. The undersigned agrees that in case of failure to fulfill the obligations under the foregoing proposal and/or failure to furnish financial security as specified, the RECEIVER/TRUSTEE may, at RECEIVER/TRUSTEE's option, determine that the undersigned has abandoned the rights and interests in such Agreement and that the Proposal Security has been forfeited to the Solid Waste Management Division, but otherwise, the Proposal Security shall be returned to the undersigned upon the execution of the Operation Agreement and the acceptance of the financial security.

The undersigned agrees that if awarded the Operation Agreement, Proposer will start work May 30, 2011, or on such other date as the RECEIVER/TRUSTEE and Proposer shall agree.

In submitting this proposal, it is understood that the right is reserved by the RECEIVER/TRUSTEE to reject any or all proposals, to award the Operation Agreement for the work proposed by the Proposer to other than the low-price Proposer, to waive irregularities and/or formalities, and in general, to make award in any manner deemed by it, in its sole discretion, to be in the best interest of the Solid Waste Management Division.

The undersigned acknowledges receipt of addenda to RFP001-17 and has indicated the date such addenda were received below.

RFP Addenda Acknowledgement:

No. 1 Date Received _____
No. 2 Date Received _____
No. 3 Date Received _____
No. 4 Date Received _____
No. 5 Date Received _____

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

A. General Information

Proposer Name: _____

Address: _____

Telephone: _____ Fax: _____

Contact: _____

Federal ID Number (TIN): _____

Type of organization (corporation, joint venture, partnership, individual): _____

If a corporation, list the names of all officers, directors, and shareholders possessing five percent or more of outstanding stock in the corporation. If a partnership, list the names of all general and limited partners. Attach additional sheets as necessary.

B. Business Information

1. Describe the nature of your current business:

2. State the length of time you have been in that business under your present name:

3. With what other lines of business are you directly or indirectly affiliated?

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

4. Have you ever failed to complete any contract awarded to you?

If so, where and why?

5. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a contract?

If so, state name of individual, other organization, reason therefore, and bonding company:

6. Has any officer or partner of your organization ever failed to complete a contract handled in his or her own name?

If so, state name of individual, name of owner, reason therefore, and bonding company:

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

7. With what individuals or entities have you been associated as partner or otherwise during the last seven (7) years? Attach additional sheets as necessary.

8. Has any Disposal Facility that you operated been the subject of administrative or judicial action for alleged violation of environmental or public health laws or regulations? If so, state the details and disposition. Attach additional sheets as necessary.

9. Have you, your partners, members, joint venturers, parent corporation, or subsidiaries been a party to any lawsuits, including any current investigations, indictments, or pending litigation, within the last seven (7) years? If so, list these lawsuits. Attach additional sheets as necessary.

10. List any and all actions occurring within the last seven (7) years which have resulted in revocation or suspension of any permit or authority to do business in any federal, state or local jurisdiction, recorded by Proposer, any officer or director thereof or any affiliate or related company.

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

11. List any and all actions occurring in the last seven (7) years that have resulted in the barring from public bidding recorded by Proposer, any officer or director thereof or any affiliate or related company.

12. List any bankruptcy proceedings in the last seven (7) years recorded by Proposer, any affiliate or related company.

C. Place of Direction and Main Office

Following are the name and location of the main office of the Proposer and the place of business from which the services in the Operation Agreement will be directed.

Main Office: Name of Company

City and State

Place of Business for Direction of Services under the Operation Agreement:

Name of Company

City and State

PROPOSAL FORM B-1
PROPOSER INFORMATION FORM
(Continued)

D. Ambiguity

In case of ambiguity or lack of clarity in stating prices in the proposal, the RECEIVER/TRUSTEE shall have the right to construe such prices in a manner most advantageous to the Solid Waste Management Division or to reject the proposal.

Company's Authorized Agent:

Signature

Name and Title (Typed or Printed)

Date

Telephone No.

Fax No.

Email address

PROPOSAL FORM B-2
CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT
THIS FORM SHALL BE EXECUTED BY AN OFFICIAL
AUTHORIZED TO BIND THE OFFEROR, DETACHED,
AND MADE A PART OF ITS PROPOSAL

During the performance of the Operation Agreement, the Proposer, as Operator, agrees as follows:

1. The Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, disability, or national origin. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Operator, in all solicitations or advertisements for employees placed by or on behalf of the Operation Agreement, shall state that such Operator is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. The Operator shall include the provisions of the foregoing Paragraphs 1, 2, and 3 above in every subcontract or purchase order so that the provisions shall be binding upon each subcontractor or vendor.

Authorized Signature

Title:

Date:

PROPOSAL FORM B-3
AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF _____)
) ss.
STATE OF _____)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the Proposer and that *[please check only one]*:

- ☐ The Proposer is an individual or sole proprietor and owns the entire (100%) interest in the proposing business.
- ☐ The Proposer is a corporation, partnership, joint venture, or association known as _____ *[please state name of Proposer company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the proposing business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the proposing business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

Signature of one of the following:

Proposer, if the Proposer is an individual;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

Subscribed and sworn to before me

this ____ day of _____, 2010.

NOTARY PUBLIC

My commission expires: _____

AG Procurement form 002 (Nov 17, 2005)

CITY OF _____)
) ss.
STATE OF _____)

The name of the proposing company or individual is *[state name of company]*

That I make this statement on behalf of myself as a representative of the Proposer, and on behalf of the Proposer's officers, representatives, agents, subcontractors, and employees.

Proposer, if the Proposer is an individual;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

this _____ day of _____, 2010.

My commission expires _____, _____.

Case 1:02-cv-00022 Document 1815-1 Filed 06/14/18 Page 35 of 54

PROPOSAL FORM B-5
AFFIDAVIT re NO GRATUITIES or KICKBACKS

CITY OF _____)
) ss.
STATE OF _____)

[state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the proposing firm or individual is [state name of Proposer company] _____.
- Affiant is _____ [state one of the following: the Proposer, a partner of the Proposer, an officer of the Proposer] making the foregoing identified bid or proposal.
2. To the best of affiant's knowledge, neither affiant, nor any of the Proposer's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of Proposer, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).
 3. To the best of affiant's knowledge, neither affiant, nor any of the Proposer's officers, representatives, agents, subcontractors, or employees has or have offered, given or agreed to give, any Government of Guam employee or former Government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the Proposer's proposal.
 4. I make these statements on behalf of myself as a representative of the Proposer, and on behalf of the Proposer's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:
Proposer, if the Proposer is an individual;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

Subscribed and sworn to before me
this _____ day of _____, 2017.

NOTARY PUBLIC
My commission expires _____, _____.

AG Procurement form 004 (July 12, 2010)

CITY OF _____) ss.
STATE OF _____)

The affiant is _____ [state one of the following: *the Proposer, a partner of the Proposer, an officer of the Proposer*] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees of Proposer have knowingly influenced any Government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he nor she, nor any officer, representative, agent, subcontractor, or employee of Proposer will knowingly influence any Government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 §11103(b).

Proposer, if the Proposer is an individual;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

Subscribed and sworn to before me
this _____ day of _____, 2010.

NOTARY PUBLIC
My commission expires _____, _____.

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PROPOSAL FORM B-7
DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: 001-18

Name of Proposer Company: _____

I, _____ hereby **certify**
under penalty of perjury:

(1) That I am _____ [*please select one: the Proposer, a partner of the Proposer, an officer of the Proposer*] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the Government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the Government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the Government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the Government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the Government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the Proposer is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

Signature

AG Procurement form 006 (February 16, 2010)

PROPOSAL FORM B-8

AFFIDAVIT re CONTINGENT FEES

CITY OF _____)
) ss.
STATE OF _____)

_____ [state name of affiant signing below], being
first duly sworn, deposes and says that:

1. The name of the Proposer or individual is [state name of company]
_____.

2. As a part of the Proposer's proposal, to the best of my knowledge, the Proposer has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 § 11108(f).

3. As a part of the Proposer's bid or proposal, to the best of my knowledge, the Proposer has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 § 11108(h).

4. I make these statements on behalf of myself as a representative of the Proposer, and on behalf of the Proposer's officers, representatives, agents, subcontractors, and employees.

Signature of one of the following:

Proposer, if the Proposer is an individual;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

Subscribed and sworn to before me

this _____ day of _____, 2018.

NOTARY PUBLIC

My commission expires _____, _____.

AG Procurement form 007 (July 15, 2010)

DRAFT

ATTACHMENT C – SAMPLE CONTRACT

CONTRACT NO. _____

DRAFT FORMAL CONTRACT

**CONTRACT FOR:
Independent Engineer Services
for
Ordot Dump Closure Facility Post Closure Care Period**

Contractor Name

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

**Contract
for: Independent Engineer Services
Project No. GSWA 001-18
Amount: \$
Place: Ordot, Guam**

DRAFT CONTRACT

BETWEEN GOVERNMENT AND CONTRACTOR

THIS AGREEMENT AND FORMAL CONTRACT ("Contract") is made and entered into this _____ day of _____, 2018, by and between the Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Guam Solid Waste Authority (hereinafter called the Receiver), and _____, a {corporation, partnership, limited liability company, liability company or sole proprietorship}, hereinafter called the "Independent Engineer," a properly licensed and qualified engineer or engineering firm fully licensed to conduct business on Guam and having Guam Business License No. _____ and Professional Engineering Services License No. _____.

WITNESSETH, that whereas the Receiver is fully authorized to act on behalf of the Guam Solid Waste Authority (hereinafter called GSWA) pursuant to the terms of Court Orders issued by the United States District Court of Guam in *United States v. Government of Guam*, Civil Case No. 02-00022 (D. Guam); and

Whereas the United States District Court of Guam has scheduled the Receivership to end on _____ pursuant to its Order dated _____, thereafter which a Trustee is to be named to oversee the Ordot Dump Closure Facility during the period of time for which it is required to be maintained pursuant to a Post-Closure Plan of Care approved by the United States Environmental Protection Agency and the Guam Environmental Protection Agency; and

Whereas the Receiver intends to procure Independent Engineer services, in accordance with the scope of work and other Contract documents included in RFP _____; and

Whereas said Independent Engineering services are to be provided to the Receiver during the remaining period of time GSWA remains in Receivership and to the Trustee designated by the United States District Court of Guam after the Receivership ends making the contracting authority for this Contract initially the Receiver and after the Receivership ends the Trustee, hereinafter called the Receiver/Trustee; and

Whereas, the Receiver, on behalf of GSWA, issued a Request for Proposals (RFP No. GSWA 001-18) for an Independent Engineer to assist the Receiver/Trustee by providing independent engineering and related technical advice to the Receiver/Trustee to enable the Receiver/Trustee to perform its proper due diligence as it ensures that the funds of the Trust are used wisely to implement the Ordot Dump Post-Closure Facility's post-closure care in accordance with the Post-Closure Plan approved by Guam EPA and EPA; and

Whereas, following an evaluation and selection process by the Receiver, on behalf of GSWA, {Independent Engineer name} was selected as the best proposer with the necessary skills, experience, and expertise to perform the duties of the Independent Engineer for the Ordot Dump Post-Closure Facility, and the Independent Engineer is willing to act as Independent Engineer pursuant to this Contract; and

NOW THEREFORE, the Independent Engineer, its proposal submitted in response to RFP _____ having been evaluated as the highest-ranking proposal submitted, and meeting all of the other criteria to perform as an Independent Engineer and the Receiver/Trustee and Independent Engineer for the considerations herein set forth and in other Contract documents associated with the performance hereunder, agree as follows:

Section 1. **THE INDEPENDENT ENGINEER AGREES:** To provide the services necessary to perform and complete the work required for the Independent Engineer in strict compliance with the Contract documents herein mentioned, which are hereby made a part of the Contract, including the following addenda:

Addendum No.

Dated

1

2

Etc.

Section 2. **COMPENSATION:** The RECEIVER/TRUSTEE agrees to pay, and the Independent Engineer agrees to accept, in full payment for the performance of this Contract, payment for its services actually utilized by the Receiver/Trustee based on the rates, services and hours required to perform said services , all in accordance with the terms as stated in the Contract documents.

Progress payments will be made as specified in the General Conditions.

The RECEIVER/TRUSTEE will compensate the Contractor for services rendered, pursuant to Appendix A, Scope of Work, as follows:

A. The RECEIVER/TRUSTEE shall compensate the Independent Engineer by progress payments based upon satisfactory delivery and acceptance of services performed pursuant to the scope of work and as described herein. Projects/tasks outside the primary responsibility of the Independent Engineer may be added at the RECEIVER/TRUSTEE's discretion upon written agreement (e.g., email of the Independent Engineer to perform additional projects/tasks). The Independent Engineer shall provide the service at the fees stated in the Cost Proposal, unless otherwise agreed in writing. The Cost Proposal contains the following information:

1. **Time and Materials:** The attached Cost Proposal (Attachment B) provides a current schedule of fees charged by the Independent Engineer for personnel assigned to each task performed and also lists the basis for other related costs subject to reimbursement under this Contract.
2. **Estimated Costs of Individual Task:** The RECEIVER/TRUSTEE shall compensate the Independent Engineer in amounts not to exceed the fees for each task and subtask as listed in Cost Proposal. Should the Receiver/Trustee request any task or subtask not listed in the Cost Proposal, the Independent Engineer and Receiver/Trustee shall negotiate an additional task order based on the rates included within the cost proposal. In the event that services not included in the cost proposal are required, the Independent Engineer and Receiver/Trustee shall negotiate the rates and terms of such services which shall be incorporated into the task order.
3. **Submission of Invoices:** The Independent Engineer shall be paid upon submittal and approval by the Receiver/Trustee of monthly invoices, based on the acceptance of the level of effort performed and the submittal of deliverables for the work. Invoices shall display breakdown of hours charged and work performed for each respective invoice period and shall be subject to the maximum cost as provided in the cost proposal and other applicable limits included in any additional task order negotiated. Any request for reimbursement of reimbursable expenses shall include proof of

purchase or receipts for all expenditures and an explanation as to the necessity of any such reimbursable expenses. Profit margin and overhead shall not be applied to reimbursable expenditures. Invoices should be sent to:

c/o RECEIVER – Gershman, Brickner & Bratton, Inc./TRUSTEE
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: TBD

- B. The Independent Engineer shall certify in writing, at the time of submitting each of his invoices for payment, that the work performed during the invoicing period is paid within hourly rates not exceeding the rates used in Cost Proposal. The RECEIVER/TRUSTEE shall have complete access to the Independent Engineer's payroll records to verify hourly rates.
- C. Subject to Guam Procurement Regulations, an adjustment to the fee stated herein may be requested by the Contractor and authorized by the RECEIVER/TRUSTEE if the physical scope of work, time of completion, or services requested is increased over that agreed to.
- D. The RECEIVER/TRUSTEE is not obligated to compensate the Independent Engineer for work that is not completed in accordance with that stated in the Scope of Work.
- E. Disputed Invoices and Late Fees:

If the RECEIVER/TRUSTEE disputes any items in Independent Engineer's invoice for any reason, including the lack of supporting documentation, the RECEIVER/TRUSTEE may temporarily delete the disputed item and pay the remaining amount of the invoice. The RECEIVER/TRUSTEE will promptly notify the Independent Engineer of the dispute and request clarification and/or correction. After the dispute(s) have been settled, the Independent Engineer will include the disputed item to the extent it is payable on a subsequent, regularly scheduled invoice, or on a special disputed items invoice; if the disputed item is found to be payable in whole or in part.

§22501. Title: Prompt Payment Act: Sections 22502 - 22507 of this Article may be cited as the Prompt Payment Act which applies to late payments by the RECEIVER/TRUSTEE. In the event undisputed portions of Independent Engineer's invoices are not paid when due, Independent Engineer also reserves the right, after thirty (30) days' prior written notice, to suspend the performance of its services under this Contract until all past due amounts have been paid in full.

- F. Receiver/Trustee shall make payments to the Independent Engineer of each invoice within forty-five (45) days of the receipt by the Receiver/Trustee in accordance with the procedures for the Trust Account.

Section 3. **SCOPE OF WORK:** The Independent Engineer agrees to provide technical assistance and perform the different tasks as defined in the "Scope of Work" and described in Attachment A, the Scope of Work, which is incorporated herein by reference and made an integral part hereof.

Section 4. **SCHEDULE OF SUBMITTALS:** The Independent Engineer shall complete the services pursuant to this Contract in accordance with the schedules as specified in the Scope of Work and made an integral part of this Contract.

Section 5. **CONTRACT TERM:** Subject to Section 7, the term of this Contract shall commence after the RECEIVER/TRUSTEE signs the Contract and a Notice to Proceed is issued thereafter, and continue for a period of **Five (5) years with the RECEIVER/TRUSTEE's option to renew bi-annually, for two (2) additional 2-year periods but not to exceed four (4) additional years.** The option to renew will be based on the future need for the Independent Engineer's continued services and the evaluation of the performance of the Independent Engineer during the previous year(s) of service.

Section 6. **INDEPENDENT ENGINEER AGREES:**

A. That there shall be no employee benefits occurring from this Contract, such as:

- 6.1 Insurance coverage provided by the RECEIVER/TRUSTEE;
- 6.2 Participation in the Government of Guam retirement system; and
- 6.3 Accumulation of vacation leave or sick leave.

B. That there shall be no withholding of taxes by the RECEIVER/TRUSTEE. Independent Engineer is obligated to pay taxes in accordance with the Laws of Guam.

Section 7. **SCOPE OF CONTRACT:** This Contract supersedes any and all other contracts, either oral or in writing, between the parties hereto with respect to the retainment of Independent Engineer by the RECEIVER/TRUSTEE and contains all of the covenants and contracts between the parties with respect to such retainment in any manner whatsoever. Each party to this Contract acknowledges that no representation, inducements, promises or Contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing and signed by the Independent Engineer and the RECEIVER/TRUSTEE. If it is a modification involving compensation, funds have to be certified and the modification approved by the Receiver/Trustee. For the purposes of this paragraph and of the entire Contract, the signature of the Receiver/Trustee is the only signature that will bind the RECEIVER/TRUSTEE

Section 8. **RESPONSIBILITY OF THE INDEPENDENT ENGINEER:** The Independent Engineer shall be responsible for the professional and technical accuracy of all work performed under this Contract. The Independent Engineer shall, without additional cost to the RECEIVER/TRUSTEE, correct or revise all errors or deficiencies in his work. The RECEIVER/TRUSTEE's review, approval, acceptance of, and payment of fees for services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the Independent Engineer's failure in performance of this Contract, and the Independent Engineer shall be and remain liable to the RECEIVER/TRUSTEE for negligent performance of any of the services performed under this Contract.

PROGRESS REPORTS: Independent Engineer agrees to provide progress reports in a form and frequency stated in the Scope of Work.

Section 9. **RECEIVER/TRUSTEE RESPONSIBILITIES:** The RECEIVER/TRUSTEE's responsibilities are defined in the Scope of Work for this Project.

Section 10. **COOPERATION WITH INDEPENDENT ENGINEER:** The RECEIVER/TRUSTEE agrees to cooperate fully with the Independent Engineer on the Project.

Section 11. **DEFECTS:** The RECEIVER/TRUSTEE shall give prompt written notice to the Independent Engineer whenever the RECEIVER/TRUSTEE observes or otherwise becomes aware of any defect or other event which may substantially affect the Independent Engineer's performance of services under this Contract.

Section 12. **ACCESS:** The RECEIVER/TRUSTEE, without cost to the Independent Engineer, shall provide access to and make all provisions for the Independent Engineer to enter upon public and private lands as required for the Independent Engineer to perform his work.

Section 13. **OWNERSHIP OF DOCUMENTS AND EQUIPMENT:** All plans, reports and other incidental work, furnished hereunder as described in the Cost Proposal, including electronic files shall be and remain the property of the RECEIVER/TRUSTEE and may be used by the RECEIVER/TRUSTEE without any additional cost to the RECEIVER/TRUSTEE.

Section 14. **GENERAL COMPLIANCE WITH LAWS:** The Independent Engineer shall be required to comply with all Federal and territorial laws and ordinances applicable to the work. Independent Engineer shall attach a copy of appropriate business license.

Section 15. **CHANGES:** The RECEIVER/TRUSTEE may at any time by written order, make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Contract, or in the time required for performance, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly.

Section 16. **MANDATORY DISPUTES CLAUSE:**

- A. The RECEIVER/TRUSTEE and the Independent Engineer agree to attempt resolution of all controversies which arise under, or are by virtue of, this Contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Independent Engineer shall request the RECEIVER/TRUSTEE to issue a final decision in writing 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 Independent Engineer may proceed as though the RECEIVER/TRUSTEE had issued a decision adverse to the Independent Engineer.
- B. The RECEIVER/TRUSTEE shall immediately furnish a copy of the decision to the Independent Engineer, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- C. The RECEIVER/TRUSTEE's decision shall be final and conclusive, unless fraudulent or unless the Independent Engineer appeals the decision.
- D. This subsection applies to appeals of the RECEIVER/TRUSTEE's decision on a dispute. For money owed by or to the RECEIVER/TRUSTEE under this Contract, the Independent Engineer shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Claims Officer of the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by the RECEIVER/TRUSTEE or from the date when a decision should have been rendered. For all other claims by or

against the RECEIVER/TRUSTEE arising under this Contract, the Office of the Public auditor has jurisdiction over the appeal from the decision of the RECEIVER/TRUSTEE. Appeals to the Office of the Public Auditor must be made within sixty (60) days of the RECEIVER/TRUSTEE's decision or from the date the decision should have been made.

- E. The Independent Engineer shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. The Independent Engineer shall comply with the RECEIVER/TRUSTEE's decision and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where the Independent Engineer claims a material breach of this Contract by the RECEIVER/TRUSTEE. However, if the RECEIVER/TRUSTEE determines in writing that continuation of services under this Contract is essential to the public's health or safety, then the Independent Engineer shall proceed diligently with performance of the Contract notwithstanding any claim of material breach by the RECEIVER/TRUSTEE.

Section 17. **CLAIMS AGAINST RECEIVER/TRUSTEE:** The Independent Engineer expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Independent Engineer against the RECEIVER/TRUSTEE if the claim arises out of or in connection with this Contract. The Independent Engineer also expressly recognizes that all other claims by the Independent Engineer against the RECEIVER/TRUSTEE are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

Section 18. **CONSENT TO JURISDICTION:** The Independent Engineer hereby expressly consents to the jurisdiction of and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Contract, except as otherwise may be provided by the Guam Procurement Law. The Independent Engineer waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

Section 19. **MANDATORY REPRESENTATION BY INDEPENDENT ENGINEER:**

- A. **ETHICAL STANDARD:** With respect to this Contract and any other contract that the Independent Engineer may have, or wish to enter into, with the RECEIVER/TRUSTEE, the Independent Engineer represents that it has not knowingly influenced, and promises that it will not knowingly influence, any RECEIVER/TRUSTEE employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.
- B. **PROHIBITION AGAINST GRATUITIES AND KICKBACKS:** With respect to this Contract and any other contract that the Independent Engineer may have or wish to enter into with the RECEIVER/TRUSTEE, the Independent Engineer represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.
- C. **PROHIBITION AGAINST CONTINGENT FEES:** The Independent Engineer represents that it has not retained any person or agency upon an Contract or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Contract or any other contract with the RECEIVER/TRUSTEE. For breach or violation of this warranty, the RECEIVER/TRUSTEE shall have the right to

annul this Contract without liability, or, in its discretion to deduct from the Contract price of consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

- D. RESTRICTION ON EMPLOYMENT OF SEX OFFENDERS:** The Independent Engineer warrants that no person in its employment who has been convicted of a sex offense under the provision of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide service on behalf of the Independent Engineer relative to this Contract. If any person employed by the Independent Engineer and providing service under this Contract is convicted subsequent to the parties entering into this Contract, then the Independent Engineer warrants that it will notify the RECEIVER/TRUSTEE of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Contract. If the Independent Engineer is found to be in violation of any of the provisions of this paragraph, then the RECEIVER/TRUSTEE shall give notice to the Independent Engineer to take corrective action. The Independent Engineer shall take corrective action within twenty-four (24) hours of notice from the RECEIVER/TRUSTEE, and the Independent Engineer shall promptly notify the RECEIVER/TRUSTEE when action has been taken. If the Independent Engineer fails to take corrective steps within twenty-four hours of notice from the RECEIVER/TRUSTEE, then the RECEIVER/TRUSTEE in its sole discretion may suspend this Contract temporarily.

Section 20. ACCESS TO RECORDS AND AUDIT: The Independent Engineer, including the Independent Engineer's subcontractor, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such materials available at the Independent Engineer's office at all reasonable times during the initial or renewal terms of the Contract and for a period of three (3) years from the date of the final payment under this Contract, for inspection by the RECEIVER/TRUSTEE or its agents. Each subcontract by the Independent Engineer relative to this Contract shall include a provision containing the conditions of this paragraph.

Section 21. EFFECTIVE DATE OF CONTRACT: This Contract and any amendment to it shall take effect upon the date such is signed by the Receiver/Trustee and the date of this Contract shall be the date upon which the Receiver/Trustee affixes his signature.

Section 22. RECEIVER/TRUSTEE NOT LIABLE: The RECEIVER/TRUSTEE and its officers, agents, employees, and representatives assume no liability for any accident or injury that may occur to the Independent Engineer, his agents', dependents, or personal property while en route to or from this territory or during any travel mandated by the terms of this Contract.

The RECEIVER/TRUSTEE, its officers, agents, employees, and representatives shall not be liable to Independent Engineer for any work performed by the Independent Engineer prior to the written and signed approval of this Contract, and the Independent Engineer hereby expressly waives any and all claims for service performed in expectation of this Contract prior to its signature.

Section 23. ASSIGNMENT OF CONTRACT: The Independent Engineer shall not assign this Contract, or any sum becoming due the Independent Engineer under the provisions of this Contract, without prior written consent of the RECEIVER/TRUSTEE.

Section 24. MISCELLANEOUS PROVISIONS:

- A. Invalid or Unenforceable Provisions: In the event any provisions of this Contract shall be held to be invalid and unenforceable, the remaining provision shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- B. Delays: Time is of the essence in completion of all work, including research that needs to be completed so as to allow sufficient time for completion of all elements of the work required. Independent Engineer shall develop a schedule, which allows for timely completion of all work, including incidental works necessary to complete the Project. Delays caused by Independent Engineer's negligence will be assessed accordingly by the RECEIVER/TRUSTEE.

Section 25. **INDEMNITY AND LIMITATION OF LIABILITY:** Independent Engineer agrees to indemnify, save harmless and defend the RECEIVER/TRUSTEE and their respective officers, employees, agents, representatives, successors and assigns from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Independent Engineer, or its officers, employees or agents, or subcontractors. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the RECEIVER/TRUSTEE, its officers, agents, employees, Receiver and representatives.

Section 26. **INSURANCE PROVISIONS:**

Insurance Provisions for this Contract are provided in Attachment C.

Compliance by the Independent Engineer and all subcontractors with the Insurance Provisions in Attachment C shall not relieve the Independent Engineer and all subcontractors of their liability provisions of the Contract.

Section 27. **CONFLICT OF INTEREST:** Independent Engineer agrees that Independent Engineer has not engaged or will not engage in participating or having an economic interest in any Guam Department of Public Works procurement which results from its contractual services.

Section 28. **COUNTERPARTS:** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one Contract. Further, all original counterparts shall be delivered to the Receiver/Trustee, Attention:

Alicia Fejeran

Guam Solid Waste Authority
542 N. Marine Corps Drive
Tamuning, Guam 96913
Email: alicia.gswa@gmail.com

(671) 647-4312 phone
(671) 649-3777 fax

Section 29. **NOTICES:** All notices between the parties shall be in writing and shall be deemed served when personally delivered or when deposited in the mail, registered or certified, first-class postage prepaid, addressed as follows, or sent via facsimile or e-mail to the number or e-mail address provided by the Independent Engineer:

To: CONTRACTING OFFICER (RECEIVER/TRUSTEE REPRESENTATIVE):

Attn: _____

To: INDEPENDENT ENGINEER:

Section 30. **TERMINATION FOR CONVENIENCE:**

- A. **TERMINATION:** The RECEIVER/TRUSTEE may when its interest so requires, terminate this Contract in whole or in part, for the convenience of the Government or the default of the Independent Engineer. The RECEIVER/TRUSTEE shall give written notice of the termination to the Independent Engineer specifying the part of the Contract terminated and when it is effective.
- B. **INDEPENDENT ENGINEER'S OBLIGATIONS:** The Independent Engineer shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Independent Engineer will stop work to the extent specified. The Independent Engineer shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Independent Engineer shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The RECEIVER/TRUSTEE may direct the Independent Engineer to assign the Independent Engineer's right, title, and interest under terminated orders or subcontracts to the RECEIVER/TRUSTEE. The Independent Engineer must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- C. **RIGHT TO WORK PRODUCT:** Upon termination of the Contract for the convenience of the RECEIVER/TRUSTEE, Independent Engineer shall deliver to the RECEIVER/TRUSTEE all documents and reports, plans, drawings, information and other material produced by Independent Engineer or any of its subcontractors in connection with the performance of this Contract and title thereto. The Independent Engineer shall protect and preserve property in its possession or in the possession of any of its subcontractors in which the RECEIVER/TRUSTEE has an interest.
- D. **COMPENSATION:**
- (a) The Independent Engineer shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by 2 G.A.R. Div. 4 §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Independent Engineer fails

to file a termination claim within one year from the effective date of termination, the RECEIVER/TRUSTEE may pay the Independent Engineer, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

- (b) The RECEIVER/TRUSTEE and the Independent Engineer may agree to a settlement provided the Independent Engineer has filed a termination claim supported by cost or pricing data to the extent required by 2 G.A.R. Div. 4 §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the RECEIVER/TRUSTEE and the Contract price of the work not terminated.
- (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the RECEIVER/TRUSTEE shall pay the Independent Engineer the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
 - (i) Contract prices for services accepted under the Contract;
 - (ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Independent Engineer would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (iii) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this section;
 - (iv) The reasonable settlement costs of the Independent Engineer, including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the Independent Engineer under this Subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the Independent Engineer reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the Contract price of work not terminated.
- (d) Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

Section 31. **SEVERABLE PROVISIONS:** If any provision of this Contract shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Contract and the Contract shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

IN WITNESS WHEREOF the Parties hereto have executed this Contract as of the day and year first written.

INDEPENDENT ENGINEER

FOR THE RECEIVER/TRUSTEE OF
GUAM

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

Date: _____

Date: _____

CERTIFIED FUNDS AVAILABLE:

Allotment No.: _____
Amount: \$ _____

Certifying Officer
Receiver – Gershman, Brickner & Bratton, Inc.

Date: _____

CORPORATE CERTIFICATION AS TO AUTHORIZATION TO BIND

I, _____ certify that I am the Secretary of the corporation named as Independent Engineer herein; that _____, who signed this Contract on behalf of the Independent Engineer, was then _____ of said corporation by authority of said corporation of its governing body, and is within the scope of its corporate powers authorized to bind said corporation to the terms and conditions of this Contract.

Signed

Date

(CORPORATE SEAL)

ATTACHMENT D – ORDOT DUMP CLOSURE FACILITY PROPERTIES

DRAFT

EXHIBIT

“B”

REQUEST FOR PROPOSALS
RFP NO.:

Gershman, Brickner & Bratton, Inc. (GBB) in its capacity as Receiver for the Guam Solid Waste Authority (GSWA) is seeking proposals on behalf of the District Court of Guam from qualified institutions (“Proposers”) to provide services as Trustee (“Trustee”) for the Ordot Dump Closure Facility.

The Request for Proposal may be viewed and downloaded at the Documents section of the Guam Solid Waste Receivership Information Center (www.guamsolidwastereceiver.org). All proposals must be sent to and received by GBB no later than the **close of business** {date TBD}. Proposals are to be submitted as directed in the RFP.

Inquiries and requests for clarifications relative to the RFP and /or the proposal process shall be sent in writing to: David Manning via email at . Such inquiries and requests for clarifications must be submitted on or before {date TBD}.

**Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the
Guam Solid Waste Authority of the
Government of Guam**

**REQUEST FOR PROPOSALS
TO PROVIDE TRUSTEE SERVICES
FOR THE ORDOT DUMP CLOSURE FACILITY**

Gershman, Brickner & Bratton, Inc. (GBB), in its capacity as Receiver for the Guam Solid Waste Authority (GSWA), is seeking proposals from qualified institutions ("Offerors") to provide services as Trustee for the Ordot Dump Closure Facility ("Trustee").

Pursuant to the Orders of the U.S. District Court of Guam, GBB is authorized to conduct this process to identify qualified candidates to serve in the capacity as Trustee and to provide trustee and services as described in this Request for Proposals. After identifying qualified candidates for providing these services and evaluation their respective capabilities, GBB will make a recommendation to the District Court of Guam. The District Court of Guam will conduct whatever additional hearings or evaluation it finds necessary and appropriate and make the final selection of the Trustee.

I. Background

Guam is a United States Territory with an area of 210 square miles in the Western Pacific Ocean. Guam has a population of approximately 170,000, and it is the largest and southernmost island of the Mariana Islands. The primary civilian Municipal Solid Waste ("MSW") Disposal site in Guam is the Layon Landfill which opened in 2011 to replace the Ordot Dump. The Ordot Dump has existed at least since World War II and has been cited for Violation of the Clean Water Act (33 U.S.C. §1251, et. seq.).

The Government of Guam entered into a Consent Decree with the United States Environmental Protection Agency ("USEPA") on February 11, 2004, to close the Ordot Dump, cease all discharges into the Lonfit River, open a new Municipal Solid Waste landfill, and develop and implement Recycling and Hazardous Waste management strategies to reduce the volume of materials going into the landfill ("the Consent Decree Projects").

As Receiver, GBB has 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 Guam Solid Waste Authority (GSWA), and any and all departments or other divisions of the Department of Public Works insofar as they affect the Government of Guam's compliance with the Consent Decree.¹

In January 2014, construction began on the Ordot Dump closure system, and the construction was completed on March 1, 2016. The Ordot Closure Facility (or Ordot Facility or Facility) occupies approximately 96 acres and consists of:

¹ On April 18, 2011, the Guam Legislature passed the Guam Solid Waste Authority Act ("the Act"). The Act named the Guam Solid Waste Authority ("GSWA"), an autonomous agency, as the successor of the Solid Waste Management Division (SWMD), a sub-entity of the Department of Public Works. The legislation provided that the SWMD shall continue in existence as an autonomous, public corporation to be referred to as the Guam Solid Waste Authority (GSWA). In an order dated September 2, 2011 Accordingly, the Court extended to the Receiver, full power and authority over GSWA, to the full extent of its previously granted authority over SWMD.

- 43.5 -acre closure cover system over delivered and deposited waste
- Four stormwater management ponds, with associated engineered inlet and outlet control structures
- Leachate collection and removal system consisting of:
 - Perimeter leachate collection and leachate interceptor lines
 - Three steel/glass lined 16,000-gallon leachate storage tanks with associated pump station and controls
 - Leachate forcemain providing discharge from tanks to GWA flow meter
- Gas Collection and Control System (GCCS)
 - 26 vertical extraction wells
 - 13 horizontal collectors
 - Flare Station
- 10 perimeter groundwater monitoring wells
- 18 perimeter gas monitoring wells
- One standby power generation system
- 7,120 linear feet of security fencing (encompassing 57 of the 96 acres) enclosing all major Facility systems with six Vehicle and 14 personnel gates for access and maintenance

The RECEIVER has just completed the procurement process and entered into a contract with Brown and Caldwell to operate the Ordot Dump Closure Facility. This company, a highly qualified entity with extensive experience in this area, will operate, maintain, monitor, report, and maintain compliance with the Post Closure Care Permit, and its conditions, as issued by the Guam Environmental Protection Agency. The Agreement with Brown and Caldwell is included in this RFP as Attachment [REDACTED] for reference as potential Trustees prepare their submissions for consideration.

The Trustee, which will be contracted through this RFP, will oversee the contract with the Operator and, working with the Independent Engineer, ensure compliance with the permits, maintain, invest and administer a trust fund to pay the costs of the work of the operator and any other contractors required to maintain the Ordot Dump Closure Facility in full compliance with the Post-Closure Plan approved for the care and maintenance of the period for the thirty-year post-closure period required by federal law and regulation.

At this time, the RECEIVER is also procuring the services of a qualified Independent Engineer who will provide technical, engineering and related services to assist the Trustee in its review of the work of the Operator of the Ordot Dump Closure Facility and any other contractors employed by the Trustee or Operator, in the necessary work to maintain and operate the facility in full compliance with the Post Closure Plan for the Ordot Dump Closure Facility while meeting or exceeding generally accepted industry standards for the quality of said work. These services include, but not limited to multi-disciplined monitoring and review of Operator performance under the Ordot Post Closure Care Permit.

In order for the Consultant to be considered qualified, the firm or project team must possess technical expertise, experience and necessary qualifications listed below, of a third party, enter into a binding contract commitment to avoid conflicts of interest and ensure third party independence and possess relevant experience to perform the services required.

II. Qualified Financial Institutions

To be qualified for selection, a financial institution must submit documentation that it meets at least one of the following criteria:

1. Be a bank organized and operating under the National Banking Laws as a national bank;
2. Be a bank or territorial bank organized under the laws of any state or territory of the United States authorized and is either currently licensed or capable of becoming licensed to conduct the business of banking in Guam; or
3. Be a savings and loan association organized under the laws of Guam which is an insured institution as defined in Title IV of the National Housing Act.

III. Scope of Services

The scope of the Trustee's services is specified in the Draft Trust Agreement included in this RFP as [REDACTED]. Please review all aspects of this Draft Trust Agreement and consider carefully the effort and resources required to accomplish these vital duties. Certain additional documents will be critical to the proposers understanding of the work to be accomplished by the Trustee. These include the final Agreement with Brown and Caldwell Constructors to Operate the Facility and the contract for the services of the Independent Engineer. The latter remains a draft while the procurement to secure these services is yet to be completed. Both documents are made a part of this RFP as [REDACTED] and [REDACTED] respectively.

Another vital document is the approved plan of Post-Closure Care for the Ordot Dump Closure Facility. The current version of that document is included as a part of the Operator's Agreement. This document remains subject to final revision based on on-going discussions between the Receiver, the United States Environmental Protection Agency and the Guam Environmental Protection Agency. It is not expected that any further revisions to this document will have a significant impact on the duties of the Trustee or the terms of Trust Agreement itself.

IV. Evaluation of PROPOSALS

1. Delivery and Acceptance of Proposals

Proposals may be mailed, couriered or hand delivered to the GSWA at the location and deadline indicated on the Proposer Signature Cover page. Proposals may also be submitted electronically via email (not via facsimile) in PDF file format only. Proposals submitted electronically should also be followed with a hardcopy submission of the proposal, within 5 working days of the proposal deadline at the location indicated on the Proposer Signature Cover page. Proposals received after this time will be returned unopened. Postmarks and email 'sent' times of electronic submissions will not be accepted as proof of receipt.

Proposers are reminded that the U.S. Postal Service (U.S.P.S.) deliveries may be delayed. Proposers are responsible for on-time deliveries of proposal documents to the GSWA, and are strongly encouraged to use alternate means, such as overnight/hand delivery carriers, or allow ample time for U.S.P.S. deliveries to be received in time.

Proposer must submit one (1) original and five (5) numbered copies of each proposal (total of six) in a sealed envelope or box. Proposers shall mark the RFP Number, due date, and proposer name clearly on the outside of the box or envelope. Proposals received on time will be opened. Any material that is to be considered confidential in nature must be clearly marked as such and shall be treated as confidential to the extent allowable under the Guam Law. Trade secrets, proprietary and/or confidential information MUST be placed in a separate envelope marked "CONFIDENTIAL INFORMATION" and EACH PAGE must be

marked "CONFIDENTIAL INFORMATION." Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

In the event that the RECEIVER receives a request for information that a Proposer has previously marked as proprietary or confidential, the RECEIVER will confer with legal counsel on the matter and will notify the Proposer, and provide an opportunity to oppose such disclosure as required by Guam Law.

2. Interpretations and Addenda

Any explanation, clarification, or interpretation desired by a Proposer regarding any part of the RFP must be requested in writing from the RECEIVER no later than the date specified herein. Requests for explanations or clarifications may be emailed or mailed to the RECEIVER's contact for this RFP:

Alicia Fejeran
Guam Solid Waste Management Authority
542 North Marine Corps Drive
Tamuning, Guam 96913
E-mail: alicia.gswa@gmail.com
Phone: 671-646-3111

Nothing stated or discussed orally during any conversation, pre-proposal conference, interview or other session shall alter, modify or change the requirements of the RFP. Only interpretations, explanations or clarifications of this RFP and answers to questions that are incorporated into a written addendum to this RFP issued by the RECEIVER shall be binding on RECEIVER and may be considered by Proposers. All addenda will be posted on the RECEIVER's website, but it shall be the responsibility of Proposers to make inquiries as to the addenda issued. All such addenda shall become a part of this RFP, and all Proposers shall be bound by such addenda. Each Proposer must acknowledge its receipt of all addenda by completing the appropriate section of the Proposer Information Form B-1, which must be submitted with its proposal. Other communications with Proposers, at the discretion of the RECEIVER, may be issued by mail, email and/or placed on the Receiver's website www.guamsolidwastereceiver.org.

3. Ambiguity, Conflict or Errors in RFP

Proposers are expected to examine all documents that make up the RFP. The RECEIVER assumes no responsibility for any errors or misrepresentations that result from the use of an incomplete RFP. If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, it shall promptly notify the RECEIVER of such error in writing and request modification or clarification of the document. The RECEIVER will make modifications by issuing an addendum and will post such addendum on the RECEIVER's website. The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or it shall be waived.

4. Implied Requirements

Products and services that are not specifically requested in this RFP, but which are necessary to provide the functional capabilities proposed by the Proposer, shall be included in the proposal.

1. Information Provided by RECEIVER

Information included in or provided with this RFP is provided solely for the convenience of the Proposers. WHILE THIS INFORMATION IS BELIEVED TO BE ACCURATE, NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY THE RECEIVER AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION INCLUDED IN OR PROVIDED WITH THIS RFP. Proposers are solely responsible for conducting such independent due diligence investigations as may be necessary for the preparation of proposals. The RECEIVER, the Government of Guam and its employees, consultants, agents and advisors are not responsible for the completeness or accuracy of any information distributed or made available, orally or in writing, during this procurement process.

2. Costs and Expenses of Proposers

The RECEIVER shall have no liability under any circumstances for any costs or expenses incurred by Proposers in making a proposal, visiting and evaluating the Ordot Closure Facility, attending any meetings or interviews and participating in negotiations of the Trust Agreement, or in acquiring information, clarifying or responding to any condition, request or standard contained in this RFP. Each Proposer that participates in this procurement process does so at its own expense and risk, and agrees that the RECEIVER, the District Court of Guam and the Government of Guam shall not reimburse any costs incurred during this process whether or not any award results from this solicitation.

3. Cancellation or Modification of RFP and Rejection of Any and All Proposals

The RECEIVER reserves the right to withdraw this RFP at any time and for any reason and to issue such clarifications, modifications, and/or addenda, as it may deem appropriate. If there is any disagreement or discrepancy between this RFP and any supplement or addendum, the most recent supplement or addendum shall govern. The RECEIVER reserves the right to waive irregularities in proposals, if such action is in the best interest of the RECEIVER. Any such waiver shall not modify any remaining RFP requirements or excuse the Proposer from full compliance with the RFP specifications and other Operation Agreement requirements if the Proposer is selected as Trustee.

The RECEIVER shall accept all proposals for review that are prepared and submitted in conformance with this RFP, but reserves the right to accept or reject in whole or in part any or all proposals submitted. The RECEIVER reserves the right to request clarifications or corrections to proposals. The unreasonable failure of a Proposer to promptly supply information in connection with such a request may be grounds for a determination of non-responsibility and rejection of the proposal. Receipt of a proposal by the RECEIVER or submission of a proposal to the RECEIVER confers no rights upon the Proposer, nor does it obligate the RECEIVER or the District Court in any manner. The RECEIVER reserves, at its sole discretion, the right to determine which Proposers are qualified to provide services requested in this RFP.

4. Form of the Proposal - Tab I Operational and Management Plan and Technical Proposal

- 4.1 Description of the Proposer's staff to be employed and the role of each member, identifying all key personnel, in performing the proposed service(s). Attach resumes of all company officers, managers, and senior-level supervisors who will be involved in the management and delivery of the services;
- 4.2 Description of all subcontractors, if any, to be used including their role, responsibility, staff, location, and reporting relationships;

- 4.3 Proposed organizational structure, interrelationships, and interactions and specific plan describing how Proposer will work with the Operator and Independent Engineer;
- 4.4 Describe such other activities and planning as contemplated to ensure smooth implementation of the Ordot Closure Facility Trustee responsibilities required pursuant to the Trust Agreement;
- 4.5 Detailed plan of approach (including major tasks and sub-tasks) in performing the service(s) proposed;
- 4.6 Quality control methods, complaint management and resolution procedures; and
- 4.7 Communication plans for how the Trustee will notify the District Court and resolve the situation in case of problems or other events which may hinder operations.

5. Exceptions to the Terms and Conditions of Agreement – Tab II

Proposer shall indicate any exceptions to the general terms and conditions of the RFP and/or draft Trustee Agreement (as presented in Appendix). All exceptions must be listed, referencing the section of the RFP or Agreement to which they apply. Proposer shall describe the nature of each exception and provide proposed substitute language. Proposer shall indicate any additional information that would be required by Proposer to complete its investigation of the Ordot Closure Facility and execute the Operation Agreement. Proposer shall describe any constraints or requirements regarding the execution of the Trustee Agreement and identify any conditions attached to Proposer's proposal. The RECEIVER and the District Court attaches considerable importance to the terms of the Trustee Agreement, and a proposal that is subject to significant modification to the draft Trustee Agreement or extensively conditioned may be rejected. After selection, Proposer will not be permitted to propose any exceptions not identified in Tab II of its proposal.

6. References – Tab III

Proposer shall include references where similar services and responsibilities have been or are being provided. Name of person or entity, contact, address and phone number shall be provided for each reference along with a complete description of the services and nature of the entity to which said services are provided.

7. Financial Stability – Tab IV

Proposer shall include any applicable findings of regulatory agencies or any pending or settled litigation that may have a bearing on the financial stability of the proposer or its ability to carry out its fiduciary duties pursuant to the Trustee Agreement.

Proposer shall highlight data that demonstrate financial strength and stability. Proposer shall also demonstrate the ability to obtain and maintain all insurance and financial security as required of a Trustee acting in the capacity required by the Trust Agreement.

8. Cost – Tab V

While the work of the Trustee is essential to the complex task of ensuring that the Ordot Dump Closure Facility remains in full compliance with the Consent Decree, the Post-Closure Plan of Care and its permits, the technical and engineering work required to accomplish this will be conducted by highly qualified consultants who will be in place when the Trustee assumes its role under the Trust Agreement. While not a complete description of all of its duties, (see Trust Agreement for a complete description), the work of the Trustee can be reasonably described in the following ways:

1. Managing the Trust Fund of the Ordot Dump Closure Facility to ensure that it remains fully funded to accomplish the purposes of the Trust.
2. Working with the Independent Trustee to ensure that the Operator performs to the standards required in its contract and that the Operator is paid in a timely and accurate manner for all of the work it performs to meet these standards;
3. Compensating the Independent Engineer in a timely and accurate manner for its work in compliance with its contract;
4. Keeping the District Court and through the Court all of the parties to the Consent Decree fully informed as to the status of the Facility and any issues concerning its funding, maintenance and compliance.

Much of the work the Trustee will oversee for the Operator or other contractors are repetitive and based on set fees to be charged by these respective contractors explicitly included in their contracts. For the Operator these are referred to and contractually defined as "Routine Services". Unexpected or event caused services are referred to as "Non-Routine Services" and will be provided by either the Operator or a separate, qualified contractor chosen by the Trustee in a competitive procurement process. The Independent Engineer will advise the Trustee when a separate procurement process is justified but the decision to use such a process or the Operator will be exclusively up to the Trustee.

The work of the Independent Engineer will be primarily that of technical assistance for the Trustee and the District Court to ensure that the work of the operator and any other contractors subsequently involved perform to acceptable levels to ensure that the Facility remains in full compliance with all permit requirements and the approved Post-Closure Plan. The Independent Engineer's work will be paid using standard hourly rates included in its contract. For Routine Services, the fees will be set in the Independent Engineer's Contract and the number of hours for any extraordinary work will be negotiated prior to the work.

While the pricing of the contractors will vary depending on the scope of the work to be done in the Non-Routine category, it will be either set by existing contracts and the Independent Engineer will be constantly available to assist the Trustee in ensuring that the pricing is both reasonable and necessary.

Using the Scope of Work referenced in Section III and included in the Draft Trust Agreement Appendix [REDACTED], the proposer shall provide its cost of Trustee services for the first five years of the Trust Agreement based on the assumptions to follow and the format provided in Appendix [REDACTED]. proposed pricing for operation of the Ordot Closure Facility.

9. Additional Fees – Tab VI

If additional fees are required for any reason and the amount of such fees are not identified in the preceding cost section, they should be included in a fee schedule to be included in this section. All fees

and compensation owed to the Trustee, payable under any aspect of the Trust Agreement, will be paid to the Trustee in a timely manner pursuant to the Agreement and subject only to the approval of the District Court of Guam.

10. Security of Deposits.

Deposits or investment certificates insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation do not require further security. To be eligible to receive or retain other active or inactive deposits, an eligible bank shall place with, or to the accounts of, the government of Guam, as security for such deposits, securities of a type herein below specified, and approved by the Director of Administration, in an amount in value at least ten percent in excess of the amount of monies deposited with the bank:

- (a) Treasury notes or bonds of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and in interest;
- (b) Any evidence of indebtedness of the government of Guam;
- (c) Investment certificates of the Federal Home Loan Bank;
- (d) Such other securities as may be hereafter approved by the Director of Administration and the Governor of Guam.

SOURCE: GC § 6313 amended by P.L. 13-104:1.

ATTACHMENT A – STANDARD INSURANCE REQUIREMENTS

Under Review

ATTACHMENT B – PROPOSAL FORMS

Under Review

ATTACHMENT C – DRAFT TRUST AGREEMENT

DRAFT

ORDOT DUMP POST-CLOSURE FACILITY CUSTODIAL TRUST AGREEMENT

This Custodial Trust Agreement (the “Trust Agreement”) is entered into this ____ day of (month), 2018 (the “Effective Date”), by and between _____ as trustee (the “Trustee”), and the Receiver, in its capacity as Receiver for the Guam Solid Waste Authority (the “Grantor”), pursuant to the terms of Court Orders in *United States v. Government of Guam*, Civil Case No. 02-00022 (D. Guam).

RECITALS

WHEREAS, on August 7, 2002, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint against the Government of Guam under the Clean Water Act, asserting claims for civil penalties and injunctive relief relating to Government of Guam’s unpermitted leachate discharges from the Ordot Dump to waters of the United States, including the Lofit River and its tributaries; and

WHEREAS, on February 11, 2004, the District Court of Guam (the “Court”) entered a Consent Decree between the United States and the Government of Guam, in which the Government of Guam, among other things, agreed to close the Ordot Dump in accordance with Guam law, to cease all discharges to waters of the United States from the Dump, to implement post-closure care of the Dump in accordance with Guam law, and to construct and operate a new landfill; and

WHEREAS, on January 31, 2007, the United States filed a motion to enforce the Consent Decree, contending that the Government of Guam had failed to comply with Consent Decree deadlines to award contracts for the closure of the Ordot Dump and the construction of a new landfill, and requesting the Court to issue an Order enforcing the Decree; and

WHEREAS, pursuant to an Order dated March 17, 2008, the Court appointed Gershman, Brickner & Bratton, Inc. (“GBB”) as Receiver for the Government of Guam Solid Waste Management Division of the Department of Public Works (the “Solid Waste Management Division”) in order to enforce the terms of the Consent Decree (the “Receivership Order”); and

WHEREAS, in the Receivership Order, the Court ordered that the Receiver shall have full power and authority to enforce the terms of the Consent Decree, and shall assume all of the responsibilities, functions, duties, powers, and authority of the Solid Waste Management Division; and

WHEREAS, on April 18, 2011, the Guam Legislature passed the Guam Solid Waste Authority Act, 10 Guam Code Ann. Ch. 51, naming the Guam Solid Waste Authority (“GSWA”), an autonomous agency, as the successor to the Solid Waste Management Division; and

WHEREAS, on September 2, 2011, the Court vested the Receiver with full power and authority over GSWA to the full extent of the Receiver’s authority over the Solid Waste Management Division pursuant to the Receivership Order; and

WHEREAS, on May 27, 2015, the Court issued an Order, directing the Receiver to develop

a financing plan that includes a dedicated financing mechanism to secure funds necessary to fully implement all post-closure care and monitoring actions at the Ordot Dump; and

WHEREAS, on October 21, 2015, the Receiver presented a financing plan that included a dedicated funding mechanism to ensure payments into a trust fund that is managed by an independent trustee and dedicated to post-closure care; and

WHEREAS, on May 2, 2016, the Court issued an Order approving the Receiver's financing plan to fund post-closure care at the Ordot Dump; and

WHEREAS, on August 12, 2016, the Court issued an Order approving the Receiver's request to establish a separate bank account, the Ordot Dump Post-Closure Care Reserve account, to begin accumulating the funds needed to cover the cost of the post-closure care of the Ordot Dump; and

WHEREAS, EPA and the Guam Environmental Protection Agency ("Guam EPA") have promulgated certain regulations applicable to the Grantor, requiring that the owner of the Ordot Dump Post-Closure Facility (or "Facility") shall provide assurance that funds will be available when needed for post-closure care of the Facility; and

WHEREAS, the Receiver, on behalf of GSWA, and in accordance with the Court's Orders, has elected to establish a trust as the financial assurance mechanism to provide all such financial assurance for post-closure care of the Facility; and

WHEREAS, the Receiver, on behalf of GSWA, issued a Request for Proposals (RFP No. RFP001-17) for the operation of the Ordot Dump Post-Closure Facility; and

WHEREAS, {operator name} entered into a contract to become the Operator of the Ordot Dump Post-Closure Facility on [Date, 201_]; and

WHEREAS, the Receiver, on behalf of GSWA, issued a Request for Proposals (RFP No.____) for a Trustee to manage the financial arrangements for the Ordot Dump Post-Closure Facility's post-closure care in accordance with the Post-Closure Plan approved by Guam EPA and EPA, and to perform certain due diligence with respect to the Facility; and

WHEREAS, following an evaluation and selection process by the Receiver, on behalf of GSWA, {Trustee name} was selected as the best proposer with the necessary skills, experience, and expertise to perform the duties of Trustee for the Ordot Dump Post-Closure Facility, and the Trustee is willing to act as trustee pursuant to this Trust Agreement; and

WHEREAS, this Trust Agreement is created pursuant to Court Order and to effectuate the terms of the Consent Decree.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, {Trustee name} and the Receiver, acting on behalf of GSWA, the Grantor, intending to legally bind themselves and their respective successors and assigns, hereby covenant and agree as follows:

Section I

Definitions

1.0 For all purposes of this Trust Agreement, capitalized terms used herein shall have the meanings set forth below:

- a. “Beneficiaries” shall mean the United States, on behalf of EPA, and Guam EPA.
- b. “Consent Decree” means the Consent Decree entered by the Court in *United States v. Government of Guam*, Civil Case 1:02-cv-00022 (D. Guam), on February 11, 2004.
- c. “Court” shall mean the District Court of Guam.
- d. “EPA” shall mean the U.S. Environmental Protection Agency and any successor agency.
- e. “Grantor” shall mean the Guam Solid Waste Authority, the Owner of the Ordot Dump Post-Closure Facility, which enters into this Trust Agreement, and any successor agency or assigns.
- f. “GSWA” shall mean the Guam Solid Waste Authority and any successor agency.
- g. “Guam EPA” shall mean the Guam Environmental Protection Agency and any successor agency.
- h. “Independent Engineer” shall mean a properly licensed and qualified engineer or engineering firm initially designated by the Receiver and subsequently designated by the Trustee.
- i. “Operator” shall mean the Person(s) responsible for the overall operations of the Ordot Dump Post-Closure Facility as initially contracted by the Receiver and subsequently contracted by the Trustee.
- j. “Ordot Dump Post-Closure Facility” or “Facility” shall mean the landfill closure facilities, equipment, and real property located on the site of the Ordot Dump and related contiguous properties on Dero Drive located in the Municipalities of Chalan Pago-Ordot and Asan, Guam, and all other real property that may now or in the future be acquired for Post-Closure Care operations as designated by the Receiver or the Trustee after the Receivership has ended, and all improvements and appurtenances thereto.
- k. “Ordot Dump Post-Closure Care Reserve Account” shall mean the account originally established by the Receiver pursuant to the Court’s Order dated August 12, 2016, approving a separate bank account to accumulate the funds needed to cover the cost of the Post-Closure Care of the Ordot Dump. Subject to the Court’s Order dated _____, 2018, the Ordot Dump Post-Closure Care Reserve

Account shall be transferred to the Trustee for deposit into the Trust Fund for the Post-Closure Care of the Facility as more fully described in Schedule B.

- l. “Owner” shall mean the the Guam Solid Waste Authority who owns the Ordot Dump Post-Closure Facility.
- m. “Paragraph” shall mean a portion of this Trust Agreement identified by an Arabic numeral or a lower case letter.
- n. “Permits” shall mean any and all permits issued by Guam EPA and/or EPA, including, but not limited to, a RCRA Subtitle D Post-Closure Care permit, a storm water permit, a National Pollutant Discharge Elimination System (“NPDES”) permit, air permits, and such other permits as may be required to operate and maintain the Ordot Dump Post-Closure Facility.
- o. “Person” shall mean an individual, corporation, company, partnership, joint venture, association, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof.
- p. “Post-Closure Care” shall mean operation, maintenance, reporting, and monitoring activities at the Ordot Dump Post-Closure Facility as required by the Post-Closure Care Plan approved by Guam EPA and EPA.
- q. “Post-Closure Care Plan” or “Post-Closure Plan” shall mean a document, together with all appendices and amendments, approved by Guam EPA and EPA, describing the activities, procedures, oversight, and reporting required for the Ordot Dump Post-Closure Facility during the Post-Closure Period.
- r. “Post-Closure Period” shall mean the period commencing on March 1, 2016, and continuing for thirty calendar years thereafter, which may be extended if Guam EPA, EPA, and/or the Court determine that an extension of this period of Post-Closure Care is needed to protect human health or the environment.
- s. “Receiver” shall mean GBB, in its capacity as Receiver for GSWA. Under the terms of the Receivership Order and applicable subsequent Court Orders, the Receiver has the full power and authority to enforce the terms of the Consent Decree, and has assumed all of the responsibilities, functions, duties, powers, and authority of GSWA.
- t. “Section” shall mean a portion of this Trust Agreement identified by a Roman numeral.
- u. “Trust” shall mean the Ordot Dump Post-Closure Facility Trust established pursuant to this Ordot Dump Post-Closure Facility Custodial Trust Agreement.
- v. “Trust Agreement” shall means this Ordot Dump Post-Closure Facility Custodial Trust Agreement to provide for Trustee services for the Ordot Dump Post-Closure Facility, together with all Appendices, Schedules, and amendments.

- w. “Trust Fund” shall mean any and all assets of the Trust, including, without limitation, the Ordot Dump Post-Closure Facility, proceeds transferred from the Ordot Dump Post-Closure Care Reserve Account, all amounts withheld by the Trustee under Paragraph 7.2.c. and deposited into the Trust Fund, and all proceeds from investment of the Trust Fund under Paragraph 7.2.d.
- x. “Trustee” shall mean the trustee who enters into this Trust Agreement and any successor Trustee. The Trustee must be an entity that has authority to act as a trustee and whose trust operations are regulated and examined by a Federal, state or territorial agency.

Section II

Authority and Establishment of Trust and Trust Fund

2.1 Authority. The authority for this Trust Agreement is derived from the Court’s Order dated May 2, 2016, in which the Court approved the Receiver’s financing plan to fund Post-Closure Care at the Ordot Dump, and the Consent Decree, which required the Government of Guam to implement Post-Closure Care of the Ordot Dump in accordance with Guam law.

2.2. Trust Establishment. The undersigned representatives for the Trustee and the Receiver certify that they are fully authorized to execute this Trust Agreement and to bind the Trustee and GSWA, the Grantor, respectively to this Trust Agreement. The parties agree not to contest the validity of this Trust Agreement in any subsequent proceeding arising from it. The Receiver, in its capacity as Receiver for GSWA, and the Trustee hereby establish, on behalf of the Beneficiaries, the Ordot Dump Post-Closure Facility Trust.

2.3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a Trust Fund for the benefit of the Beneficiaries. The Grantor and Trustee intend that no third party have access to the Trust Fund except as herein provided. The Trust Fund is established initially as consisting of the Ordot Dump Post-Closure Facility, which is acceptable to the Trustee, described in Schedule B hereto. The Trust Fund shall be initially funded as provided in Paragraph 4.1.

Section III

Name and Purpose of Trust

3.1. Name. This Trust shall be known as the “Ordot Dump Post-Closure Facility Trust” (the “Trust”).

3.2. Trust Purpose. The purpose of this Trust is to function for the sole benefit of the Beneficiaries to: (1) receive, hold, and manage in trust the Trust Fund, which has been designated by the Court for the care and maintenance of the Ordot Dump Post-Closure Facility; (2) make distributions from the Trust Fund as reasonably necessary to execute the purpose of this Trust and to implement the approved Post-Closure Care Plan as it may be amended and approved by Guam EPA and EPA; and (3) complete the Post-Closure Care requirements for the Ordot Dump Post-Closure Facility as required by the Consent Decree and the approved Post-Closure Plan, and as

approved by the Court.

Section IV

Funding of Trust and Acceptance of Trust

4.1. Funding of Trust. Pursuant to the Court's Order dated August 12, 2016, the Receiver established the Ordot Dump Post-Closure Care Reserve Account to accumulate the funds needed to cover the cost of the Post-Closure Care of the Ordot Dump. Subject to the Court's Order dated _____, 2018, the Ordot Dump Post-Closure Care Reserve Account shall be transferred to the Trustee to initially fund the Trust Fund. Such initial funding and any other funds transferred to the Trustee pursuant to this Trust Agreement shall be referred to as the Trust Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Trust Agreement.

4.2. Trust Acceptance. By executing this Trust Agreement, the Trustee hereby accepts the duties, obligations, and requirements specifically imposed on it by this Trust Agreement and the fiduciary trust obligations established by this Trust Agreement, and agrees to carry out and perform such duties, obligations, and requirements as set forth in this Trust Agreement for the benefit of the Beneficiaries.

4.3. Schedule A. This Trust Agreement pertains to the Facility and cost estimates identified on the attached Schedule A. [On Schedule A, for the Facility, list the EPA Identification Number, name, address, and the current Post-Closure Care cost estimates for which financial assurance is demonstrated by this Trust Agreement.] The Trustee shall update Schedule A of the Trust Agreement to include the current Post-Closure Care cost estimates approved by Guam EPA and EPA within 60 days of notification by the United States, EPA, or Guam EPA that the cost estimates have been approved. The notification shall include a copy of the approved cost estimates.

Section V

Obligations of the Trustee

5.1. The Trustee shall:

- a. Accept assignment of the contract for the Ordot Dump Post-Closure Facility from the Receiver and shall cause contractual employment of an Operator of the Ordot Dump Post-Closure Facility to be maintained on a continuous basis throughout the Post-Closure Period through either the initial contract assigned to the Trustee by the Receiver or subsequent Operators contractually employed pursuant to the requirements of this Trust Agreement;
- b. Protect title to the Ordot Dump Post-Closure Facility and all surrounding land included in the Facility at the time this Trust Agreement is established. Title shall remain vested in GSWA throughout the duration of this Trust Agreement;
- c. Cause to be performed such measures as are necessary or appropriate to comply with the Permits and the approved Post-Closure Care Plan;

- d. Authorize reasonable access, in coordination with the Operator, to the Ordot Dump Post-Closure Facility by Guam EPA, EPA or their properly authorized representatives, contractors, and agents, and others authorized by the Court;
- e. Employ reasonable methods to control access to and prevent unauthorized entry upon, use of, or damage to the Ordot Dump Post-Closure Facility;
- f. Comply with all relevant provisions of this Trust Agreement, the Consent Decree, and Orders of the Court; and
- g. With receipt of an appropriately itemized bill and associated report, make payment to an Operator or other person authorized by this Trust Agreement to conduct Post-Closure Care, if the Trustee determines that the Post-Closure Care expenditures are in accordance with the approved Post-Closure Plan, the Operator Agreement or otherwise justified to protect human health or the environment

Section VI

Powers of the Trustee

6.1. Express Powers of Trustee. In addition to the powers conferred by law or elsewhere in this Trust Agreement, the Trustee shall have, solely as a fiduciary, full and ample rights, powers, and authority, without obtaining prior Court approval, to do any and all things which the Trustee shall reasonably deem necessary or advisable to administer and carry out the purpose of the Trust, including the following rights and powers, but subject to any limitations set forth in this Trust Agreement:

- a. To execute the duties of the Trustee as defined herein, and to oversee the Operator of the Ordot Dump Post-Closure Facility and the Independent Engineer in compliance with the terms and conditions of their respective agreements;
- b. With the approval of the Court, to solicit proposals for the services of a new Operator or Independent Engineer upon the termination of or in anticipation of the termination of the contracts assigned to the Trustee by the Receiver upon the initiation of the Trusteeship, provided, however, that the contracts assigned to the Trustee upon the initiation of the Trusteeship may only be terminated in full compliance with the provisions of those contracts;
- c. To make payments from the Trust Fund that the Trustee has determined are in accordance with the approved Post-Closure Plan, or otherwise justified to protect human health or the environment. Within 60 days of receiving an appropriately itemized bill and associated report, the Trustee shall complete its determination for payment. The Trustee shall provide a detailed written statement to the Operator or any other authorized contractor or vendor of reasons for any payment or portion of payment that is withheld;
- d. To employ and timely compensate the Operator of the Ordot Dump Post-Closure

Facility in compliance with the terms of the Operator's agreement to operate the Ordot Dump Post-Closure Facility, and such engineers, environmental consultants, project managers, and such other assistance as may be reasonably necessary to ensure the continuous maintenance and operation of the Ordot Dump Post-Closure Facility, in compliance with the approved Post-Closure Plan. Whenever the Trustee shall determine it necessary to ascertain the technical compliance of any work performed prior to payment, it shall request the review and approval of the Independent Engineer;

- e. To employ and timely compensate the Independent Engineer in compliance with the terms of the Independent Engineer's agreement;
- f. To report all necessary information to the Court, the United States, and appropriate officials of the Government of Guam to facilitate a full and complete accounting for the Trust, and to fully cooperate with audits conducted by the Court, EPA, or the Government of Guam or its duly authorized representatives; and
- g. To obtain or cause to be obtained property, casualty, and liability insurance for the Trust.
- h. Sale or Disposal of Property of the Trust Estate. The Trustee, subject to all requirements and conditions of this Trust Agreement and the approved Post-Closure Plan, may allow or contract for the sale or disposal of excess surplus personal property that may have value for salvage or recycling to be sold, removed or disposed of; the monetary value of which shall be deposited to the Trust Fund. This provision shall not be applicable to real property as described in Paragraph 5.1.b. and Schedule B, none of which shall be sold, disposed or otherwise exchanged during the Post-Closure Period.
- i. Authority to Represent the Trust before Government Agencies. The Trustee shall represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state, or territorial agency or authority that has authority or attempts to exercise authority over any matter that concerns this Trust and/or the Ordot Dump Post-Closure Facility.
- j. Limitation on the Trustee. The Trustee shall not undertake any activity on behalf of the Trust, except as and to the extent the same is deemed by the Trustee to be necessary or proper for the conservation or protection of the Facility, the Trust Fund, or for achieving the purposes of this Trust Agreement.
- k. Construction and Exercise of Powers. Notwithstanding anything else appearing herein, the powers of the Trustee shall be construed and exercised so as not to jeopardize either: (a) the status of this Trust as a Qualified Settlement Fund exempt from income taxation under the provisions of the Internal Revenue Code and other applicable law, or (b) the status of the Facility as exempt from real estate taxation under Guam law.

Section VII

Ordot Dump Post-Closure Facility Trust Fund Management

7.1. The Trustee shall invest and reinvest the principal and income of the Trust Fund and shall keep the Trust Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines herein. In investing, reinvesting, exchanging, selling, and managing the Trust Fund, the Trustee shall discharge its duties with respect to the Trust Fund solely in the interest of the Beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.

7.2. Responsibilities of the Trustee include, but are not limited to, the following:

- a. The Ordot Dump Post-Closure Care Reserve Account. Pursuant to the Court's Order dated _____, 2018, the Trustee shall accept the funds accumulated in the Ordot Dump Post-Closure Care Reserve Account from the Receiver and shall deposit the funds into the Trust Fund for Post-Closure Care. The Trustee shall continue to receive, hold, and manage the Trust Fund to cover the cost of the Post-Closure Care of the Ordot Dump and to execute the purpose of this Trust.
- b. Collection of Tipping Fees. Pursuant to the Court's Order dated _____, all commercial waste haulers on Guam that were billed \$20,000 or more per month during the preceding calendar year or those that can reasonably be assumed will be billed \$20,000 or more per month during the current calendar year, shall pay all tipping fees owed to GSWA to the Trustee. Such payments shall be made electronically via Automated Clearing House ("ACH") to the credit of an account designated by the Trustee.
- c. Amount Withheld. Until the Trust Fund is fully funded in accordance with the current Post-Closure Care cost estimates in Schedule A and the Court's Orders, on the first working day of each month, the Trustee shall withhold, on a pro-rata basis, from the payments received from tipping fees from commercial waste haulers in the previous month, the amount of \$375,758 for deposit into the Trust Fund for Post-Closure Care. The balance of tipping fees collected the previous month, after deducting \$375,758, shall be immediately transmitted electronically via ACH to the GSWA account designated by the Board of Directors of GSWA. The Trustee shall also immediately transmit to GSWA a full accounting of the amount received from each commercial hauler, the amount deducted, and the amount being transmitted to GSWA.
- d. Investment of Trust Fund. The Trust Fund shall be invested at all times for the exclusive benefit of the Trust and its Beneficiaries. The Trustee shall invest and reinvest principal and income of the Trust Fund in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal required by the purposes of the Trust, and not of speculating or carrying on any business for profit or derivation of gains therefrom. The right and power of the Trustee to invest and reinvest the Trust Fund shall be

limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, or bank accounts or certificates of deposit to the extent such are insured by the federal government. Such investments shall be in maturities structured, to the extent possible, to produce the estimated funds needed for each year of the approved Post-Closure Care Plan for the Facility, as it may be revised from time to time. Any funds not required for the execution of the Post-Closure Care Plan for any year shall be held in reserve by the Trustee in short-term investments guaranteed by the full faith and credit of the United States as a contingency fund for necessary but unanticipated expenditures not specifically covered in the approved Post-Closure Care Plan's estimates for any year of the Post-Closure Period.

- e. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect to the Trust Fund and all brokerage commissions incurred by the Trust Fund shall be paid from the Trust Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee, and all other proper charges and disbursements of the Trustee shall be paid from the Trust Fund.
- f. Annual Budgets. By October 1 of each year during the life of the Trust, the Trustee shall submit to the Court a budget for the following calendar year. If the budget deviates from the estimates contained in the Post-Closure Care Plan, the Trustee shall state the reason for the deviation. In addition, the Trustee shall state any adjustments that the Trustee proposes to make in the amounts being withheld pursuant to Paragraph 7.2.i. from the GSWA commercial customer revenue that are required to ensure that the Trust Fund remains adequate to pay all of the expenses for the Post-Closure Care of the Ordot Dump Post-Closure Facility for the remainder of the Post-Closure Period, including the cost of the Operator, the Trustee, and the Independent Engineer. Upon approval of the budget by the Court, or the approval of the budget as adjusted by the Court, the Trustee may disburse funds to cover the Post-Closure Care cost, the cost of the Trusteeship, and the cost of the Independent Engineer. Should the Court not approve the budget prior to the beginning of the calendar year for which it applies, the Trustee may proceed to make the necessary payments to ensure continuous post-closure care pending final action on the budget by the Court. Any payments made by the Trustee to pay for the services of the Trustee shall be subject to the prior written approval of the Court.
- g. Content of Budget. Each budget shall provide adequately for all costs and expenses related to the Post-Closure Care of the Ordot Dump Post-Closure Facility for the following calendar year. Each budget shall include an explanation of Trustee compensation, the expenses that the Trustee believes should be funded, the projected levels of such expenses over time, and the bases for its projections.
- h. Changes to Budget. If necessary, the Trustee may change any current budget by providing the details of such change to the Court. The Trustee may begin operations under the budget as modified by notice to the Court of the circumstances that require the modification and the circumstances that require its immediate implementation.

Under no circumstances shall any modification of the amounts to be paid to the Trustee be modified without the prior approval of the Court.

- i. Increases to Post-Closure Care Cost Estimates after Initial Pay-in Period. After the initial pay-in period to fully fund the Trust Fund is completed, whenever the current approved Post-Closure Care cost estimates, as updated in Schedule A pursuant to Paragraph 4.3, are increased during the Post-Closure Period, the Trustee shall compare the new cost estimates with the Trustee's most recent annual valuation of the Trust Fund. If the value of the Trust Fund is less than the new cost estimates, the Trustee, within 60 days after notification from the United States, EPA, or Guam EPA of the new cost estimates, shall withhold, on a pro-rata basis, from the payments received from tipping fees from commercial waste haulers, the amount equal to the monthly amount set forth in Paragraph 7.2.c for deposit into the Trust Fund for Post-Closure Care until the value of the Trust Fund at least equals the amount of the approved cost estimates as they may be adjusted pursuant to Paragraph 4.3. The Trustee shall follow the withholding, payment, and accounting procedures set out in Paragraph 7.2.c. regarding the tipping fees it collects.

Section VIII

Accounts and Reports

8.1. The Trustee shall keep books of records and accounts for the Ordot Dump Post-Closure Facility separate from all other records and accounts, in accordance with applicable accounting principles and governmental reporting requirements, in which entries shall be made of all transactions relating to the Ordot Dump Post-Closure Facility and the Trust Fund. The Court, GSWA, EPA, Guam EPA or designated agents shall have the right at all reasonable times and upon reasonable notice to inspect all records, accounts, budgets, and data of the Trustee relating to the Trustee's performance of its duties hereunder. The Trustee shall also submit the following reports:

- a. Quarterly Reports. Commencing ninety-days after the termination of the Receivership and each 90 days thereafter, the Trustee shall submit to the Court, with electronic copies to EPA, Guam EPA, and GSWA, quarterly reports summarizing the Post-Closure Care of the Ordot Dump Post-Closure Facility. Copies of itemized bills and associated written reports submitted by the Operator for payment during the most recently completed calendar quarter, together with the status of each such invoice (paid, unpaid, reasons for delays in payment or partial payments) shall be attached to the electronic copies provided to EPA and Guam EPA.
- b. Annual Financial Reports. On or before March 31 of each year during the Post-Closure Period, the Trustee shall submit to the Court, with electronic copies to EPA and Guam EPA, a statement describing the nature and amount of any expenditures made from the Trust Fund during the preceding calendar year. Each annual statement shall also confirm the value of the Trust Fund as of December 31 of the previous year. The statement shall be accompanied by a report of the Trust's independent certified public accountants, stating that an audit of such accounts has been made in accordance with generally accepted auditing standards, stating the

opinion of such accountants in respect of the accounts and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which such accountants take exception and stating, to the extent practicable, the effect of such exception on such accounts.

- c. Any other reports or information properly required by the Court or other government agencies, including Guam EPA and EPA.

Section IX

Conditions of Trustee's Obligations

- 9.1. The Trustee accepts the Trust subject to the following express terms and conditions:
 - a. Trustee's Compensation. The Trustee shall be entitled to reasonable compensation by the Trust for the services it performs in accordance with this Trust Agreement and the scope of fiduciary duties set forth in this Trust Agreement, all in accordance with the compensation schedule in Appendix 1.
 - b. No Bond. Notwithstanding any Guam or State law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.
 - c. Limitation of Liability. For purposes of this Trust Agreement, the Trustee shall be considered a "fiduciary" as that term is defined in section 107(n)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(n)(5). In no event shall the Trustee, or any of its owners, officers, directors or employees, be (a) individually or personally liable pursuant to this Trust Agreement except to the extent that damages, claims or losses arise out of the gross negligence or willful misconduct or willful omissions of any such persons in relation to the duties of the Trustee hereunder, or (b) individually or personally liable for the acts or omissions of any prior Trustee or successor Trustee. The limitation of liability provided by this Paragraph 9.1.c. shall not apply to the extent the Trustee or its owners, officers, directors or employees are not acting solely in a fiduciary capacity, such as if such persons are engaged in activities not in accordance with this Trust Agreement or outside the scope of their fiduciary duties.
 - d. Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own individual funds or otherwise incur any personal financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, nor to take any action pursuant to this Trust, which in the reasonable judgment of the Trustee, may conflict with any rule of law or with the terms of the Trust Agreement.
 - e. Advice of Counsel. The Trustee may from time to time consult with counsel with regard to any question arising as to the construction of this Trust Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent

permitted by law, in acting upon the advice of counsel.

Section X

Trustee Replacement

10.1. Replacement of Trustee.

- a. Resignation of Trustee. The Trustee may resign by giving not less than one hundred eighty (180) calendar days written notice to the Court, but such resignation shall take effect only upon: (i) the appointment of a successor by the Court; and (ii) the acceptance of the appointment by the successor.
- b. Removal of Trustee for Cause. Guam EPA, EPA, or GSWA shall each have the right to petition the Court to remove the Trustee for cause, including a material failure to comply with the Trustee's obligations hereunder.
- c. Appointment of Successor Trustee. If the Trustee or any successor Trustee dies, gives notice of resignation or is removed, one or more candidates for successor Trustee may be nominated by EPA and/or GSWA by written notice filed with the Court. After such hearings and proceedings as the Court may deem proper, the Court will appoint a successor Trustee. Upon appointment by the Court and the successor Trustee's acceptance of the appointment, each successor Trustee shall be bound by the terms of this Trust Agreement and applicable laws, regulations, and Orders of the Court. The successor Trustee shall have the same power, duties, immunities, and discretions as the original Trustee. The successor Trustee shall specify the date on which it assumes administration of the Trust in writing sent to the Grantor, EPA, Guam EPA, and the present Trustee by certified mail 10 days before such change becomes effective.
- d. Transfer to Successor Trustee. Upon any successor Trustee's appointment, as provided in Paragraph 10.1.c., such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estate, rights, powers, trusts, duties, and other obligations hereunder of its predecessor. However, such predecessor shall, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estate's rights, powers, and trusts of such predecessor, and every predecessor trustee shall deliver all property of any kind and all securities; provided, however, that before any such delivery is required or made, all appropriately billed but unpaid expenses of any such predecessor Trustee shall be paid in full.
- e. Merger or Consolidation of Trustee. Any corporation or association into which the Trustee or any successor to it may be merged or converted, or with which it or any successor to it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Trustee or any successor to it shall be a party, shall be a successor Trustee under this Trust Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, notwithstanding anything to the contrary herein.

- f. Performance of Trustee's Duties during Vacancy. If for any reason the Trustee's position becomes vacant, the Court shall appoint an interim or emergency trustee pending Court approval of a successor Trustee pursuant to the provisions of this Trust Agreement.

Section XI

Termination of Trust

Subject to the rights of the parties, upon Court approval or notice to the Court, to amend this Trust Agreement as provided in Paragraph 12.1.d., this Trust shall be irrevocable and shall continue until terminated. Notwithstanding any provision herein to the contrary, this Trust shall terminate (if it has not previously terminated) upon certification to the Court by EPA and Guam EPA that the Post-Closure Period for the Ordot Dump Post-Closure Facility has ended, or pursuant to an Order of the Court. In the event of termination of the Trust prior to the end of the Post-Closure Period, all of the requirements of the Post-Closure Care Plan shall remain in full effect with respect to the Ordot Dump Post-Closure Facility, and the Grantor shall substitute an alternate, approved successor trust or an approved financial assurance mechanism to ensure Post-Closure Care at the Facility for the benefit of the Beneficiaries. If the Post-Closure Period has been terminated by EPA and Guam EPA, all remaining funds in the Trust Fund, less final trust administration expenses, shall be delivered to GSWA upon termination of the Trust unless otherwise directed by Order of the Court.

Section XII

Miscellaneous

12.1. Miscellaneous Provisions.

- a. Particular Words. Any word contained in the text of this Trust Agreement shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. The descriptive headings for each Section or Paragraph of this Trust Agreement shall not affect the interpretation or the legal efficacy of this Trust Agreement.
- b. Jurisdiction. The Trust and the Trustee are each subject to the jurisdiction of the Court for the purposes of enforcing this Trust Agreement and resolving any disputes regarding its terms, including the obligations of the Trustee to perform its obligations hereunder. Matters relating to the interpretation and performance of this Trust Agreement shall be subject to resolution by the Court.
- c. Laws Governing Construction. The validity, interpretation, and performance of this Trust Agreement shall be governed by the laws of the United States and, as applicable, the laws of the Territory of Guam, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction.
- d. Amendments. Material modifications to this Trust Agreement may be made by a

written agreement among the Trustee, GSWA, and the United States, and only to the extent that such modification does not change or inhibit the purposes of this Trust as set forth in Paragraph 3.2. Where the modification constitutes a material change to this Trust Agreement, it shall be effective only upon approval by the Court. Minor modifications or clarifying amendments may be made upon written approval of the Trustee, GSWA, and the United States, as necessary to enable the Trustee to effectuate the provisions of this Trust Agreement. The United States shall file a notice of any non-material modifications with the Court.

- e. Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust Agreement, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.
- f. Severability. The provisions of this Trust Agreement shall be severable. To the extent any provision hereof is declared by a court of competent jurisdiction to be illegal, unenforceable, or inconsistent with the status of the Trustee as a bona fide Trustee, then such provisions shall be deemed null and void and the other provisions hereof shall remain in full force and effect.

Section XIII

Notices and Submissions

All notices, demands, requests, and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail and email or facsimile, to such addresses:

As to EPA:

As to GSWA:

Guam Solid Waste Authority
542 North Marine Corps Drive
Tumon, Guam 96913
[E-mail and Fax Number]

As to Guam EPA:

As to the United States:

As to the Trustee:

The persons identified in this Section XIII for receipt of notices and correspondence may be changed upon written notice to the other parties.

IN WITNESS WHEREOF, the parties have entered into this Trust Agreement on _____, 2018.

RECEIVER:

TRUSTEE:

In its capacity as Receiver for the
Guam Solid Waste Authority

Date

Date