

CONTRACT NO. _____

DRAFT FORMAL CONTRACT
***may not be in exact form as provided below**

CONTRACT FOR:

**LAYON MUNICIPAL SANITARY LANDFILL
ACCESS ROAD AND SEWER SYSTEM
PROJECT NO. SWMD-09-03**

Contractor

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

Contract for: **LAYON MUNICIPAL SANITARY LANDFILL, ACCESS ROAD AND SEWER SYSTEM**
Project No. **SWMD-09-03**
Amount: **\$**
Place: **Layon, Inarajan, Guam**

FORMAL CONTRACT
Access Road and Sewer System
Project No. SWMD-09-03

FORMAL CONTRACT

THIS AGREEMENT AND FORMAL CONTRACT ("Contract"), made and entered into this _____ day of _____, 2009, by and between the Government of Guam, hereinafter called the "Government", represented by the Receiver – Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works executing this Contract, party of the first part, and _____, a corporation, partnership, limited liability company, liability company or sole proprietorship, hereinafter called the "Contractor", party of the second part, licensed to conduct business on Guam and having Guam Business License No. _____.

WITNESSETH, That whereas the Government intends to construct the **Layon Municipal Sanitary Landfill, Access Road and Sewer System, SWMD-09-03**, hereinafter called the "Project", in accordance with the drawings, specifications and other Contract Documents prepared by the Department of Public Works.

NOW THEREFORE, the Government and Contractor for the considerations herein set forth and in other Contract Documents associated with the performance hereunder, agree as follows:

I. THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all the Work required for the construction of the Project, 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

- (a) Contract Time: The Contractor agrees to commence work under this Contract upon written notice to proceed, and **to complete the Project ready for use and operation within five hundred (500) calendar days** of the commencement of the Contract time as stated in Section 2.0, Time of Completion, Instructions to Bidders of the Contract.
- (b) Subcontractors: The Contractor agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Government.

II. THE GOVERNMENT AGREES to pay, and the Contractor agrees to accept, in full payment for the performance of this Contract, the **Contract amount of** _____ **Dollars**

FORMAL CONTRACT
Access Road and Sewer System
Project No. SWMD-09-03

(\$ _____) plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, as authorized under the terms as stated in the General Conditions of the Contract, all in accordance with the terms as stated in the Contract Documents.

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

III. CONTRACT DOCUMENTS: It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the Contract between the parties hereto, and they are as fully a part of this Contract as if they were set out verbatim and in full herein, and are designated as follows:

- a) Invitation for Bid
- b) Instructions to Bidders
- c) Bid Form
- d) Bid Bond
- e) Schedule of Values
- f) Non-Collusion Affidavit
- g) Affidavit Disclosing Ownership and Commissions
- h) Certification of Non-Segregated Facilities
- i) Bidder's Statement on Previous Contracts Subject to EEO Clause
- j) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- k) Formal Contract
- l) Performance and Payment Bond
- m) Special Provisions
- n) General Conditions
- o) General Scope of Work
- p) Prevailing Wage Rates
- q) Technical Specifications
- r) Addenda
- s) Plans
- t) Environmental Protection Plan with Erosion Control Plan
- u) Stormwater Pollution Prevention Plan

IV. LIQUIDATED DAMAGES: The Contractor further agrees to pay to the Government the **sum of**

FORMAL CONTRACT
Access Road and Sewer System
Project No. SWMD-09-03

Three Thousand Three Hundred Dollars (\$3,300.00), not as a penalty, but as a reasonable liquidated damages for breach of this Contract by the Contractor by his failing, neglecting or refusing to complete the Work within the time herein specified and said sums shall be paid for each consecutive calendar day thereafter that the Contractor shall be in default after the time stipulated in the Contract for completing the Work ready for use and/or operation.

V. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that he has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the Contract, or in its discretion, to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. The warranty shall not apply to commissions payable by Contractors upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

VI. OTHER CONTRACTS. The Government may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

VII. DISPUTES. Except as otherwise specifically provided in this Contract, all disputes concerning questions of fact arising under this Contract shall be decided by the Contracting Officer whose decision shall be final and conclusive upon the parties thereto. In the meantime, the Contractor shall diligently proceed with the Work as directed.

VIII. CONTRACT BINDING. It is agreed that this Contract and all of the Covenants hereof shall inure to the benefit of and be binding upon the Government and the Contractor respectively and his partners, successors, assignees and legal representatives. Neither the Government nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for, or in any other manner, have or acquire any lien upon the Work covered by this Contract, or the land upon which the same is situated.

IX. INDEMNITY. Contractor agrees to indemnify, save harmless and defend the Government and Gershman, Brickner & Bratton, Inc. as Receiver 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 Contractor, 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 Government.

X. **INSURANCE.** Contractor shall place and maintain with responsible insurance carriers licensed on Guam, insurance as required under Section 4.11, Contractor's and Subcontractor's Insurance, of the General Conditions.

Furthermore:

- All insurance companies must have an A.M. Best Rating of A-6 or its equivalent or higher.
- The cancellation provision on all policies must provide ninety (90) calendar days notice of cancellation to the Government.
- The Government of Guam, Government of Guam Department of Public Works, and Gershman, Brickner & Bratton, Inc. as Receiver, must be shown as additional insured on the general liability, auto liability, and excess liability policies.
- Contractor must agree to waive all rights of subrogation against the Government of Guam, Guam Department of Public Works, Gershman, Brickner & Bratton, Inc. and their officers, officials, employees from losses arising from work performed by the Contractor.
- Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970. Public Law 91-956, and any other laws that may apply to the Contract.
- Contractor, at a minimum, shall apply risk management practices accepted by Contractor's industry.
- The Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every subcontractor in any tier, and shall require each and every subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason its subcontractor(s) fails to procure and maintain insurance as required, all such required insurance shall be procured and maintained by Contractor at Contractor's expense.
- The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a certificate of insurance or an approved substitute.
- The Government, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the Government based upon changes in statutory law, court decision or the claims history of the industry as well as of the Contractor. The Government shall be required to provide prior notice of ninety (90) calendar days.

Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liability provisions of the Contract.

XI. **GOVERNMENT NOT LIABLE.** The Government, its officers, agents, employees, Receiver, and representatives assumes no liability for any accident or injury that may occur to the Contractor, Contractor's

agents, subcontractors, employees, or to Contractor's property while on the job or otherwise en route to or from the job during any travel required by the terms of this Contract.

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

XII. 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 Contractor:

To: **CONTRACTING OFFICER:**

To: **CONTRACTOR:**

XIII. TERMINATION FOR CONVENIENCE.

(1) Termination. The Government may when its interest so requires, terminate this Contract in whole or in part, for the convenience of the Government. The Government shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when it is effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Government may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Government. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Work Product. Upon termination of the Contract for the convenience of the Government, Contractor shall deliver to the Government all documents and reports, plans, drawings, information and other material produced by Contractor or any of its subcontractors in connection with the

performance of this Contract and title thereto. The Contractor shall protect and preserve property in its possession or in the possession of any of its subcontractors in which the Government has an interest.

(4) Compensation.

(a) The Contractor 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 Contractor fails to file a termination claim within one year from the effective date of termination, the Government may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Government and the Contractor may agree to a settlement provided the Contractor 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 Government and the Contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Government shall pay the Contractor 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 Contractor 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 clause;
- (iv) The reasonable settlement costs of the Contractor 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. Attorney's fees if for any reason it files suit against The Government must be paid by the Contractor. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the Contractor 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.

XIV. 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.

XV. GOVERNING LAW AND VENUE. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the Parties to this Contract, shall be governed by the laws of Guam. Moreover, any and all actions governing this Contract shall be brought in the Superior Court of Guam.

XVI. OWNERSHIP OF DOCUMENTS AND WORK PRODUCT. All briefs, memoranda and other incidental Contractor work or materials furnished hereunder shall be and remain the property of the Government including all publication rights and copyright interests, and may be used by the Government without any additional cost to the Government.

XVII. GENERAL COMPLIANCE WITH LAWS. The Contractor agrees that Contractor is to comply with all federal and territorial laws, rules, regulations and ordinances applicable to the Work being performed hereunder.

XVIII. ACCESS TO RECORDS AND OTHER REVIEW. The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the Contract period and for three (3) years from the date of the final payment under the Contract, for inspection by the Government. All originals of any documents related to this Contract shall be provided to the Government as soon as possible, but not later than one day prior to the conclusion of this Contract. Each subcontract by the Contractor pursuant to this Contract shall include a provision containing the conditions of this Section.

XIX. RESTRICTION ON EMPLOYMENT OF SEX OFFENDERS. The Contractor 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 Contractor relative to this Contract. If any person employed by the Contractor and providing services under this Contract is convicted subsequent to the Parties entering into this Contract, then the Contractor 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 this Contract. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the Government shall give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the Government, and the Contractor shall notify the Government when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend this Contract temporarily.

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

CONTRACTOR

Date: _____

FOR THE GOVERNMENT OF GUAM

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

Date: _____

Allotment No.: _____

Amount: \$ _____

CERTIFIED FUNDS AVAILABLE:

Certifying Officer
Bureau of Budget and Management Research

Date: _____

FORMAL CONTRACT
Access Road and Sewer System
Project No. SWMD-09-03

APPROVED:

ALICIA G. LIMTIACO
Attorney General, Guam

Date

FELIX P. CAMACHO
Governor of Guam

Date

CORPORATE CERTIFICATION AS TO AUTHORIZATION TO BIND

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

(CORPORATE SEAL)