

REQUEST FOR PROPOSALS

RFP NUMBER: RFP/GSWA NO: RFP 003-13

HOUSEHOLD HAZARDOUS WASTE FACILITY OPERATION

July 2013

Guam Solid Waste Authority

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1.0 INTRODUCTION

The Island of Guam is a United States Territory with an area of 210 square miles in the Western Pacific Ocean. Guam has a population of approximately 159,000, and it is the largest and southernmost island of the Mariana Islands. The primary civilian Municipal Solid Waste (MSW) Disposal site in Guam was the Ordot Dump, which has existed since World War II and has been cited for Violation of the Clean Water Act (33 U.S.C. §1251, et. seq.). The Ordot Dump officially closed to receipt of all waste at the close of business on August 31, 2011.

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").

Following the Consent Decree, the Guam Government, through its Department of Public Works, Solid Waste Management Division, proceeded with certain studies, surveys, and engineering designs toward the Closure of the Ordot Dump and the siting and development of a new lined, leachate controlled Municipal Solid Waste landfill (the "Layon Landfill") located in Inarajan. However, the promised schedule of compliance in the Consent Decree was not met and progress to achieve compliance has been deemed unsatisfactory by the U.S. EPA and the United States District Court of Guam. Therefore, on March 17, 2008, the United States District Court of Guam issued a court order appointing Gershman, Brickner & Bratton, Inc. (GBB), a solid waste management consultant, as Receiver to achieve the Guam Government's compliance with the Clean Water Act as set forth in the Consent Decree and implementation of all Consent Decree Projects.

In 2011 the Guam Legislature enacted Public Law 31-20 creating the Guam Solid Waste Authority (GSWA) as the successor agency to the Solid Waste Management Division. 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 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.

1.1. Departure from Guam Procurement Law

In the Order of the District Court appointing GBB as Receiver, the Court gives the Receiver the authority to enter into contracts. The 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 provisions for the use of a Request for Proposals (RFP). These provisions do not allow for the full consideration of the complex financial aspects that are critical to the selection of a Contractor for Operation of a Household Hazardous Waste (HHW) Facility.

The use of an RFP that considers all of the financial issues associated with the operation of a facility such as a Household Hazardous Waste Facility is essential to obtaining these services without the serious risk of delay that, in the Receiver's judgment, would accompany the use of the procurement processes authorized by Guam Law. This conclusion is informed by 30 years of experience in solid waste management consulting and procurement.

Accordingly, after due consideration, the Receiver has concluded that this procurement requires the use of an RFP which is not authorized by Guam Law. The use of any of the methods authorized by Guam Law would result in serious delays in obtaining a qualified

Contractor for this vital aspect of achieving compliance with the Consent Decree. Accordingly, it is the Receiver's best judgment that we must depart from the use of Guam's statutes and regulations for this procurement in order to avoid unreasonable delay in the progress in meeting the mandates of the Consent Decree. The Receiver will seek to comply with Guam Law to the extent that such compliance will not result, in the sole judgment of the Receiver, in unreasonable delays in meeting the mandates of the Consent Decree.

1.2. Services Required

Gershman, Brickner & Bratton, Inc., in its capacity as Receiver for the Guam Solid Waste Authority (GSWA) is soliciting the services of a contractor with demonstrated knowledge and experience in HHW management. The selected Contractor will be responsible for the following services:

- 1) Characterize, segregate, collect, recycle/reuse, and dispose of HHW in an environmentally responsible manner meeting all of the applicable rules and regulations of the Guam Environmental Protection Agency (GEPA) and the United States Environmental Protection Agency (USEPA);
- 2) Manage the daily operations of the HHW Facility located at the GSWA's Harmon Street Transfer Station;
- 3) Collect and transport select HHW material from residential Transfer Stations;
- 4) Provide public educational material for the safe handling of HHW and alternatives to using HHW in the home and conduct up to four (4) customer surveys a year;
- 5) Provide for an interim collection program to be used before the permanent HHW Facility is built and open to receive material; and
- 6) Provide the proper disposal or reuse of materials received.

1.3. Pre-Proposal Conference and Schedule

A **mandatory** pre-proposal conference will be held in the Second Floor Conference Room, GSWA Building at the Department of Public Works Compound, 542 North Marine Corps Drive, Tumon, Guam 96913, on the day and time provided in Table 1.1. This will be followed by a site tour of the GSWA compound where the HHW Facility is to be constructed. If a prospective Proposer who intends to submit a proposal cannot attend, the prospective Proposer may send a representative to attend on their behalf at both the pre-proposal conference and site tour. Also, a prospective Proposer may attend the pre-proposal conference by teleconferencing per the instruction in Table 1.1

Only written questions regarding this RFP (submitted via email or mail) will be accepted prior to and after the pre-proposal conference. It is important in email correspondence to fully identify the entity that is submitting the questions along with address and telephone information. Both oral and written questions will be accepted at the pre-proposal conference. Written responses will be provided in the form of an RFP addendum for all written questions received and any oral questions at the pre-proposal conference, and will be posted on the Internet Website. No questions will be accepted after the deadline for submitting questions shown in Table 1.1. Written responses will govern. Information regarding this RFP is available from and communication shall be done exclusively through:

Linda Ibanez
Guam Solid Waste Authority
542 North Marine Corps Drive
Tumon, Guam 96913
E-mail: lindaibanez@gmail.com
Telephone: 671-646-3239

Table 1.1 Pre-Proposal Meeting and RFP Schedule

All dates and times refer to Guam’s calendar.

Location	Guam Solid Waste Authority Offices 542 North Marine Corps Drive Tumon, Guam 96913
Contact Person	Linda Ibanez, lindaibanez@gmail.com ; Telephone: 671 646-3239
Conference Call Numbers	
Pre-Proposal Mandatory Meeting Guam Date	Wednesday, July 31, 2013
Pre-Proposal Meeting, Guam Time	10:00 A.M.
Response to Pre-Proposal Questions	Friday, August 9, 2013
Final Date to Submit Questions Regarding the RFP	Thursday, August 15, 2013
Answers to Final Submittal of Questions are Released by	Tuesday, August 20, 2013
Proposals Due:	Wednesday, September 4, 2013, 10:00 a.m. (Guam Time) in Guam Solid Waste Authority Offices located at: 542 North Marine Corps Drive Tumon, Guam 96913
Evaluation Committee Review of Proposals	September & October 2013
Interviews if needed	2 nd Week in October 2013
Negotiations	TBD
Contract Approved	TBD
Operations Begin	TBD

1.4. Contact with Receiver/GSWA, Government of Guam Officials, Staff and Advisors

All questions concerning this RFP must be directed to **Linda Ibanez**.

The following provisions are intended to ensure a fair and equitable review process so that there is no actual or potential situation where one Proposer secures or attempts to secure an unfair advantage over another Proposer or creates a situation where there is an appearance of impropriety in contacts between the Proposer or Proposer’s agents or consultants and the Receiver/GSWA or Government of Guam officials.

After release of the RFP, no officer, employee, agent or representative of the Proposer shall have any contact or discussion, verbal or written, with any member of the GSWA or Receiver’s staff or the consultants employed by the Receiver or GSWA, or directly or indirectly through others, seek to influence any members of the GSWA or Receiver’s staff or the GSWA or Receiver’s consultants regarding any matters pertaining to this RFP, the HHW Facility or the potential Agreement for operation of the HHW Facility, except as herein provided.

Contacts by the Proposer with the Receiver/GSWA or Government of Guam when such contacts do not pertain to the services considered under this procurement are permissible. Examples include:

- Solid waste collection within Guam;
- Contacts with the Receiver/GSWA or the Government of Guam pursuant to other existing contracts or procurements;
- Private (non-business) contacts with the Receiver/GSWA or Government of Guam by the Proposer’s employees acting in their personal capacity;
- Presentations and/or responses to inquiries initiated by the Receiver/GSWA staff; and
- Casual social contacts that do not include mention of the HHW Facility or the potential Agreement for the HHW Facility.

If a Representative of the Proposer has a question about any potential contact as described above, the Receiver/GSWA will be notified in order to make a determination as to whether any contact is allowed in accordance with the RFP.

If a Representative of any company or party submitting a Proposal violates the foregoing prohibition by contacting any of these parties, such contact may result in a Proposer forfeiting the Proposal Security and being disqualified from the procurement process.

1.5. Reservation of Rights

The Receiver/GSWA reserves the right to reject any or all proposals, and may elect to make a decision without further discussion or negotiation. The Receiver/GSWA further reserves the right to supplement, modify or withdraw this RFP at any time, to issue additional solicitations for proposals, to negotiate with Proposers for amendments or modifications to their proposals, and/or not to enter into the Agreement contemplated by this RFP. This RFP is not to be construed as a contract of any kind. Neither the Receiver/GSWA nor the Government of Guam is liable for any costs incurred by any Proposer in the preparation of a response to this RFP or in any subsequent negotiations or response to questions by the Receiver/GSWA and its consultants, advisors and agents. The Receiver/GSWA reserves the right to award the Agreement to any Proposer who is deemed, in the sole discretion of the Receiver/GSWA, to offer the best proposal in accordance with this RFP.

The Receiver/GSWA also reserves the right to audit, at any time, any and all of the selected Proposer’s books and records related to any Agreement awarded to that Proposer through this RFP. This audit right extends for three years following termination of the Agreement.

1.6. Submitting Proposals

Proposals must be received in the form and manner stated in Table 1.2 Proposals. All times are listed in **Table 1.1 Pre-Proposal Meeting and RFP Schedule**

Table 1.2 Proposals

Proposal Due Dates	Are in Guam Time
Submittal Time	Wednesday, September 4, 2013, 10:00 a.m. (Guam Time)
Submittal Form	Electronic E-mail and/or hard copy by Guam due date and time. If electronically submitted, original and hard copies are to be provided to the GSWA within five (5) Business Days from the due date.
Copies	If Electronic only one with the original and six (6) copies to follow; if hard copy, six (6)

Place to Submit	Guam Solid Waste Authority Offices 542 North Marine Corps Drive Tumon, Guam 96913 lindaibanez@gmail.com
Identification	All Proposals (electronic and hard copy) must be signed; hard copies must be in a sealed envelope or container with the following inscription on the outside of the envelope or container: REQUEST FOR PROPOSALS RFP NUMBER: RFP/GSWA NO. 003-13 OPERATION OF HOUSEHOLD HAZARDOUS WASTE FACILITY ATTENTION: LINDA IBANEZ

1.7. Award of Agreement

1.7.1. General

The Agreement will be awarded to the Proposer the Receiver/GSWA determines to be qualified and has submitted the best proposal as determined through evaluation. The goal is to receive the highest quality service in the most cost-effective manner. However, the Receiver/GSWA reserves the right to reject any or all proposals, to accept or reject any one or more items of a proposal, or to waive any irregularities or informalities in a proposal.

1.7.2. Modification to RFP

The Receiver/GSWA reserves the right to issue clarifications, modifications, and/or amendments to this RFP, as it may deem appropriate.

1.7.3. Binding Terms

Proposals shall be binding upon the Proposer for one hundred twenty (120) calendar days after the proposal opening. Receiver/GSWA reserves the unqualified right, at its sole discretion, to reject any and all proposals.

1.7.4. HHW Background

Household Hazardous Waste (HHW) materials are generated from products used every day in the home. Some examples include oil and latex paints, household cleaners and solvents, swimming pool chemicals, motor oil, preservatives and pesticides, and other agricultural chemicals.

It is generally estimated that up to approximately one (1) percent of the MSW stream consists of HHW. The percentage translates to roughly 10 to 15 pounds per household per year. Collection of HHW in Guam began in the early 1990s. These were annual or biannual events at one or more sites. For example in 2004, Guam conducted HHW collection events

in Dededo, Tiyan, and Inarajan. The aggregate total collected at these events by major category is shown in Table 2.1 HHW Collections in 2004.

Table 2.1: HHW Collections in 2004 (As reported in the 2006 Solid Waste Plan)

Item	Quantity
Lead Acid Batteries	3,681 units
Flammable Paint	2,365 gallons
Latex Paints	2,475 gallons
Crushed Fluorescent Bulbs	165 gallons
Elemental Mercury	1 milliliter
Used Oil	4,200 gallons

One percent of HHW represents a relatively minor component of the total waste stream. Yet this one percent has the greater toxicity, ignitability, corrosivity, and reactivity in the MSW stream. Consequently, the safety and environmental concerns resulting from the presence of these wastes in the waste stream necessitate changes in their handling. Sanitation workers may be exposed to HHW during garbage collection activities. Chemical reactions among incompatible materials, in vehicles and containers, could cause fires or explosions. Workers at disposal facilities also are subject to injury from the mismanagement of these wastes. The removal of HHW from the solid waste stream using proper handling, collection, and disposal methods could reduce injuries to sanitation workers and the public-at-large, and mitigate damage to the environment.

2.0 PROPOSAL SUBMITTAL

The GSWA is seeking a qualified firm to provide the staff and materials/equipment needed to operate the facility each working day. The following is an outline of the required content the Proposer must submit in the Proposal for this RFP. The Proposal should have a cover letter and then Sections 1 through 12; followed by an appendix to include any additional information the Proposer wishes to submit.

Section 1: Operating Plan for the Operation of the HHW Facility located on the GSWA compound. This Operating Plan shall contain, at a minimum, the following items:

- a. Staffing: provide the number and certifications of staff at the HHW Facility who would work there Thursday through Monday from 9 am until 5 pm;
- b. Operation Procedures for each operating day. These must include the following:
 - i. Daily opening up the facility
 - ii. Record keeping
 - iii. Receiving material
 - iv. Bulking received material
 - v. Reusing received material and material handling
 - vi. Daily closing of the facility

- c. Monthly Record Keeping and Reports: the Contractor shall keep all records as required by law.
- d. The GSWA requires that all material be quantified by combination of weight and/or volume and that each month the Proposer provide, by category, a report showing the weight and/or volume of material received that month as well as number of customers serviced during each month. In the Proposal, the Proposer shall submit a proposed form for such a report. The Contractor will be required to submit an invoice at the end of each month. The form of the invoice shall be mutually agreed upon by the Contractor and Receiver/GSWA. Invoices and reports will be sent to the Receiver/GSWA electronically or on paper as directed by the Receiver/GSWA.
- e. Emergency and Safety Plans: The Proposer shall submit in the Proposal an emergency plan to address how an accident at the HHW Facility would be handled. The Proposal shall also contain a safety plan describing to GSWA how the Proposer intends to maintain a high level of safety each day.

Section 2: Operational Materials: the Proposal shall list and explain the following:

- a. The type of supplies the Proposer expects to use in the daily operation of this HHW Facility;
- b. That the material, such as shipping drums, is approved by the U.S. Department of Transportation for the storage/collection or transport of HHW;
- c. Whether the material is new, used, or refurbished. Please itemize the material into these three categories.

Section 3: Disposal Plan: the Proposal shall contain a disposal plan which shall cover all items proposed to be handled by the Contractor. The disposal plan shall contain the following sections:

- a. Acceptance of materials to be handled as stated on Form E and any additional items proposed to be handled by the Proposer;
- b. Locations of disposal outlets for each of these items proposed by the Proposer. The description of the disposal outlets should answer the questions: Where is the material going? Who or what company is expected to handle the material at the disposal outlet? Is the disposal outlet disposing of the material in a beneficial and/or environmentally safe manner? (The GSWA understands that the disposal market may change throughout the term of the Agreement and that this submittal in no way should be understood as locking the Contractor into these specific disposal outlets.)
- c. Provide examples of shipping and disposal documentation that you propose to provide to GSWA with each invoice or as is appropriate.

Section 4: Education Plan: the selected Contractor shall be expected to educate the customers in how to better handle HHW and substitute non-toxic material for HHW items. The Contractor is also expected to provide appropriate forms and conduct four (4) surveys a year of its customers coming to the HHW Facility. In the Proposal, the Proposer must provide the following information:

- a. A description of its educational plan to educate customers and other residents of Guam to better handle HHW and to replace HHW items with non-toxic substitutes. This plan may include outreach to civic and non-profit groups, brochures, website information and other items as the Proposer sees fit.

- b. A sample survey form that the Contractor would provide to their customers of the HHW Facility. Please include a schedule that the Contractor would be expected to follow in order to perform the four (4) customer surveys.

Section 5: Interim Plan for Collection: During the period of time before the HHW Facility is approved and ready to open for receiving HHW, the GSWA expects the Contractor to provide collection of HHW on a regular basis. This can be performed through ways such as holding collection events at one or more locations around the island. The Contractor may also have a facility whereby it can receive HHW on a regular, scheduled manner until the HHW Facility is constructed and opened to receive HHW. In the Proposal, the Proposer shall submit an interim plan for collection that shall include the following:

- a. A narrative explaining how the interim collections would be carried out;
- b. Proposed location(s) for the interim collections;
- c. Proposed items to be collected in the interim collections;
- d. Proposed publicity plan to inform the residents of Guam about the interim collections.
- e. Fees proposed for interim collections shall be shown on Form H and shall be based on one collection event per month for each month until the permanent HHW Facility is open. The collection event will be opened to the public for four (4) continuous hours on each collection event day.

Section 6: Transfer Station HHW Collection Plan: The GSWA wishes to have selected HHW items collected at each of the Residential Transfer Stations. The GSWA would allow residents to bring a small quantity of these select items, such as motor oil, to each of these Transfer Stations. When the container is near full, the Transfer Station employee will put in a request to the HHW Contractor to collect the material. The Proposer shall submit in the Proposal a Transfer Station HHW collections plan that shall contain the following:

- a. Items recommended by the Proposer that the Contractor shall collect from the Residential Transfer Stations;
- b. Recommended containers for each of the recommended items to be dropped off at the Residential Transfer Stations;
- c. The method by which the Contractor would collect the said material at the Residential Transfer Stations; and
- d. Contractor's education plan for the Transfer Station employees as to how to handle such items received at the Residential Transfer Stations.

Section 7. Performance Security: The RECEIVER/GSWA requires that the awarded Contractor provide performance security to the RECEIVER/GSWA in the form of either a Performance Bond or a Letter of Credit for operation of the HHW Facility and other services performed by the Contractor throughout the term of the Agreement. The Proposer must describe the form of the security, in this section, to be provided for the performance of its obligations through an irrevocable direct pay Letter of Credit issued to the RECEIVER/GSWA by a bank whose long-term debt is rated "BB" or better by a Rating Service and which is duly licensed and registered to do business in Guam (the "Letter of Credit"), or by a Performance Bond issued by an insurance company or a bank to guarantee satisfactory completion of a project. In the event that the Contractor should fail to perform the operations as described in the Agreement, the Receiver/GSWA shall be guaranteed compensation for any monetary loss up to the amount of the Letter of Credit or Performance Bond. The

value of either form of security shall be one (1) years' worth of fees (100%) to perform the operation and disposal services as described in the Agreement.

Section 8. Insurance: Proposer shall provide a narrative explaining the insurance coverage it will provide. At a minimum, the required insurance the Proposer shall maintain, at the Proposer's expense throughout the term of the Agreement, includes: insurance for Workers' Compensation that meets statutory limits and Employer's Liability Insurance with a minimum limit of \$100,000 each accident for any employee; Comprehensive/Commercial General Liability insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage; Vehicle Liability Insurance covering all owned, hired, and non-owned vehicles with Personal Protection Insurance and Property Protection Insurance including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage; Environmental Liability coverage with a minimum limit of \$1,000,000 each occurrence with the Government of Guam, the Guam Solid Waste Authority and the Receiver added as "additional insured" on Environmental Liability policy with respect to the services provided under the Agreement; and Pollution Liability including transport and disposal of collected material \$2,000,000. The Government of Guam the Guam Solid Waste Authority and the Receiver shall be added as "additional insured" on the Commercial General Liability policy with respect to the services provided under the Agreement

Section 9. References: Proposer shall provide three (3) references listing them on Form I in Appendix C. All information as required on Form I shall be included for each reference.

Section 10. Proposal Security: Proposer shall provide Proposal Security in the form of a properly executed proposal bond or cashier's check payable to the Guam Solid Waste Authority to accompany the Proposal in the amount of five thousand dollars (\$5,000). The proceeds thereof will become the property of the GSWA if the Proposer fails to or refuses to execute the Agreement within ten (10) calendar days after the Receiver/GSWA has notified the Proposer of the intent to award the Agreement or within ten (10) calendar days after notice of the award has been sent by mail to the Proposer, whichever occurs first.

Section 11. Price Proposal: The Proposer shall submit a price proposal using the Forms of **E THROUGH H**.

2.1.Evaluation Criteria and Selection Process

A selection committee will review all of the Proposals submitted, conduct evaluations, arrange interviews, check references, and submit a recommendation for selection. The following criteria and their point values will be followed by the selection committee in the evaluation of Proposals:

1. Completeness and quality of the Proposal. Items in RFP Sections 1 through 10 and all required forms must be included in the Proposal. (30 points)
2. Price Proposal is Section 11. (35 points)
3. Qualifications, abilities and demonstrated knowledge of HHW. (15 points)
4. References. (10 points)
5. Exceptions to the draft Agreement. (10 points)

3.0 GENERAL TERMS AND CONDITIONS

Assignment: The Agreement may not be assigned without the prior approval of the GWSA.

AUTHORITY: This Request for Proposals (RFP) is issued subject to all the provisions of the Guam Procurement Law (5 GCA Section 5001) and the Guam Procurement Regulations. Per the March 17, 2008 Order from the District Federal Court appointing Gershman, Brickner & Bratton, Inc., as Receiver of the Guam Solid Waste Authority (GWSA) thereby authorized to issue solicitations and enter into contracts on behalf of the Territory of Guam's GWSA and, if the Receiver deems it appropriate, to depart from Guam Procurement Law if, in the best judgment of the Receiver, compliance would unreasonably delay the progress in meeting the mandates of the Consent Decree between United States Environmental Protection Agency and the Government of Guam.

Confidential or Proprietary Information: After award, each Proposal received becomes a part of the public record of procurement.

Agreement Term: The Agreement shall be for five (5) years with two (2) three (3)-year extensions. The Agreement's term is always subject to the availability of certified funds and satisfactory performance.

Covenant Against Contingent Fees: The Proposer warrants that it has not employed any person to solicit or secure any contract resulting from this RFP, upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the government the right to terminate the Agreement. This warranty shall not apply to commissions payable by the Proposer upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Proposer for the purpose of securing business.

Ethical Standards: The Proposer represents that it has not knowingly influenced, and promises that it will not knowingly influence, a government employee to breach any of the ethical standards set forth in Guam's procurement code or regulations pertaining to ethics in public contracting.

Equal Employment Opportunity: By law, the Proposer may not discriminate against its employees or applicants for employment because of race, creed, color, or national origin. The Proposer shall take affirmative action to ensure that applicants are employed, and that employees are treated equally without regard to their race, creed, color or national origin.

Explanation of Offerors: No oral explanation in regard to the substantive or material meaning of the specifications will be made before the award of the Proposal. Material discrepancies, omissions, or doubts as to the meaning of the requirements of this RFP should be communicated in writing no later than fifteen (15) days before the submission deadline.

General Compliance with Laws: The awarded Proposer shall be required to comply with all federal and local laws applicable to the work.

General Intention: Unless otherwise specified, it is the declared and the acknowledged intention and meaning of these General Terms and Conditions for the Proposer to provide the Government of Guam with the services specified.

Government Liability: The GWSA and the Government of Guam assume no liability for any claims, accidents, or injuries that may occur to the awarded Proposer, its agents, dependents, sub consultants, employees, or employees of sub contractors. The GWSA and the Government of Guam shall not be liable to the awarded Proposer for any work performed by the awarded Proposer prior to the approval of the Agreement by the Government of Guam. The awarded Proposer shall expressly waive any and all claims for services performed in expectation of the Agreement prior to its effective date.

Late Proposals: Late Proposals will not be accepted.

Licensing: Proposers are cautioned that the Government will not consider for award any Proposal submitted by a Proposer who has not complied with the Guam Licensing Law as may be applicable. Specific information on license may be obtained from the Director of Revenue and Taxation.

Mistakes in Proposals: The GSWA reserves the right to waive any minor informalities in Proposals received, or to have them corrected by the Proposer, but only in accordance with applicable regulations.

Ownership of Documents: All briefs, memoranda and other incidental work of materials prepared by the awarded Proposer shall be and remain the property of GSWA.

Prohibition Against Gratuities and Kickbacks: The Proposer represents that it has not violated, and promises that it will not violate, the prohibition against and kickbacks set forth in the Guam Procurement Law. The prohibition is as follows: it is a breach of ethical standards for any person to offer, give or agree to give any government employee or former government employee, or for any government employee or former government employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. Further, it shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a sub contractor under a contract to the Contractor.

Rejection of Proposals or Cancellation of Solicitation: The RECEIVER/GSWA shall have the prerogative to reject Proposals in whole or in part if a determination is made that such is in the public interest, or to cancel this RFP at any time, either for all services or for one or more services only.

Responsibility of Awarded Proposer: The awarded Proposer shall be responsible for the technical accuracy of all work and materials furnished under the Agreement. The awarded Proposer shall, without additional cost to the GSWA, correct or revise all errors or deficiencies in its work. The awarded Proposer shall agree to devote their best efforts to the duties and responsibilities under the Agreement in accordance with the laws, rules, regulations, and policies of the GSWA. The GSWA's review, approval, acceptance of, and payment of fees for, services required under the Agreement shall not be construed to operate as a waiver for any rights under the Agreement or of any cause of action arising out of the awarded Proposer's failure to perform the services required, and the awarded Proposer shall be and remain liable to the GSWA for all costs of any kind which may be incurred as a result of the awarded Proposer's negligent performance of any of the services to be performed under this Agreement.

Scope of Agreement: Each party to the resulting Agreement shall acknowledge that no agreements otherwise have been made by any party, or anyone acting on behalf of any party, which are not embodied within the Agreement and that no other agreement, statement, or promise contained in the Agreement will be valid or binding.

Withdraw of Proposal: Proposals may be withdrawn upon written request received from the Proposer prior to the time fixed for opening. Negligence on the part of the Proposer in preparing the Proposal confers no right for the withdrawal of the Proposal after it has been opened.

APPENDIX A

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DEFINITIONS

'Adjustment Factor' means the methodology to adjust certain costs, prices and fees as described in Section 3.05 of the Agreement.

'Agreement' as used herein means the Agreement to operate the HHW Facility and to provide interim services and other services as described in the Agreement, together with all Appendices and amendments.

'Alleged Violation Resolved' means any allegation, charge or similar claim by a Governmental Entity that the Receiver/GSWA, the Government of Guam or the Contractor of the HHW Facility is in Violation of or not in compliance with any portion of the Permits or Applicable Laws but which is subsequently resolved.

'Appendix' or ' Appendices' means any exhibit, appendix, attachment, form, schedule or annex, which is attached to, incorporated in, or made a part of the RFP or the Agreement.

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

'Business Day' means any calendar Day of each month excepting including Saturdays and Sundays.

'Cathode-Ray Tube' means is a picture tubes found in all electronic television sets up until the invention of LCD screens. .

'CFC' means chlorofluorocarbon.

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

'Contractor' means the company or organization awarded the Agreement to operate and maintain the Household Hazardous Waste program.

'Convenience Center' means a facility which includes a Vehicle receiving area and various bulk containers for deposit of selected waste and Recyclables so as to provide Guam residents with one stop, drop-off service for deposit of Municipal Solid Waste and Recyclables.

'Day' means calendar day, unless otherwise specified.

'Disposal' means the discharge, deposit, dumping, or placing of any Solid Waste into or on any land or water so that such Solid Waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters including ground-water.

'Disposal Facility' means a sanitary landfill or other facility permitted by GEPA for the Treatment, utilization, processing and final disposition of Solid Waste.

'E-Waste' means Cathode-Ray Tube or flat-panel computer monitors and televisions having a viewable area greater than four inches, measured diagonally; desktop computers; and laptop or portable computers.

'Environmental Laws' means statutes, regulations, orders, directives and common law concerning public health and safety, nuisance, pollution and protection of the environment, including, without limitation, Guam Environmental Protection Agency Solid Waste Disposal Rules and Regulations (GARR: Title 22, Division 4, Chapter 23), the Solid Waste Disposal Act (42 U.S.C. §§6901, et seq.), the Clean Air Act (42 U.S.C. §§7401, et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§1251, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601, et seq.) and similar local laws.

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

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

'Governmental Entity' means, as appropriate, any one or several of any court of competent jurisdiction, the United States of America, the Territory of Guam and/or any appropriate jurisdiction over the Contractor or the Receiver/GSWA or their activities relating to the HHW Facility or Interim HHW Facility; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the Contractor, the transfer, transportation, or Disposal of HHW or any services or utilities related to any of the foregoing.

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

'Guam Solid Waste Authority' or 'GSWA' means the legal agency as defined in Guam Public Law 31-20..

'Guarantor' means the Person guaranteeing the performance and payment obligations of the Contractor.

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

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

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

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

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

(E) is pathological, infectious or biological waste,

(F) is treated as Hazardous Waste or as a hazardous substance under Applicable Law, or,

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

'Household Hazardous Waste' or 'HHW' means any waste, produced in the home, which contains hazardous substances, which may pose threat to the environment, wildlife, and human health. Products containing hazardous substances are often labeled with words such as: toxic, flammable, corrosive, reactive, danger, warning, caution, flammable, explosive, do not use near open flame, and other cautionary words. Hazardous products become hazardous waste once the consumer no longer has any use for them. Households that dispose of small amounts of Household Hazardous Waste are exempt from Hazardous Waste management and are not subject to regulations. They may therefore place their used HHW (paint, chemicals, etc.), computers, etc. in their regular household garbage that is then sent to a Municipal Solid Waste (MSW) landfill (these are lined landfills where the liquids that percolate through the landfill are collected and treated). Non-residential generators (businesses) of less than 220 pounds of Hazardous Waste (including Cathode Ray Tubes) in a calendar month are known as Conditionally Exempt Small Quantity Generators and are not subject to most RCRA Subtitle C Hazardous Waste management standards.

'Household Hazardous Waste Facility' or 'HHW Facility' means the non-commercial only building that is the subject of this RFP in so far as it is the Facility to be managed. The location of the HHW Facility is at the GSWA Compound located at 542 North Marine Corps Drive, Tumon, Guam 96913.

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

'Industrial Waste' means Solid Waste generated by manufacturing or industrial processes that is not a Hazardous Waste regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) or Guam's Hazardous Waste Management Regulations. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes/operations: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather

and leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water Treatment. This term does not include mining waste or oil and gas waste.

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

'Infectious Waste' means:

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

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

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

'Initial Term' has the meaning set forth in the Agreement.

'Interim Household Hazardous Waste Facility' or 'Interim HHW Facility' means Proposer's proposed location to receive HHW from residential customers while the permanent HHW Facility is being constructed.

'Interim Operating Fee' means agreed to remuneration to the Contractor operating an Interim Household Hazardous Waste Facility.

'Large Quantity Generators' means those generators who produce more than 2,200 pounds of Hazardous Waste in a calendar month and are subject to all of the applicable Hazardous Waste regulations for generators.

'Letter of Credit' has the meaning set forth in the Agreement.

'Mandate' means an expenditure or action imposed on the Receiver/GSWA, Government of Guam or the Contractor by a Governmental Entity, which is directly related to the operation of a HHW facility or the collection, handling, or disposal of HHW, mandatory in nature, and adopted or implemented subsequent to the execution of the Agreement.

'Medical Waste' means any Solid Waste which is generated by health-care related facilities and associated with healthcare activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care related activities in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such terms do not include any Hazardous or Household

Waste identified, listed, or defined in the Agreement. The term includes Special Waste from health care-related facilities, which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in Guam Administrative Rules and Regulations – 2005 (GARR) or any successor. The term does not include waste produced on farmland and ranchland as defined in GARR or any successor, nor does the term include artificial, nonhuman materials removed from a patient and/or requested by a patient, including but not limited to orthopedic devices and implants.

'Municipal Solid Waste' or 'MSW' means Solid Waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes Garbage, Rubbish, ashes, and other Solid Waste other than Industrial Waste.

'Odor Condition Control' means complying with all limits and requirements established by Applicable Laws with respect to the control of all odor at the HHW Facility and Interim HHW Facility.

'Operating Fee' means agreed to remuneration to the Contractor managing the Permanent Household Hazardous Waste Facility.

'Operating Year' means a one-year period commencing on the Operation Commencement Date or any anniversary thereof.

'Operation Commencement Date' means the first date upon which all of the conditions precedent set forth in the Agreement shall be satisfied or waived as agreed to in writing by the Parties pursuant to the Agreement.

'Operational Record' means the entire document records and reporting history of the HHW Facility construction and operation.

'Optional Work Activity' means work proposed in the Proposal but which is not mandatory to be in compliance with the RFP.

'Overdue Rate' means the lesser of (i) the maximum rate of interest permitted by Applicable Laws or (ii) 1% over the prime rate of interest published in the *Wall Street Journal*, or such other daily financial publication as shall be mutually agreeable to the Parties if the *Wall Street Journal* ceases to be published or ceases to publish such information.

'Parties' mean the Receiver/GSWA and Contractor.

'Pass-Through Costs' means fees, charges, or tariffs imposed by the federal, Territorial or local government, or their respective agencies, after the Contract Date of the Agreement, that contractors of HHW facilities must collect from users of a HHW facility and remit to the appropriate government agency and certain other costs incurred by the Contractor for which Receiver/GSWA has agreed to reimburse Contractor subject to cost substantiation by Contractor and for which Contractor provides cost substantiation.

'Performance Bond' means a bond underwritten by a surety and issued to one party of a contract as a guarantee against the failure of the other party to meet obligations specified in the contract.

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

'Person' means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, of any agency, department, or instrumentality of the federal, Territorial, or local government, or any other legal Representatives, agents or assigns.

'Proposal' means the proposal submitted in response to RFP No.004-13

'Proposal Security' means the proposal bond or cashier's check provided by a Proposer to secure its Proposal.

'Proposer' means a party that submits a Proposal in response to this RFP.

'Receiver/GSWA' means a term referring to the contracting entity for the services listed in this RFP. Under the terms of the Orders of the U.S. District Court of Guam appointing GBB as Receiver, "the Receiver shall have full power and authority to enforce the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and authority of the Solid Waste Management Division (now known as the Guam Solid Waste Authority)." After the termination of the receivership of the GSWA by the U.S. District Court of Guam, the term shall mean the Guam Solid Waste Authority, Government of Guam or any successor organization designated to carry out the duties and responsibilities of the Guam Solid Waste Authority.

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

'Recycling' means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete, are collected, separated, ground or processed and returned to use in the form of raw materials used in the production of new products or for any beneficial purpose. Except for mixed Municipal Solid Waste composting, that is, composting of the typical mixed Solid Waste stream generated by residential, commercial, and/or institutional sources. Recycling includes the composting process if the compost material is put to beneficial use.

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

'Renewal Term' includes the first Renewal Term, if applicable, as described in Article II of the Agreement and the Second Renewal Term, if applicable, as described in Article II of the Agreement.

'Representative' means any Person or organization, whether in a paid or voluntary status, working in conjunction with a particular Proposer to promote the interests of that Proposer.

'Residential Transfer Stations' means sites operated and managed by the GSWA which are for the sole use of non-commercial customers for depositing their trash and Recyclables. These are staffed facilities that charge a fee for accepting trash and allow free deposit for Recyclables. There are three (3) such facilities: Malojloj, Dededo, and Agat.

'Reuse Center' means a portion of the HHW Facility where HHW that is reusable will be placed for residents to take for their home use.

'Reused HHW Material' means the reuse process begins with the collection of chemicals at the HHW Facility. Technicians receive the material from residential customers coming into the facility. Technicians identify materials and determine whether or not they are acceptable for reuse. If they appear acceptable, technicians place the materials in segregated, secure area of the facility known as the Reuse Center where residents can take the material for their home use.

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

'Salvaging' means the controlled removal of waste materials for utilization.

'Scavenging' means uncontrolled and unauthorized removal of Solid Waste materials from a Municipal Solid Waste storage or Disposal site(s) or HHW from the HHW Facility or Interim HHW Facility.

'Self-Haul Waste' means waste brought to the HHW Facility by Guam residents.

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

'Solid Waste Facility Permit' means the Permit or Permits issued by GEPA for the construction and operation of the HHW Facility and/or the Interim HHW Facility, as applicable.

'Special Waste' means waste that is defined as such by applicable Government of Guam or federal regulation and which because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and Disposal to protect human health or the environment. Special Waste includes, but is not limited to, Infectious Waste, dead animals and offal, sludge and asbestos wastes.

'Term' means the Initial Term and any Renewal Term of the Agreement.

'Transfer Station' means a permitted or registered facility where Solid Waste is temporarily deposited and prepared for transport on larger transfer Vehicles or in special bulk containers placed on other Vehicles for ultimate Disposal in a Disposal Facility, or where Solid Waste, Recyclables or organic Recyclable Materials are deposited for transfer on larger Vehicles or in special containers placed on other Vehicles for transport to an appropriate processing facility or Disposal Facility.

'Treatment' means the physical, chemical or biological processing of Solid Waste to make such Solid Waste safer for storage or Disposal, amenable for energy or material resource recovery or reduced in volume.

'Treated Medical Waste' means waste from health care-related facilities that has been treated in accordance with the procedures specified by law or regulations and which has been identified and packaged in accordance with law and regulations.

'USC' means United States Code.

'Vector' means any insect or other arthropod, rodent or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

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

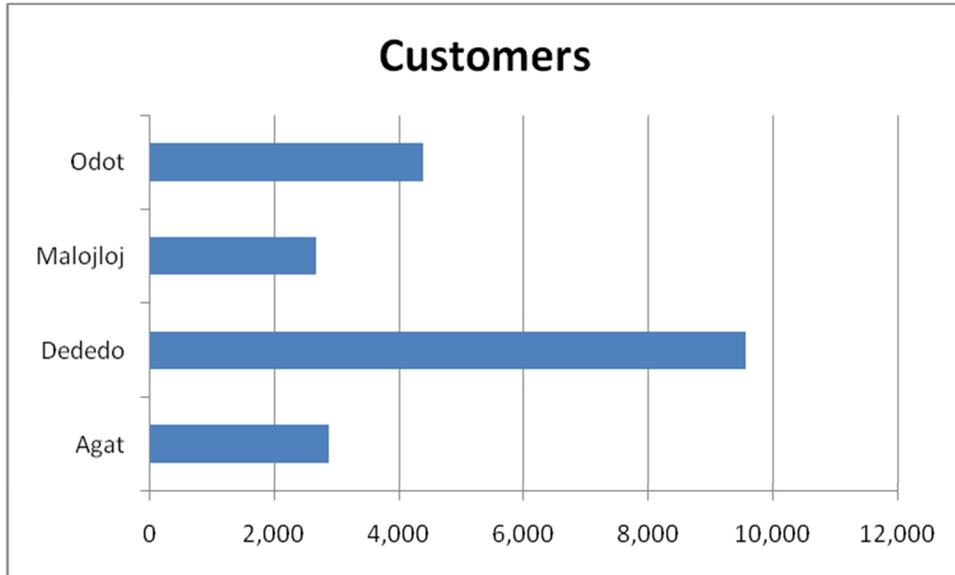
'Violation' means any determination by a Governmental Entity, after notice to and permitted contest by the Receiver, GSWA, the Government of Guam or the Contractor of the HHW Facility, that the HHW Facility, Interim HHW Facility or Contractor's operations is (are) in violation of or not in compliance with any portion of the Permits or Applicable Laws, under its jurisdiction; however, an Alleged Violation Resolved shall not constitute a Violation.

'Waste Recycling' means reusing waste materials and extracting valuable materials from a waste stream.

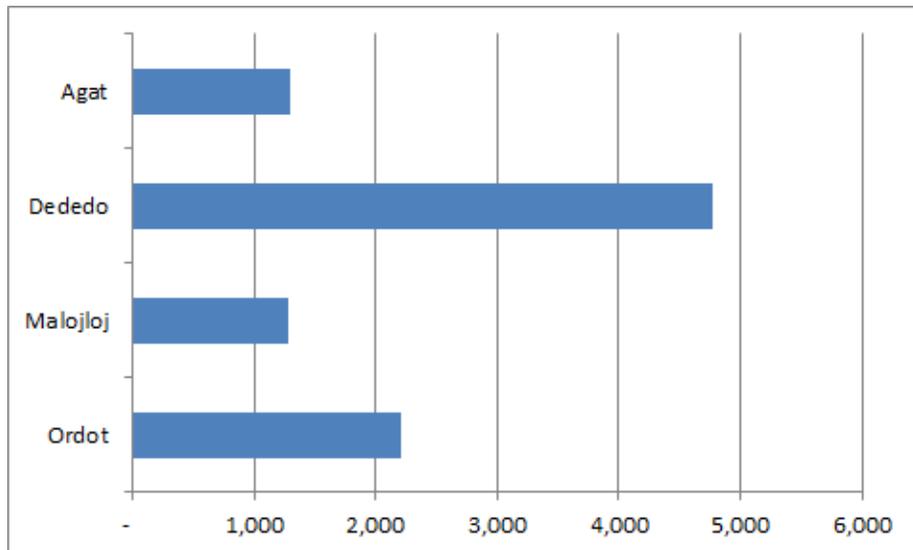
'Waste Screening' means the process of separating acceptable waste and unacceptable waste.

APPENDIX B

**Customers at Residential Transfer Stations and Ordot Dump, October 1, 2010 –
March 11, 2011**



**Customers at Transfer Stations and Ordot Dump, April 1, 2011 –
June 30, 2011**



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APPENDIX C

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FORM A

PROPOSAL SIGNATURE

THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER, DETACHED, AND MADE A PART OF ITS PROPOSAL.

By submitting this Proposal, the Proposer certifies that its authorized Representative has fully read and understands the Proposal and the RFP and has full knowledge of the scope, nature, and quality of work to be performed or the services to be rendered.

In compliance with this RFP and with all the conditions imposed herein, the undersigned offers and agrees to provide services in accordance with the attached signed Proposal, or as mutually agreed upon by subsequent negotiation. This completed Proposal Signature Form shall be submitted with the Proposer's written Proposal and will become a part of any agreement that may be awarded. This Proposal Signature Form must be signed by an authorized Representative.

Signature of Authorized Representative

Date

Type or Print Name and Title

Name of Proposer: _____

Address: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Type of Organization: ___ Individual ___ Non-Profit ___ Partnership
___ Corporation ___ Joint Venture ___ Other (Specify) _____

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FORM B

NON-COLLUSION AFFIDAVIT

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

Name of Proposer Firm or Individual: _____

Territory of Guam

Hagatna, Guam

_____, being first duly sworn,
deposes and says:

This he/she is _____ (the Proposer, a partner of the Proposer, an officer of the Proposer) making the foregoing identified Proposal; that such Proposal is genuine and not collusive or a sham; that said Proposer has not colluded, conspired, connived or agreed, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the Proposal price of Proposer or of any other Proposer, or to fix any overhead, profit or cost element of said Proposal price, or of that of any other Proposer, or to secure any advantage against the Government of Guam or any other Proposer, or to secure any advantage against the Government of Guam or any Person interested in the proposed Agreement; and that all statements in this affidavit and Proposal are true.

Signature of:

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 _____, 2013

NOTARY PUBLIC

My Commission expires: _____

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FORM C
LICENSES

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

Please attach copies of all business licenses, permits, fictitious names certificates, certificates of good standing, or any other license, permit or certificate issued to the individual or company, which is applicable to the Request for Proposals. Please indicate the attached documents by checking the applicable boxes:

BUSINESS LICENSE

from Department of Revenue and Taxation, Government of Guam

from a jurisdiction other than Guam _____

FICTITIOUS NAME REGISTRATION

from Department of Revenue and Taxation, Government of Guam

from a jurisdiction other than Guam _____

CERTIFICATE OF INCORPORATION

from Department of Revenue and Taxation, Government of Guam

from a jurisdiction other than Guam _____

FEDERAL I.D.# _____

OTHER ATTACHMENTS: _____

PLEASE CHECK HERE IF THERE ARE NO ATTACHMENTS TO THIS FORM

Authorized Signature

Title

Date

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FORM D

DISCLOSURE AFFIDAVIT

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

The undersigned, being first duly sworn, deposes and says that I am an authorized representative of the undersigned and that (please check one):

- The Proposer is an individual or sole proprietor and owns the entire interest in the Proposer company;
- The Proposer is a corporation, partnership, joint venture, or association, and the persons, companies, partners, or joint ventures who have held more than 10% of the shares of interest in the Proposer business during the past twelve months are as follows (if none, please state):

Name	Address	Percent of Shares or Interest Held

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 this affidavit is submitted as follows (if none, please state):

Name	Address	Compensation

FORM D

DISCLOSURE AFFIDAVIT (Continued)

Signature of:

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 _____, 2013

NOTARY PUBLIC

My Commission expires: _____

FORM E

PRICE FORM FOR MATERIAL DISPOSAL

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

All prices listed in the Proposal are inclusive of all costs from the time the material is bulked for shipment and leaves the HHW Facility and is disposed. This form corresponds to **Section 12** of the Proposal. If the Proposer submits in this Proposal to take materials not listed in this Form E, then the Proposer shall list those items on an additional page and in the same format with the disposal price the Proposer is submitting.

Material Type	Quantity	Method (recycled, reused, disposed)	Cost per quantity (US\$)
Latex Paint (bulk)	55 gallon		
Oil Based (bulk)	55 gallon		
Oil Based (loose pack)			
Acid, Inorganic, Liquid	55 gallons		
Base, Inorganic, Liquid	55 gallons		
Liquid, Flammable	55 gallons		
Toxic, Liquid, Flammable			
Environmental Hazard, Liquid			
Oxidizer, Liquid	55 gallons		
Batteries (Alkaline)	55 gallons		

**FORM E
(Continued)**

PRICE FORM FOR MATERIAL DISPOSAL

Material Type	Quantity	Method (recycled, reused, disposed)	Cost per quantity (US\$)
Batteries (Ni Cd)	55 gallons		
Aerosol, Flammable			
Aerosol, Poisons	55 gallon		
Oil Filters	55 gallon		
Compressed Gas, Flammable	55 gallon		
Compressed Gas, Non Flammable	55 gallon		
Water Reactive Waste	55 gallon		
Fluorescent Tubes	Linear Feet		
Propane Cylinders	5 gallon		
Sharps	55 gallon		
Electronic Waste			
Television per unit			

Authorized Signature

Title

Date

FORM G

**ITEMIZED ANNUAL OPERATING COSTS OF THE
HHW FACILITY
(2011 US\$)**

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

I. Mobile Equipment

Please specify the number of units

	<u>No. of Units</u>	
A. Front-end loader(s)	_____	
B. Forklift(s)	_____	
C. Containers (list)	_____	
D. Transfer Trailers	_____	
E. Other (list) _____	_____	
Total Equipment Capital Costs (A-E above)		\$ _____
Annual Capital Cost Charge for Item I above		\$ _____
Annual Non-Labor Operations & Mobile Equipment Maintenance (includes fuel, oil, maintenance, replacement parts, etc.)		\$ _____
Annual Mobile Equipment Owning & Operating Costs Proposed		SUBTOTAL \$ _____

II. Management & Operating Personnel

Please indicate the number of positions:

Job Title	No. of Personnel	
A. _____	_____	
B. _____	_____	
C. _____	_____	
D. _____	_____	
E. _____	_____	
F. _____	_____	
Direct Operating Personnel Costs (A-F above)		\$ _____
Indirect Fringe Benefits and Overtime		\$ _____
Annual Management & Operating Personnel Costs Proposed		SUBTOTAL \$ _____

FORM G

(Continued)

**ITEMIZED ANNUAL OPERATING COSTS OF THE
HHW FACILITY**

(2011 US\$)

III. Utilities

(including electricity, water, sewer, etc. will be paid directly by GSWA.)

Annual Utilities Costs Proposed **SUBTOTAL** \$ 0

IV. Insurance and Performance Security

Property and Liability Insurance and Performance Security
(Minimum, as required by the Agreement)

Annual Insurance/Performance Security Costs Proposed **SUBTOTAL** \$ _____

V. Maintenance and Supplies

HHW Facility maintenance and supplies, (excluding mobile
equipment and supplies included in item **I** above).

Annual Maintenance and Supplies Costs Proposed **SUBTOTAL** \$ _____

VI. Administration and General Overhead

(including management fee, if any)

Annual Administration and Overhead Costs Proposed **SUBTOTAL** \$ _____

VII. Collection of HHW from Residential Transfer Stations¹ **SUBTOTAL** \$ _____

VIII. Other, if required

(must specify): _____

Annual Other Costs Proposed **SUBTOTAL** \$ _____

ANNUAL OPERATING COST (I through VIII) **TOTAL** \$ _____

Authorized Signature _____ Title _____ Date _____

¹ This is the cost for the Contractor to provide on call collection of selected HHW at each of the GSWA Residential Transfer Stations (See Section 7 of RFP). This cost is to be identified separate from other Annual Operating Costs of the HHW Facility.

FORM H

INTERIM COLLECTION SERVICE

*THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER,
DETACHED, AND MADE A PART OF ITS PROPOSAL.*

The following proposed fees refer to all work required and proposed in **Section 5** of the Proposal, exclusive of the disposal fee(s) for the collected HHW. The disposal fee(s) for all material collected during the interim collection shall be those fees provided by the Proposer in Form E. The disposal and the operational fees shall equal the total fees for this proposed work activity. All costs shall be on a per event basis in US\$.

Inclusive Labor Cost Per Event: \$ _____

Inclusive Transportation Cost Per Event: \$ _____

Inclusive Materials Cost Per Event: \$ _____

Other Costs (Please detail these costs below) Per Event: \$ _____

Total Cost Per Event: \$ _____

Authorized Signature

Title

Date

(This page is intentionally left blank.)

Form I

STATEMENT OF PROPOSER'S REFERENCES

THIS FORM SHALL BE EXECUTED BY AN OFFICIAL AUTHORIZED TO BIND THE PROPOSER, DETACHED, AND MADE A PART OF ITS PROPOSAL.

List and describe fully the last three contracts performed by your firm which demonstrate your ability to complete the work included with the scope in the RFP. Attach additional pages if required. The Receiver/GSWA reserves the right to contact each of the references listed for additional information regarding Proposer's qualifications.

REFERENCE NO. 1

Customer Name:

Contact Individual:

Address:

Phone Number:

Contract Amount:

Description of Work Performed:

FORM I
(Continued)
STATEMENT OF PROPOSER'S QUALIFICATIONS AND REFERENCES

REFERENCE NO. 2

Customer Name:

Contact Individual:

Address:

Phone Number:

Contract Amount:

Description of Work Performed:

REFERENCE NO. 3

Customer Name:

Contact Individual:

Address:

Phone Number:

Contract Amount:

Description of Work Performed:

Authorized Signature

Title

Date

APPENDIX D

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(Placeholder for Area Drawing Where HHW Facility and Residential Transfer Station Is To Be Located)

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APPENDIX E

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DRAFT AGREEMENT

THIS AGREEMENT TO OPERATE A HOUSEHOLD HAZARDOUS WASTE FACILITY AND TO DISPOSE OF ALL HOUSEHOLD HAZARDOUS WASTE COLLECTED UNDER THIS AGREEMENT (hereinafter the "Agreement") entered into this ____ day of _____, 2013, by and between GERSHMAN, BRICKNER & BRATTON, INC. ("GBB"), in its capacity as Receiver for the Guam Solid Waste Authority (GSWA) and _____, as Contractor (the "Contractor").

WITNESSETH:

WHEREAS, GBB issued a Request for Proposals (RFP 003-13) (together with all addenda thereto, the "RFP") for the operation of a Household Hazardous Waste Facility and certain related services; and

WHEREAS, Contractor submitted a Proposal on _____, responding to the RFP; and

WHEREAS, following an evaluation and selection process, Contractor was selected as the best evaluated Proposer for the operation of the Household Hazardous Waste Facility and associated services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RECEIVER/GSWA and Contractor, intending to legally bind themselves and their respective successors and assigns, hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01

'Adjustment Factor' means the methodology to adjust certain costs, prices and fees as described in Section 3.05 of the Agreement.

'Agreement' as used herein means the Agreement to operate the HHW Facility and to provide interim services and other services as described in the Agreement, together with all Appendices and amendments.

'Alleged Violation Resolved' means any allegation, charge or similar claim by a Governmental Entity that the Receiver/GSWA, the Government of Guam or the Contractor of the HHW Facility is in Violation of or not in compliance with any portion of the Permits or Applicable Laws but which is subsequently resolved.

'Appendix' or ' Appendices' means any exhibit, appendix, attachment, form, schedule or annex, which is attached to, incorporated in, or made a part of the RFP or the Agreement.

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

'Business Day' means any calendar Day of each month excepting including Saturdays and Sundays.

'Cathode-Ray Tube' means is a picture tubes found in all electronic television sets up until the invention of LCD screens. .

'CFC' means chlorofluorocarbon.

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

'Contractor' means the company or organization awarded the Agreement to operate the Household Hazardous Waste Facility.

'Convenience Center' means a facility which includes a Vehicle receiving area and various bulk containers for deposit of selected waste and Recyclables so as to provide Guam residents with one stop, drop-off service for deposit of Municipal Solid Waste and Recyclables.

'Day' means calendar day, unless otherwise specified.

'Disposal' means the discharge, deposit, dumping, or placing of any Solid Waste into or on any land or water so that such Solid Waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters including ground-water.

'Disposal Facility' means a sanitary landfill or other facility permitted by GEPA for the Treatment, utilization, processing and final disposition of Solid Waste.

'E-Waste' means Cathode-Ray Tube or flat-panel computer monitors and televisions having a viewable area greater than four inches, measured diagonally; desktop computers; and laptop or portable computers.

'Environmental Laws' means statutes, regulations, orders, directives and common law concerning public health and safety, nuisance, pollution and protection of the environment, including, without limitation, Guam Environmental Protection Agency Solid Waste Disposal Rules and Regulations (GARR: Title 22, Division 4, Chapter 23), the Solid Waste Disposal Act (42 U.S.C. §§6901, et seq.), the Clean Air Act (42 U.S.C. §§7401, et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§1251, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601, et seq.) and similar local laws.

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

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

'Governmental Entity' means, as appropriate, any one or several of any court of competent jurisdiction, the United States of America, the Territory of Guam and/or any appropriate jurisdiction over the Contractor or the Receiver/GSWA or their activities relating to the HHW Facility or Interim HHW Facility; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the Contractor, the transfer, transportation, or Disposal of HHW or any services or utilities related to any of the foregoing.

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

'Guam Solid Waste Authority' or 'GSWA' means the legal agency as defined in Guam Public Law 31-20..

'Guarantor' means the Person guaranteeing the performance and payment obligations of the Contractor.

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

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

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

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

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

(E) is pathological, infectious or biological waste,

(F) is treated as Hazardous Waste or as a hazardous substance under Applicable Law, or,

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

'Household Hazardous Waste' or 'HHW' means any waste, produced in the home, which contains hazardous substances, which may pose threat to the environment, wildlife, and human health. Products containing hazardous substances are often labeled with words such as: toxic, flammable, corrosive, reactive, danger, warning, caution, flammable, explosive, do not use near open flame, and other cautionary words. Hazardous products become hazardous waste once the consumer no longer has any use for them. Households that dispose of small amounts of Household Hazardous Waste are exempt from Hazardous Waste management and are not subject to regulations. They may therefore place their used HHW (paint, chemicals, etc.), computers, etc. in their regular household garbage that is then sent to a Municipal Solid Waste (MSW) landfill (these are lined landfills where the liquids that percolate through the landfill are collected and treated). Non-residential generators (businesses) of less than 220 pounds of Hazardous Waste (including Cathode Ray Tubes) in a calendar month are known as Conditionally Exempt Small Quantity Generators and are not subject to most RCRA Subtitle C Hazardous Waste management standards.

'Household Hazardous Waste Facility' or 'HHW Facility' means the non-commercial only building that is the subject of this RFP in so far as it is the Facility to be managed. The location of the HHW Facility is at the GSWA Compound located at 542 North Marine Corps Drive, Tumon, Guam 96913.

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

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

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

'Infectious Waste' means:

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

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

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

'Initial Term' has the meaning set forth in the Agreement.

'Interim Household Hazardous Waste Facility' or 'Interim HHW Facility' means Proposer's proposed location to receive HHW from residential customers while the permanent HHW Facility is being constructed.

'Interim Operating Fee' means agreed to remuneration to the Contractor operating an Interim Household Hazardous Waste Facility.

'Large Quantity Generators' means those generators who produce more than 2,200 pounds of Hazardous Waste in a calendar month and are subject to all of the applicable Hazardous Waste regulations for generators.

'Letter of Credit' has the meaning set forth in the Agreement.

'Mandate' means an expenditure or action imposed on the Receiver/GSWA, Government of Guam or the Contractor by a Governmental Entity, which is directly related to the operation of a HHW facility or the collection, handling, or disposal of HHW, mandatory in nature, and adopted or implemented subsequent to the execution of the Agreement.

'Medical Waste' means any Solid Waste which is generated by health-care related facilities and associated with healthcare activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care related activities in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such terms do not include any Hazardous or Household Waste identified, listed, or defined in the Agreement. The term includes Special Waste from health care-related facilities, which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in Guam Administrative Rules and Regulations – 2005 (GARR) or any successor. The term does not include waste produced on farmland and ranchland as defined in GARR or any successor, nor does the term include artificial, nonhuman materials removed from a patient and/or requested by a patient, including but not limited to orthopedic devices and implants.

'Municipal Solid Waste' or 'MSW' means Solid Waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes Garbage, Rubbish, ashes, and other Solid Waste other than Industrial Waste.

'Odor Condition Control' means complying with all limits and requirements established by Applicable Laws with respect to the control of all odor at the HHW Facility and Interim HHW Facility.

'Operating Fee' means agreed to compensation to the Contractor managing the Household Hazardous Waste Facility.

'Operating Year' means a one-year period commencing on the Operation Commencement Date or any anniversary thereof.

'Operation Commencement Date' means the first date upon which all of the conditions precedent set forth in the Agreement shall be satisfied or waived as agreed to in writing by the Parties pursuant to the Agreement.

'Operational Record' means the entire document records and reporting history of the HHW Facility construction and operation.

'Optional Work Activity' means work proposed in the Proposal but which is not mandatory to be in compliance with the RFP.

'Overdue Rate' means the lesser of (i) the maximum rate of interest permitted by Applicable Laws or (ii) 1% over the prime rate of interest published in the *Wall Street Journal*, or such other daily financial publication as shall be mutually agreeable to the Parties if the *Wall Street Journal* ceases to be published or ceases to publish such information.

'Parties' mean the Receiver/GSWA and Contractor.

'Pass-Through Costs' means fees, charges, or tariffs imposed by the federal, Territorial or local government, or their respective agencies, after the Contract Date of the Agreement, that contractors of HHW facilities must collect from users of a HHW facility and remit to the appropriate government agency and certain other costs incurred by the Contractor for which Receiver/GSWA has agreed to reimburse Contractor subject to cost substantiation by Contractor and for which Contractor provides cost substantiation.

'Performance Bond' means a bond underwritten by a surety and issued to one party of a contract as a guarantee against the failure of the other party to meet obligations specified in the contract.

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

'Person' means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, of any agency, department, or instrumentality of the federal, Territorial, or local government, or any other legal Representatives, agents or assigns.

'Proposal' means the proposal submitted in response to RFP No. _____.

'Proposal Security' means the proposal bond or cashier's check provided by a Proposer to secure its Proposal.

'Proposer' means a party that submits a Proposal in response to this RFP.

'Receiver/GSWA' means a term referring to the contracting entity for the services listed in this RFP. Under the terms of the Orders of the U.S. District Court of Guam appointing GBB as Receiver, "the Receiver shall have full power and authority to enforce the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and authority of the Solid Waste Management Division (now known as the Guam Solid Waste Authority)." After the termination of the receivership of the GSWA by the U.S. District Court of Guam, the term shall mean the Solid Waste Management Division of the Department of Public Works, Government of Guam or any successor organization designated to carry out the duties and responsibilities of the Solid Waste Management Division.

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

'Recycling' means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete, are collected, separated, ground or processed and returned to use in the form of raw materials used in the production of new products or for any beneficial purpose. Except for mixed Municipal Solid Waste composting, that is, composting of the typical mixed Solid Waste stream generated by residential, commercial, and/or institutional sources. Recycling includes the composting process if the compost material is put to beneficial use.

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

'Renewal Term' includes the first Renewal Term, if applicable, as described in Article II of the Agreement and the Second Renewal Term, if applicable, as described in Article II of the Agreement.

'Representative' means any Person or organization, whether in a paid or voluntary status, working in conjunction with a particular Proposer to promote the interests of that Proposer.

'Residential Transfer Stations' means sites operated and managed by the GSWA which are for the sole use of non-commercial customers for depositing their trash and Recyclables. These are staffed facilities that charge a fee for accepting trash and allow free deposit for Recyclables. There are three (3) such facilities: Malojloj, Dededo, and Agat.

'Reuse Center' means a portion of the HHW Facility where HHW that is reusable will be placed for residents to take for their home use.

'Reused HHW Material' means the reuse process begins with the collection of chemicals at the HHW Facility. Technicians receive the material from residential customers coming into the facility. Technicians identify materials and determine whether or not they are acceptable for reuse. If they appear acceptable, technicians place the materials in segregated, secure area of the facility known as the Reuse Center where residents can take the material for their home use.

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

'Salvaging' means the controlled removal of waste materials for utilization.

'Scavenging' means uncontrolled and unauthorized removal of Solid Waste materials from a Municipal Solid Waste storage or Disposal site(s) or HHW from the HHW Facility or Interim HHW Facility.

'Self-Haul Waste' means waste brought to the HHW Facility by Guam residents.

'Solid Waste' means any Garbage, Rubbish, Refuse, or sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded or spilled material(s), including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community and institutional activities. The term does not include solid or dissolved material in domestic

sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880); or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

'Solid Waste Facility Permit' means the Permit or Permits issued by GEPA for the construction and operation of the HHW Facility and/or the Interim HHW Facility, as applicable.

'Small Quantity Generators' Small Quantity Generators (SQG) generate more than 100 kilograms, but less than 1,000 kilograms, of hazardous waste per month. Requirements for SQGs include: SQGs may accumulate hazardous waste on site for 180 days without a permit (or 270 days if shipping a distance greater than 200 miles). The quantity of hazardous on site waste must never exceed 6,000 kilograms. There must always be at least one employee available to respond to an emergency. This employee is the emergency coordinator responsible for coordinating all emergency response measures. SQGs are not required to have detailed, written contingency plans.

'Special Waste' means waste that is defined as such by applicable Government of Guam or federal regulation and which because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and Disposal to protect human health or the environment. Special Waste includes, but is not limited to, Infectious Waste, dead animals and offal, sludge and asbestos wastes.

'Term' means the Initial Term and any Renewal Term of the Agreement.

'Transfer Station' means a permitted or registered facility where Solid Waste is temporarily deposited and prepared for transport on larger transfer Vehicles or in special bulk containers placed on other Vehicles for ultimate Disposal in a Disposal Facility, or where Solid Waste, Recyclables or organic Recyclable Materials are deposited for transfer on larger Vehicles or in special containers placed on other Vehicles for transport to an appropriate processing facility or Disposal Facility.

'Treatment' means the physical, chemical or biological processing of Solid Waste to make such Solid Waste safer for storage or Disposal, amenable for energy or material resource recovery or reduced in volume.

'Treated Medical Waste' means waste from health care-related facilities that has been treated in accordance with the procedures specified by law or regulations and which has been identified and packaged in accordance with law and regulations.

'USC' means United States Code.

'Vector' means any insect or other arthropod, rodent or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well-being.

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

'Violation' means any determination by a Governmental Entity, after notice to and permitted contest by the Receiver, GSWA, the Government of Guam or the Contractor of the HHW Facility, that the HHW Facility, Interim HHW Facility or Contractor's operations is (are) in violation of or not in compliance with any portion of the Permits or Applicable Laws, under its jurisdiction; however, an Alleged Violation Resolved shall not constitute a Violation.

'Waste Recycling' means reusing waste materials and extracting valuable materials from a waste stream.

'Waste Screening' means the process of separating acceptable waste and unacceptable waste.

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

- (a) Words importing the singular number shall include the plural number and vice versa.
- (b) Words importing the feminine, masculine and neuter genders shall each include correlative words of the other genders.
- (c) No approval, consent or acceptance required to be given or made by any Person or Party hereunder shall be unreasonably withheld.
- (d) All references herein to particular articles or sections without reference to a specific document are reference to articles or sections of this Agreement.
- (e) The captions and headings herein are solely for convenience of reference and shall not constitute part of this Agreement nor shall they affect its meaning, construction or effect.
- (f) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement in its entirety and not the particular article or section of the Agreement in which they appear, and the term "hereafter" means after the Contract Date of this Agreement, and the term "heretofore" means before, the date of this Agreement.

- (g) The word "including" means "Including but not limited to."
- (h) All exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made part of this Agreement.
- (i) Any payment due hereunder on or before a non-Business Day shall be due and payable on the first succeeding Day that is not Saturday, Sunday, or a RECEIVER/GSWA holiday.

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

ARTICLE II TERM

SECTION 2.01. Initial Term. The initial term of this Agreement (the "Initial Term") shall commence on the Contract Date, and shall expire on (i) 11:59 p.m. on the date that is the Day before the fifth (5th) anniversary of the Operation Commencement Date, or (ii) the date this Agreement is terminated pursuant to ARTICLE XI or otherwise as permitted herein.

SECTION 2.02. Renewal Term. The term of this Agreement shall be extended beyond the Initial Term until (i) 11:59 p.m. on the date that is the Day before the third (3rd) anniversary of the Day following the end of the Initial Term, or (ii) the date this Agreement is terminated pursuant to ARTICLE XI or otherwise as permitted herein (the "First Renewal Term") and the term of this Agreement shall be extended beyond the First Renewal Term until (i) 11:59 p.m. on the date that is the Day before the third (3rd) anniversary of the Day following the end of the First Renewal Term, or (ii) the date this Agreement is terminated pursuant to ARTICLE XI or otherwise as permitted herein (the "Second Renewal Term"); provided, however, either Party may give written notice of its decision not to extend this Agreement. Such notice of a decision not to extend the term of this Agreement must be delivered, in writing, to the other Party at least one (1) year prior to the scheduled expiration of the Initial Term in the case of a decision by either Party not to extend the Agreement for the First Renewal Term and at least one (1) year prior to the scheduled expiration of the First Renewal Term in the case of a decision by either Party not to extend the Agreement for the Second Renewal Term. All other terms and conditions of this Agreement will remain the same during the Renewal Term unless stated otherwise herein or otherwise agreed by the Contractor and the RECEIVER/GSWA in writing in connection with the renewal.

**ARTICLE III
COMPENSATION**

SECTION 3.01. Fees.

- (A) INTERIM OPERATIONS. Commencing with the first invoicing period after the Operation Commencement Date and for each invoicing period thereafter for services covered under INTERIM OPERATIONS, RECEIVER/GSWA shall pay the Contractor an Interim Operating Fee for the services provided by the Contractor under the terms of this Agreement in accordance with the following:

Interim Operating Fee = Disposal Fee + Labor Costs + Material Costs +
Transportation Costs

- (B) OPERATING FEE. The Operating Fee for any invoicing period following the Operation Commencement Date shall be an amount equal to one-twelfth of the annual operating costs \$_____, plus monthly Disposal Fee. The annual operating costs shall be adjusted on each anniversary of the Operation Commencement Date by the Adjustment Factor.

SECTION 3.02. Invoicing of Operating Fee. Invoicing Statements. For each invoicing period the Contractor shall render a statement to the RECEIVER/GSWA by the 10th Day of the following invoicing period, which shall set forth each component of the Operating Fee. Each invoicing statement shall also include, for such invoicing period, (1) all other amounts payable by RECEIVER/GSWA to the Contractor hereunder, (2) all amounts payable by the Contractor to the RECEIVER/GSWA hereunder, and (3) with respect to items (1) and (2) above the balance due to or from RECEIVER/GSWA. The RECEIVER/GSWA shall pay the Operating Fee due to the Contractor within ____ Days of the date of receipt of the proper and complete invoicing statement.

SECTION 3.03. Annual Settlement. Within fifteen (15) Days after the end of each Operating Year, the Contractor shall deliver to the RECEIVER/GSWA an annual settlement statement setting forth the actual aggregate Operating Fee payable with respect to such Operating Year and a reconciliation of such amount with amounts actually paid by the RECEIVER/GSWA pursuant to the invoicing statements with respect to such Operating Year, including all adjustments made pursuant to the Agreement, and any other amounts payable by RECEIVER/GSWA or the Contractor. If any amount is then in dispute, the annual settlement statement shall set forth the Contractor's estimate of such amount and a final reconciliation of such amount shall be made in the invoicing statement for the invoicing period immediately following the resolution of such dispute.

SECTION 3.04. RECEIVER/GSWA Payment Obligation.

- (A) Disputes. If the RECEIVER/GSWA disputes any amount invoiced by the Contractor in any invoice, the RECEIVER/GSWA shall pay that portion of the invoice amount which is not in dispute and shall provide the Contractor with written objection within fifteen (15) Days of the receipt of such invoice indicating the portion of the invoiced amount that is being disputed and providing all reasons then known to the RECEIVER/GSWA for its objection to or disagreement with such amount. If the RECEIVER/GSWA and the Contractor are not able to resolve such dispute through mutual agreement after the RECEIVER/GSWA's objection, the dispute shall be resolved in accordance with SECTIONS 14.11 and 14.12 of this Agreement, as applicable. If any such amount is adjusted in the Contractor's favor, the RECEIVER/GSWA shall pay the amount of such adjustment to the Contractor, with interest thereon at the Overdue Rate from the date such disputed amount was due the Contractor to the date of payment in full of such amount, unless such interest payment and amount is otherwise limited by Applicable Laws. Nothing contained in this subsection shall limit the authority of any authorized officer of the RECEIVER/GSWA or any other governmental agency to raise a further objection to any amount invoiced by the Contractor pursuant to an audit conducted pursuant to Applicable Laws.

SECTION 3.05. Adjustment of Fees.

- (A) Upon each anniversary of the Operation Commencement Date, throughout the Term of the Agreement, the Operating Fee will be adjusted by the Adjustment Factor. The Adjustment Factor shall be a composite of a fixed component without adjustment and one indices, the Employment Cost Index ("ECI"), all published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS").

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

The percentages of the percentage change in the index that shall constitute the basis for the adjustment of the Operating Fee pursuant to this Agreement.

The Adjustment Factor shall be the sum of the Fixed percentage and the percentage change in the value of each of the one index between an anniversary of the Operation Commencement Date and the immediately prior anniversary of the Operation Commencement Date multiplied by the percentage factor applicable to the index.

Since some BLS data are not finalized for several months, the adjusted value of the Adjustment Factor at the end of the Operating Year may be based on preliminary indices. When an adjustment has been based and paid on preliminary indices and BLS data for indices are issued as final, the Contractor shall determine the difference in the payment amount and include that amount in the Operating Fee for the invoicing period. If BLS changes the methodology for its calculation which causes historical data used to calculate the value of the Adjustment Factor for any Operating Year to be restated,

such changes shall only apply to future adjustments and not to adjustments already implemented.

If any index defined herein shall not be determined and published or if any index as it is constituted on the Contract Date is thereafter substantially changed, there shall be substituted for such index another index which is determined and published on a basis substantially similar to the index being replaced as shall be mutually agreed upon by the RECEIVER/GSWA and the Contractor.

Within thirty (30) Days after the later to occur of (a) the anniversary of an Operating Year throughout the Term of Agreement, or (b) the final issuance of all relevant index values for the month or quarter immediately preceding such anniversary, the new Adjustment Factor shall be implemented by Contractor sending to the RECEIVER/GSWA a comparative statement setting out the Adjustment Factor determined through use of the index set forth above and the methodology described above.

On the next invoicing date after the receipt by the RECEIVER/GSWA of the changes in fees, the RECEIVER/GSWA shall pay to the Contractor a lump sum equal to any increase or decrease applicable to that portion of the current Operating Year which has elapsed, and thereafter, the fees charged by the Contractor shall be modified to reflect any change until the next date of adjustment, and a comparative statement is received by the RECEIVER/GSWA.

The Adjustment Factor, as determined and applied each Operating Year, shall be rounded to three (3) decimal places.

**ARTICLE IV
OBLIGATIONS OF CONTRACTOR**

SECTION 4.01. Development Period of Responsibilities. Prior to the Operation Commencement Date, the Contractor shall have performed the following responsibilities (the "Development Period Responsibilities"):

- (i) Obtain the required number, type, and size of equipment to be used at the Household Hazardous Waste Facility;
- (ii) Demonstrate that all equipment and machinery are in good working order;
- (iii) Hire and train the Contractor's employees and train others who will be using the site as required;
- (iv) Obtain all required permits;
- (v) Provide report templates that are satisfactory to the RECEIVER/GSWA; and
- (vi) Develop operating procedures and obtain approval of them by the RECEIVER/GSWA.

SECTION 4.02. Conditions Precedent to Operation Commencement Date. It shall be a condition precedent to the Operation Commencement Date that each of the following shall have occurred and that each Party shall use its good faith efforts to satisfy such conditions so the Operation Commencement Date may occur on or before _____ .

(A) Conditions Precedent:

- (i) The Contractor provides evidence to the RECEIVER/GSWA that Contractor is authorized to operate the Household Hazardous Waste Facility under Applicable Laws;
- (ii) The Contractor provides evidence to the RECEIVER/GSWA that all computer systems and related facilities and equipment have been properly installed and all of the foregoing have been tested and are working properly;
- (iii) The Contractor has certified in writing to the RECEIVER/GSWA that it is prepared to assume operation of the Household Hazardous Waste Facility;
- (iv) The Contractor has delivered to the RECEIVER/GSWA a properly executed Guaranty Agreement and Performance Bond or Letter

of Credit no later than fifteen (15) days after the Contract Date or such other time period agreed to in writing by the Receiver/GSWA;

- (v) The Contractor has demonstrated, to the RECEIVER/GSWA's sole satisfaction, that the Contractor has not experienced a change in the financial position represented in its Proposal that may hinder its performance hereunder;
 - (vi) The Contractor has provided evidence that it is not involved in any action, lawsuit, or legal action that may prevent or hinder their performance under this Agreement;
 - (vii) The Contractor has submitted evidence to the RECEIVER/GSWA that it has met all insurance requirements contained herein and has submitted to RECEIVER/GSWA certificate(s) of insurance evidencing the same no later than fifteen (15) Days after the Contract Date or such other time period agreed to in writing by the Receiver/GSWA;
 - (viii) The Contractor has submitted evidence to the RECEIVER/GSWA that all financial instrument(s) necessary for its performance under this Agreement have been secured no later than fifteen (15) Days after the Contract Date or such other time period agreed to in writing by the Receiver/GSWA; and
 - (ix) The Contractor's evidence of insurance is approved by the RECEIVER/GSWA and the Attorney General of Guam.
- (B) Certification of Operation Commencement Date. The Parties shall give each other prompt notice when all of the conditions precedent to the Operation Commencement Date has been achieved. Such notice shall constitute certification of Operation Commencement Date.
- (C) Liquidated Damages. Failure by the Contractor to accomplish all conditions precedent contained in SECTION 5.02(A) by the date contained in said subsection shall subject Contractor to liquidated damages as provided for in ARTICLE XIII.

SECTION 4.03. Obligation to accept Household Hazardous Waste. Commencing on the Operation Commencement Date the Contractor shall accept during Days and Receiving Time stated in this Agreement all Household Hazardous Waste delivered to the Household Hazardous Waste Facility. The Contractor will not receive or accept material from Small Quantity Generators or Large Quantity Generators or from governmental agencies without the written consent of GSWA and without all proper local and federal necessary permits. The RECEIVER/GSWA shall not warrant or guarantee the quantity or composition of waste to

be delivered and nothing contained herein shall be construed to guarantee or warrant such quantities or composition.

SECTION 4.04. Operating Requirements.

- (A) General Requirements. The Contractor shall operate and maintain the Household Hazardous Waste Facility in compliance with all permits and Applicable Laws. The Contractor shall be solely responsible for all costs of any and all operational permits,, insurance, materials, labor, damages, fines and penalties (whether assessed against the RECEIVER/GSWA or the Contractor) associated with the Household Hazardous Waste Facility except for those costs of utilities and other costs which are direct billed to and paid by the RECEIVER/GSWA or agreed by the Parties to be treated as a Pass-Through Cost. Contractor shall be responsible for the daily operation and maintenance of the Household Hazardous Waste Facility and all associated property over the Term of the Agreement.
- (B) Obligations Regarding Recyclables Diversion. The removal of Recyclables is incidental to the performance of the Waste Screening protocol used during the daily operation of the HHW Facility. The Contractor shall be responsible for the diversion efforts for Recyclables over the Term of Agreement.
- (C) Obligations Regarding Site Maintenance. Contractor shall be responsible for the daily operation and maintenance of the Household Hazardous Waste Facility over the Term of Agreement which includes, but is not limited to, the following minimum site maintenance activities:
- (i) Controlling and picking up litter on the property;
 - (ii) Maintaining all landscaping and vegetative screening controls;
 - (iii) Providing housekeeping, repair, and maintenance, to include, but not limited to, painting and water pressure washing in all building and work areas; and
 - (iv) Making any other repairs, as needed, to any areas in the site.
- (D) Household Hazardous Waste Facility Costs. The Contractor shall acquire at its own cost and expense, all machinery, equipment, rolling stock, material, supplies, services, labor, telephone, furniture, electronic equipment,

computers, software, databases and other equipment necessary or appropriate for performing Contractor's services under this Agreement.

- (E) Contractor's Managers. The Contractor shall identify a full-time facility manager who shall hold the appropriate licenses and certifications from all appropriate Governmental Entities. The facility manager shall be trained and experienced in the management of a Household Hazardous Waste facility. The facility manager's sole employment responsibility shall be managing the Household Hazardous Waste Facility.

- (F) Deliveries of Excluded Waste. The Contractor shall reject all material delivered to the Household Hazardous Waste Facility which is not HHW as defined in this Agreement and any required Permits and Applicable Laws and waste that is above the maximum amount allowed to be brought into the Household Hazardous Waste Facility per Appendix 3 (forthcoming). The Contractor shall provide information to the person bringing non-HHW waste to the HHW Facility about appropriate disposal of such non-HHW waste.

- (G) Customer Service. The Contractor shall respond in a timely and effective manner to all complaints received by the RECEIVER/GSWA regarding the operation of the Household Hazardous Facility, including complaints of dust, litter, odor, noise, and any other matter related to the operation of the HHW Facility. The Contractor shall investigate the basis of such complaint and promptly respond promptly to GSWA officials. The Contractor shall provide GSWA officials a twenty-four (24) hours (7 Days a week) emergency number and contact person to respond to any emergencies relating to or affecting the Household Hazardous Waste Facility.

- (H) Contractor shall be solely responsible for maintaining the Household Hazardous Waste Facility in a sanitary condition in compliance with all regulatory requirements, and shall correct any public nuisance created as a result of its operations. Contractor's nuisance control requirements include the specific items listed below.
 - (i) Noise Control. Contractor shall comply with all provisions of any Permits and Applicable Laws relating to noise applying to the Household Hazardous Waste Facility.

- (ii) Contractor shall control all Vectors, including insects, rodents, birds, feral pigs and dogs, flies, mosquitoes, and other disease carrying or breeding organisms at the Household Hazardous Waste Facility.
- (iii) Contractor shall maintain, repair, or replace all fire alarm and fire suppression equipment, including, but not limited to, existing water lines and/or water storage systems at the Household Hazardous Waste Facility as may be required for fire fighting and test such equipment regularly as recommended by the manufacturer, or as necessary and as required by Applicable Laws to insure proper operation.
- (iv) Contractor shall maintain all existing and future signs in a clean and readable condition, and repair or replace all damaged information, regulatory, and warning road signs and markers. Contractor shall provide any and all additional signs that may be required. Any such additional signs shall be consistent with existing signage formats and subject to the approval of the RECEIVER/GSWA.
- (v) Contractor shall provide for the service, maintenance, and replacement of internal water supply.
- (vi) Contractor agrees to carefully use and maintain the Household Hazardous Waste Facility during the Term of Agreement at the sole expense of Contractor.
 - (1.) Contractor shall perform all necessary preventive and ongoing maintenance functions for the Household Hazardous Waste Facility and fixed equipment in order to keep them in good working order, including, but not limited to, conforming with warranties and guidelines for the use of equipment, and shall comply with all necessary and required inspections and reporting as required under Applicable Laws and regulations or manufacturer's recommendations.
 - (2.) Contractor shall repair or replace (with items of equal quality and/or capacity), as necessary, all or portions of the fixed equipment during the Term of Agreement at the sole

expense of Contractor, including, but not limited to air conditioning (HVAC) systems, electrical systems, plumbing systems, alarm systems, fire and explosion suppression systems, and monitoring systems. Any replacement facilities or fixed equipment shall be acquired in the name of, and shall be the property of, and belong to, the GSWA without payment of any sum to Contractor by RECEIVER/GSWA.

- (3.) Contractor shall be responsible for any damage attributed to its operations caused to the Household Hazardous Waste Facility or fixed equipment. Contractor shall repair or replace GSWA property and Contractor's own property promptly when the damage or loss of such property impairs or impedes the Contractor's ability to operate the HHW Facility or any of Contractor's equipment required for Contractor's services under this Agreement. Other repairs or replacement shall be done in a timely manner as mutually agreed between RECEIVER/GSWA and the Contractor. Contractor shall repair or replace GSWA property, at its sole expense, from the time Contractor or its representative is given notice by the RECEIVER/GSWA to do so. After that time, the RECEIVER/GSWA may use private or RECEIVER/GSWA personnel to repair or replace said RECEIVER/GSWA property, which shall be done at the sole expense of Contractor.

SECTION 4.05. Maintenance of Equipment and Vehicles.

- (A) The Contractor shall maintain, at Contractor's expense, all of its properties, facilities and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition and to local and federal mandate. Equipment selected for use for the collection and transportation of Household Hazardous Waste shall meet or exceed federal emission standards or other standards set by the applicable Governmental Entity. All rolling stock used to carry out this Agreement shall be in good working order on the Operation Commencement Date and maintained in good working order throughout the Term of Agreement.
- (B) Contractor shall inspect each piece of equipment used to carry out the terms of this Agreement on a daily basis to ensure that all equipment is operating properly. Equipment that is not operating properly shall be taken out of service until it is repaired and does operate properly; and Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all equipment maintenance. The records shall be organized

according to date and mileage, as applicable. The Contractor shall make such records available to the RECEIVER/GSWA, upon request, to the extent necessary to ensure compliance with manufacturer's recommended scheduled service.

- (C) Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date of repair, engine or operating hours, nature of repair and the signature of a maintenance supervisor indicating that the repair has been properly performed.
- (D) Sufficient backup equipment shall be available at all times to prevent a delay in carrying out the terms of this Agreement.
- (E) Equipment Storage. Contractor shall maintain the equipment storage and maintenance area in a neat and orderly manner. Contractor shall minimize fluid spillage to the ground from storage containers, maintenance activities and other activities involving fluids. Contractor shall promptly clean up or remediate any fluid spillage in conformance with all Applicable Laws, regulations or Permits.

SECTION 4.06. Personnel Standards. The following standards for Contractor's employees working at the Household Hazardous Waste Facility and the Interim HHW Facility and/or providing other HHW collection and transport services as required in the Agreement shall apply:

- (A) The Contractor shall furnish such qualified drivers, technicians, supervisory, clerical and other personnel as may be necessary to provide the services required to fulfill the terms of this Agreement. All services provided for the Household Hazardous Waste collections shall be done in a safe, economical and efficient manner.
- (B) The Contractor shall provide applicable and necessary operational and health and safety training for all of its employees who work at the Household Hazardous Waste Facility and the Interim HHW Facility or otherwise handle or transport HHW under the Agreement. Documents showing training for all employees shall be submitted to the RECEIVER/GSWA prior to that employee beginning work at the Household Hazardous Waste Facility. All employees shall be suitably trained and qualified. There shall be at least one employee on-site at the HHW Facility and the Interim HHW Facility during all Receiving Time trained in first aid and CPR, and possessing a current 40-hour OSHA certificate in Hazardous Waste operations and emergency response training course. This training must remain current with annual update for the OSHA course, and biannual update for the first aid and CPR courses.

- (C) Contractor shall conduct, at its own expense, a minimum of once monthly training meetings for all employees. The purpose of these training meetings is to continually improve the training of employees related to Agreement. Contractor shall submit to the RECEIVER/GSWA an annual schedule of safety training at least fifteen (15) Days prior to the start of each Operating Year, and shall submit as part of its quarterly report, documentation of the completed monthly training within fifteen (15) Days of the end of each calendar quarter. The quarterly report shall include a brief description of the meeting topics and signatures of all employees attending. The RECEIVER/GSWA may attend and monitor any or all training meetings. Records for all site personnel shall be available in the operational record as documentation for audit or regulatory inspection purposes.

- (D) The Contractor shall not, nor shall it permit its employees to, demand or solicit, directly or indirectly, any additional compensation or gratuity from any person, business or other organization for services provided under the Agreement. The Contractor shall ensure that all employees present a neat appearance and conduct themselves in a courteous manner. The Contractor shall regularly train its employees in customer courtesy, and shall prohibit the use of loud or profane language. In the event that any Contractor employee fails to conduct duties in a courteous and efficient manner, fails to conduct operations in a proper manner, or permits or causes any Violation of the Agreement, Contractor agrees to take appropriate disciplinary action which shall include suspension or termination of employment of such person from work related to this Agreement, and Contractor shall replace such person, if terminated, within a reasonable time, not to exceed fifteen (15) Days, with a competent, trained employee.

- (E) The Contractor shall provide employees performing field operations with a radio or phone during the Receiving Time to handle calls and complaints from the RECEIVER/GSWA, or to follow up on problems and needs associated with Contractor's services under the Agreement or to inspect Contractor's operations.

- (F) Contractor shall provide a list of current employees to the RECEIVER/GSWA and provide an updated list to the RECEIVER/GSWA within ten (10) Days of any employee changes.

- (G) Contractor shall maintain policies and procedures that require and enforce a drug-free workplace.
- (H) Any of Contractor's employees performing duties that require communication with RECEIVER/GSWA personnel or the public shall be able to communicate in English.
- (I) It is expressly understood and agreed that RECEIVER/GSWA has entered into this Agreement in reliance upon Contractor's continuous supervision of, and responsibility for, its employees, and at no time shall Contractor rely upon supervision or performance by any other party.
- (J) Smoking in the Household Hazardous Waste Facility and Interim HHW Facility shall be prohibited.

SECTION 4.07. Weights and Measures. The Contractor shall provide to the RECEIVER/GSWA weights and volumes for all materials received as per Appendix X (forthcoming). Such weights and volumes shall be provided to the RECEIVER/GSWA on a monthly basis. The Contractor shall also track the number of customers/Vehicles using the Household Hazardous Waste Facility and shall provide that information to the RECEIVER/GSWA on a monthly basis.

SECTION 4.08. Hours of Operation – Receiving Time. The Receiving Time for the Household Hazardous Waste Facility shall be from (9 A.M. to 5 P.M., Thursday through Monday.

SECTION 4.09. Reporting Requirements. The Contractor shall prepare and submit to the RECEIVER/GSWA accurate monthly, quarterly, and annual reports, which detail certain activity related to services under this Agreement. These reports shall be in an electronic and hard-copy format as approved by the RECEIVER/GSWA, and include information as set forth below:

- (A) Monthly and quarterly reports shall include the following current data:
 - (i) Information required under SECTION 5.07.
 - (ii) Total Fee due the Contractor under this Agreement;

- (iv) A report summarizing any and all repairs;
- (v) Alleged or actual Violations of Applicable Laws;
- (vi) Disposal locations for materials collected;
- (vii) Outages or downtime at the Household Hazardous Waste Facility or in the Contractor's collection/transport operations or affecting the operations and/or preventing receipt of acceptable waste;
- (viii) Weight and volume of material diverted through recycling or reusing; and
- (x) Such other information regarding the operations of the Household Hazardous Waste Facility as the RECEIVER/GSWA may reasonably require from time to time.

Annual reports shall contain all the above data for each Operating Year, following a similar format as the monthly and quarterly reports.

SECTION 4.11. Records. The Contractor shall maintain records of all operations to fulfill the terms of this Agreement for three years after the expiration or termination of the Agreement, whichever occurs first. These records shall be subject to audit by the Receiver/GSWA or its authorized representative.

SECTION 4.12. Restoration. At the expiration or termination of the Agreement from any cause, all buildings and other permanent improvements at the Household Hazardous Waste Facility shall be in good condition and working order, ordinary wear and tear excepted. Title to all permanent improvements or fixtures in the Household Hazardous Waste Facility constructed by the Contractor during the Term of this Agreement shall vest in the GSWA upon termination or expiration of this Agreement, without the necessity of any compensation by the RECEIVER/GSWA to the Contractor.

SECTION 4.13. Removal of Personal Property. Within reasonable time after the expiration or termination of this Agreement from any cause, the Contractor shall remove any and all personal property placed thereon by the Contractor. Any property not so removed shall, at the RECEIVER/GSWA's option, become the property of the GSWA or the RECEIVER/GSWA may cause the property to be removed at the Contractor's expense.

SECTION 4.14. Community Information. Throughout the Term, the Contractor will provide knowledgeable speakers to make presentations to and attend community outreach programs for civic and neighborhood groups when requested. Contractor will also provide a host/spokesperson for prearranged tours of the Household Hazardous Waste Facility at reasonable times for schools and other groups, and designate a spokesperson, and provide information for reasonable news media requests about the Household Hazardous Waste Facility and the Contractor. The Contractor will implement its education plan (Appendix X forthcoming). The Contractor will coordinate such public education and community

information assistance and cooperate with the RECEIVER/GSWA's designated public information personnel as necessary to ensure a consistent, accurate message in the communication to Guam's residents, the media, and other parties-at-interest.

SECTION 4.15. Use of Subcontractors and Consultants by Contractor. The Contractor shall not subcontract, or enter into any consulting or subcontracting agreements pertaining to Contractor's obligations under the Agreement, without obtaining approval from the RECEIVER/GSWA. In no event will any subcontracting by the Contractor relieve the Contractor from any of the obligations or conditions of the Agreement on its part to be performed. For purposes of determining the Contractor's liability and responsibility to the RECEIVER/GSWA under this Agreement, the acts or omissions of the Contractor's subcontractors or consultants and any person directly or indirectly acting for them will be deemed to be the acts or omissions of the Contractor, and the Contractor will remain liable and responsible to the RECEIVER/GSWA as if no subcontract or consulting contract had been made. The following information must be provided to the RECEIVER/GSWA prior to the beginning of any work by a subcontractor or consultant: (i) name; (ii) address; (iii) point of contact; (iv) phone number; (v) scope of work; (vi) and certificate of insurance.

SECTION 4.16. Other Performance Standards. Contractor shall perform all work where no specific performance standard otherwise provided for herein or by Applicable Laws or regulation, to a generally accepted standard or performance expected of a competent and experienced individual who performs work of such nature for his or her livelihood, including maintaining an agreeable professional relationship with other contractors who may be working at the HHW Facility site. In addition to any other of its rights, the RECEIVER/GSWA may require that the Contractor, at Contractor's sole cost and expense, review and correct any errors or deficiency in any work that does not meet the above specified standard.

Contractor shall perform Household Hazardous Waste services in accordance with generally accepted standards of the profession. In addition to any other of its rights, the RECEIVER/GSWA may require that the Contractor, at Contractor's sole cost and expense, review and correct any errors of deficiency of the Contractor's activities and/or reports.

In the event that Contractor utilizes subcontractors in performing any work required to be performed by Contractor herein, Contractor shall require subcontractors to meet the performance standards specified in the Agreement. Contractor shall be responsible for such work as though Contractor performed such work without the use of a subcontractor.

Contractor and subcontractors to Contractor shall be appropriately licensed to perform all work in accordance with Applicable Laws.

Contractor shall have primary responsibility to establish and implement the procedures governing access to the HHW Facility and the use thereof by RECEIVER/GSWA and the public, and the operation thereof by the Contractor. Notwithstanding the foregoing, no such procedure shall conflict with: (i) any Applicable Laws or regulations; (ii) any provision of the Agreement; or (iii) any established procedure of the RECEIVER/GSWA. Further, the RECEIVER/GSWA retains the right to review, amend and disapprove of any such procedure.

In performing its duties herein, Contractor shall be required, pursuant to direction provided by the RECEIVER/GSWA, to coordinate such performance, as applicable, with the performance of the duties required of the contractors and consultants under each of the other contracts the RECEIVER/GSWA has for certain services and/or facilities at or associated with the GSWA activities.

SECTION 4.17. Other Obligations. In addition to the requirements listed above, Contractor shall be responsible for any and all other activities deemed necessary for proper operation and maintenance of the Hazardous Waste collection, including but not necessarily limited to the following:

- (A) Interim Collections. Contractor shall conduct regular Household Hazardous Waste collections between the date the Agreement is initiated and the Operation Commencement date of the permanent Household Hazardous Waste Facility. The Contractor shall follow the schedule and activities (forthcoming) as detailed in Appendix XXX.
- (B) Transfer Station Collection. Contractor is responsible for collecting specific type of Household Hazardous Waste received at the Residential Transfer Stations per Appendix XXX (forthcoming).
- (C) Regulatory Inspections. Contractor shall provide access to the Household Hazardous Waste Facility by authorized Governmental Entities and insurers or their agents for purpose of conducting required inspections. Contractor shall submit copies of all inspection forms and other information provided by Governmental Entities or insurers or their agents related to inspections of the Household Hazardous Waste Facility to the RECEIVER/GSWA within forty-eight (48) hours of the inspection and as part of the monthly report. Contractor shall take any and all actions necessary to rectify any noted deficiencies, areas of concern or Violations related to its operations under the Agreement. Contractor shall submit to the RECEIVER/GSWA within seven (7) Days of an inspection, documentation of actions taken to rectify any deficiencies, areas of concern or Violations or a specific plan and schedule to do so. Contractor shall be responsible for payments of any fines levied.
- (D) Fires. Should any fires occur at the Household Hazardous Waste Facility at any time, Contractor shall immediately report the fire to, and cooperate with, the fire department and shall respond immediately and use all available methods to control and extinguish such fires. Contractor shall notify the RECEIVER/GSWA of the event as soon as practical.
- (E) Final Cleanup. Upon expiration or termination of the Agreement, Contractor shall remove, at Contractor's expense, from the Household Hazardous Waste Facility any and all material and property that is the Contractor's. No separate payment shall be allowed for the above work.
- (F) Utilities. GSWA will provide water and electricity to the HHW facility. Any additional utilities or services shall be the responsibility of the Contractor.

- (F) Communication. Contractor shall provide telephone at its own expense at the Household Hazardous Waste Facility. RECEIVER/GSWA shall have the right to use on-site communication facilities without cost, as may be necessary for its official purposes.
- (G) Permits. Contractor shall be responsible for assisting the RECEIVER/GSWA by providing all information/documentation required to obtain, secure, and keep in full force and effect, various Permits applicable to the Household Hazardous Waste Facility and Interim HHW Facility, as applicable.

SECTION 4.18. Traffic Control. Contractor shall do his best to assist customers using the HHW facility to safely drive in and out of the facility's receiving area

ARTICLE V
USE AND OPERATION OF THE PREMISES

SECTION 5.01. Operation of Household Hazardous Waste Facility. At all times after the Operation Commencement Date, the Contractor shall continuously operate the Household Hazardous Waste Facility. The Contractor shall operate the Household Hazardous Waste Facility in compliance with all Permits, and any future modifications thereof, and all other Applicable Laws. The Contractor agrees to operate the Household Hazardous Waste Facility in a manner comparable to other publicly- and privately-operated Household Hazardous Waste facilities in the United States. Good customer service is mandatory.

SECTION 5.02. Certain Contractor Obligations. In addition to any other obligations set forth herein, the Contractor shall furnish all labor, supervision, insurance, equipment, materials, supplies and all other items necessary to perform the services required in the Agreement.

**ARTICLE VI
INSURANCE AND INDEMNITY**

SECTION 6.01. Insurance. During the Term of this Agreement, the Contractor shall maintain, at its own expense, the following policies of insurance:

Comprehensive General Liability

\$2,000,000 per occurrence; \$2,000,000 products/completed operations; \$10,000,000 general aggregate.

Excess General Liability

"Follow form" coverage with limits of \$10,000,000, to include automobile liability and general liability.

Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage should be provided as "Symbol 1, any auto."

Workers' Compensation

Statutory coverage. Employer's Liability limits of \$1,000,000 each accident, \$1,000,000 disease each employee, \$1,000,000 policy limit.

Property Coverage

Contractor's insurance is to be primary and coverage is to be written on a replacement cost, all risk basis for the buildings and the contents of the buildings and any structures, equipment, and materials owned by the Government of Guam that the Agreement places in the care, custody, or control of the Contractor. Limits are to be sufficient to provide full coverage for replacement cost of all insured property. Limits will be reviewed annually by the Receiver/GSWA to allow for increased costs of repair and replacement.

Business Interruption

Coverage is to be a minimum of \$1,000,000 for the total or partial suspension of, or interruption in, the operation of the Household Hazardous Waste Facility, caused by loss or damage to or destruction as a result of the perils insured against.

Pollution Liability/Environmental Impairment

Coverage is to be a minimum of \$2,000,000 per occurrence. Coverage shall be on a "per project" basis unless specified otherwise. Policy to cover general environmental pollution liability, not limited to sudden accidental discharge and to include long-term environmental impact, applicable to bodily injury (including death) and property damage including loss of use of property that has not been physically injured or destroyed; clean up costs; and defense and settlement of all claims. Coverage shall apply to sudden and accidental and non-sudden pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage.

If the policy is a claims made form, the retro date is to be the same as or prior to the Agreement effective date. Claims made policies must be maintained for at least 5 years after the completion of the service or the warranty date, whichever is later.

The policy shall contain an endorsement fully waiving any contractual liability exclusion contained in the policy without limitation or restriction. The policy may not contain a limitation of any kind that would limit any recovery thereunder to the amount of the Agreement or any component thereof. If the policy contains an exclusion for non-owned disposal sites, the Household Hazardous Waste Facility shall be removed from any such exclusion. The policy shall not limit or restrict in any manner coverage for the warranties, guarantees, and performance standards contained in the Agreement.

Deductibles/SIR's

Self-insured retentions and deductibles affecting required insurance must be acceptable to the Receiver/GSWA. The Contractor shall identify any self-insurance coverage and include:

- Names and addresses of any third party plan administrators;
- A written reserve policy that outlines reserve targets; and
- A listing of the excess coverage, specifying the insurance company, the policy or contract number and the limits of liability and the retention amount.

Annual reports containing the elements specified above must be submitted to the Receiver/GSWA.

Coverages obtained through insurance pools or risk retention groups must also be acceptable to the Receiver/GSWA.

Copies

The Receiver/GSWA is entitled, upon request and without expense, to receive certified copies of all required insurance policies and/or endorsements and to make reasonable requests for coverage modifications.

Other Insurance Provisions

The Receiver/GSWA and the Government of Guam, its officials, and employees shall be named as an additional insured on the Commercial General Liability, Excess General Liability, Environmental Impairment Liability and Automobile Liability Insurance policies. The GSWA and the Government of Guam shall be named as loss payee on any property loss insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a Person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) Days' prior written notice has been provided to the Receiver/GSWA. If the policy is cancelled for non-payment of premium, only ten (10) Days' notice is required.

Insurance is to be placed with insurers with a Best rating of no less than "A-". The company must also be duly authorized to transact business in the Territory of Guam.

Workers' Compensation and Employers' Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Receiver/GSWA and the Government of Guam, its officials and employees for losses arising from the activities under the Agreement.

Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to:

Office of the Attorney General
287 West O'Brien Drive
Hagatna, Guam 96910

and

Gershman, Brickner and Bratton, Inc.
Receiver/GSWA for the Solid Waste Management Division
8550 Arlington Boulevard
Suite 304
Fairfax, Virginia 22031

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Receiver/GSWA to declare the Agreement void if the Contractor does not remedy the breach within ten (10) Days after receipt of notice of breach from the Receiver/GSWA.

SECTION 6.02. Workers' Compensation Insurance Coverage. In addition to the requirements contained in SECTION 7.01, the following provisions relate to the Contractor's Workers Compensation Coverage:

- (A) Certificate of coverage ("certificate") –A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the Person's or entity's employees providing services on a project, for the duration of the project.
- (B) For this Section, "Duration of the project" includes the time from the Contract Date to termination or expiration of the Agreement.
- (C) In this Section, "Persons providing services on the project" includes all persons or entities performing all or part of the services that contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that Person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-Contractors, employees of any such entity, or employees of any entity that furnishes Persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation or other service related to a project. "Services" does not include activities unrelated to the project, such as

food/beverage vendors, office supply deliveries and delivery of portable toilets.

- (D) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Guam Law for all employees of the Contractor providing services on the project, for the duration of the project.
- (E) The Contractor must provide a certificate of coverage to the RECEIVER/GSWA.
- (F) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the RECEIVER/GSWA showing that coverage has been extended.
- (G) The Contractor shall obtain from each Person providing services on a project, and provide to the RECEIVER/GSWA:
 - (1) a certificate of coverage, prior to that Person beginning work on the project, so the RECEIVER/GSWA will have on file certificates of coverage showing coverage for all Persons providing services on the project; and
 - (2) no later than seven (7) Days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (H) It is the responsibility of the Contractor to obtain these certificates of coverage and provide them in a timely manner. Contractor shall not allow any subcontractor to commence work or operations on activities related to this Agreement under its subcontract until it has obtained insurance that is acceptable to the RECEIVER/GSWA. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- (I) The Contractor shall notify the RECEIVER/GSWA in writing by certified mail or personal delivery, within ten (10) Days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any Person providing services on the project.
- (J) The Contractor shall post on each project site a notice, in the text, form and manner prescribed by , informing all Persons providing services on the project that they are required to be covered, and stating how a Person may verify coverage and report lack of coverage.

- (K) The Contractor shall contractually require each Person with whom it contracts to provide services on a project, to:
- (i) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Guam Law for all of its employees providing services on the project, for the duration of the project;
 - (ii) provide to the Contractor, prior to the Person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the Person providing services on the project, for the duration of the project;
 - (iii) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (iv) obtain from each other Person with whom it contracts, and provide to the Contractor a certificate of coverage, prior to the other Person beginning work on the project; and a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate ends during the duration of the project;
 - (v) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (vi) notify the Governmental Entity in writing by certified mail or personal delivery, within ten (10) Days after the Person knew or should have known, of any change that materially affects the provision of coverage of any Person providing services on the project; and
 - (vii) contractually require each person with whom it contracts, to perform as required above, with the certificates of coverage to be provided to the Person for whom they are providing services.
- (L) By signing the Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to the RECEIVER/GSWA that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or

misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

SECTION 6.03. Indemnity.

- (A) **CONTRACTOR ASSUMES ALL RISK OF LOSS OR INJURY TO PROPERTY OR PERSONS ARISING FROM ANY OF ITS OPERATIONS UNDER THIS AGREEMENT, AND AGREES TO INDEMNIFY AND HOLD HARMLESS RECEIVER/GSWA AND THE GOVERNMENT OF GUAM FROM ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS OR EXPENSES ARISING FROM ANY SUCH LOSS OR INJURY, SAVE AND EXCEPT FOR LOSS OR INJURY DUE TO RECEIVER/GSWA'S SOLE NEGLIGENCE OR TO THE JOINT OR CONCURRENT NEGLIGENCE OF CONTRACTOR AND RECEIVER/GSWA, THEN RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF GUAM, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO RECEIVER/GSWA OR CONTRACTOR UNDER GUAM LAW. IN SUCH AN EVENT, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE RECEIVER/GSWA FOR CONTRACTOR'S APPORTIONED LIABILITY.**
- (B) Indemnity from Environmental Assessments or Claims. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE RECEIVER/GSWA AND THE GOVERNMENT OF GUAM FROM AND AGAINST ANY AND ALL CLAIMS (1) BROUGHT BY ANY PERSONS AND THAT ARE CONNECTED WITH:**
- (a.) **THE HOUSEHOLD HAZARDOUS WASTE FACILITY'S OPERATION OR OTHER SOLID WASTE FACILITY OWNED, LEASED OR UTILIZED BY THE CONTRACTOR WHICH IS UTILIZED IN THE TRANSPORTATION OR STORAGE OF HOUSEHOLD HAZARDOUS WASTE WHICH IS ACCEPTED BY THE CONTRACTOR OF THE HOUSEHOLD HAZARDOUS WASTE FACILITY DURING THE TERM OF THIS AGREEMENT; OR**
- (b.) **ANY CLEANUP COSTS AT THE HOUSEHOLD HAZARDOUS WASTE FACILITY OR SUCH OTHER SOLID WASTE FACILITY; AND THAT RESULTED FROM THE TRANSPORTATION OR STORAGE OF HOUSEHOLD HAZARDOUS WASTE WHICH IS OR HAS BEEN ACCEPTED BY THE CONTRACTOR AT THE HOUSEHOLD HAZARDOUS WASTE FACILITY; (2) ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION AT OR RESULTING DIRECTLY FROM THE HOUSEHOLD HAZARDOUS WASTE FACILITY, WHETHER SUCH CONTAMINATION OR ALLEGED CONTAMINATION IS AIR, SOIL, GROUND**

WATER OR SURFACE WATER CONTAMINATION; AND (3) FOR CLAIMS, LIABILITIES, SUITS, DAMAGES, EXPENSES AND FINES ARISING OUT OF OR RESULTING FROM ANY SUDDEN OR GRADUAL OR ANY OTHER RELEASE, DISCHARGE, SPILL, CONTAMINATION OR POLLUTION BY OR FROM HAZARDOUS WASTES OR SUBSTANCES CAUSED BY CONTRACTOR, ITS contractors, SUBCONTRACTORS, AGENTS, OFFICERS, INVITEES AND REPRESENTATIVES, EXISTING, CREATED OR OCCURRING ON OR UNDER THE PREMISES DURING THE TERM OF THIS AGREEMENT.

- (C) Application to Surrounding Property. **THE INDEMNITY OF SUBSECTION (B) EXTENDS TO CLAIMS AND ASSESSMENTS RELATING NOT ONLY TO THE HOUSEHOLD HAZARDOUS WASTE FACILITY BUT ALSO TO CLAIMS OR ASSESSMENTS ARISING OUT OF THE SURROUNDING AREA. THE PURPOSE OF THIS PARAGRAPH IS TO MAKE THE CONTRACTOR RESPONSIBLE FOR ALL CLAIMS OR ASSESSMENTS RELATING TO THE HOUSEHOLD HAZARDOUS WASTE FACILITY, OR OTHER SOLID WASTE FACILITIES WHICH ARE USED BY THE CONTRACTOR IN ORDER TO PERFORM ITS OBLIGATIONS RELATING TO THIS AGREEMENT.**

- (D) **THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

**ARTICLE VII
SECURITY**

SECTION 7.01. Letter of Credit or Performance Bond.

- (A) Terms and Purpose. The Contractor shall within fifteen (15) Days following the Contract Date provide to the Receiver/GSWA and maintain in force for the Term of the Agreement an irrevocable, direct pay Letter or Letters of Credit or a Performance Bond in the amount of one year's worth of fees (100) in substantially the form as shown in the Agreement as financial security for its true and faithful performance of the Agreement. The Letter of Credit or Performance Bond shall provide that the Receiver/GSWA, on behalf of the Government of Guam, may draw upon it upon a determination of an Contractor default under the Agreement. The Receiver/GSWA, on behalf of the Government of Guam, shall be entitled to draw upon the Letter of Credit/Performance Bond to provide for its damages (including Liquidated Damages) and other losses, costs or expenses resulting from a default under the Agreement. Failure to replace the Letter of Credit/Performance Bond with another Letter of Credit or Letters of Credit/Performance Bond (or provide evidence satisfactory to the Receiver/GSWA of renewability of the existing Letter of Credit or Letters of Credit or Performance Bond) at least ninety (90) Days prior to the expiration of an existing Letter of Credit or Performance Bond shall, among other defaults, constitute a default for which the Receiver/GSWA, on behalf of the Government of Guam, may draw upon that existing Letter of Credit or Letters of credit/Performance Bond. Upon such a draw for non-replacement, the Receiver/GSWA shall place the proceeds of that draw in a separate bank account for the benefit of the Guam Solid Waste Authority of the Government Account. That fund shall constitute a guarantee fund, the amounts in which may be used by the Receiver/GSWA, with the approval of the District Court of Guam, to compensate the Solid Waste Authority of the Government of Guam for any damages (including liquidated damages) and other losses, costs or expenses resulting from any default under the Agreement. The issuing financial institution(s) of the Letter(s) of Credit shall have a credit rating on its long-term debt in one of the three highest categories by a nationally recognized rating agency (e.g. Standard & Poor's rating of AAA, AA, or A).

The Letter(s) of Credit/Performance Bond shall be payable in the Territory of Guam, and shall allow for multiple draws. If the credit rating of the issuing financial institution falls below the required credit rating set forth above, then the Contractor shall obtain a replacement Letter or Letters of Credit/Performance Bond within sixty (60) calendar Days of being notified from any source of the credit rating change. Any successor Letter of Credit/Performance Bond shall be issued for a term of not less than one (1) year, and the Contractor shall provide a new Letter or Letters of Credit/Performance Bond, or evidence satisfactory to the Receiver/GSWA of

the renewability of the current Letter or Letters of Credit/Performance Bond at least ninety (90) Days before the expiration date of the Letter of Credit/Performance Bond then in effect. The Letter of Credit or Letters of Credit/Performance Bond shall not require the Receiver/GSWA or Government of Guam to state or clarify to the issuing financial institution that the Receiver/GSWA has made any demand upon, or taken action against, the Contractor as a condition to draw down on the Letter of Credit/Performance Bond.

The provisions of the Letter of Credit or Letters of Credit/Performance Bond shall not modify any right of the Receiver/GSWA or the Government of Guam of any duty of the Contractor which arises under the provisions of the Agreement.

- (B) Conditions to Drawing. The right of the RECEIVER/GSWA to draw on the Letter of Credit or Performance Bond delivered pursuant to this SECTION 8.01, other than a draw based on a failure to renew, extend or replace the Letter of Credit or Performance Bond or based on a bankruptcy-related event or based on a "Step-In" as authorized by SECTION 11.03(D), shall be conditioned on the RECEIVER/GSWA having determined that the Contractor has breached this Agreement, the RECEIVER/GSWA having given Notice as required by SECTION 11.03(D), and the time for cure having passed. Upon the satisfaction of the conditions set forth in the preceding sentence, the RECEIVER/GSWA shall have the right to draw the amount of damages so assessed. The RECEIVER/GSWA shall be entitled to draw upon the Letter of Credit/Performance Bond to provide for its damages (including liquidated damages assessed pursuant to ARTICLE XIII of this Agreement) and other losses, costs or expenses resulting from a default under the Agreement.
- (C) Effect of Final Determination of Damages. In the event that subsequent to any drawing on the Letter of Credit/Performance Bond it is determined by any court of competent jurisdiction in a final non-appealable decision that such drawing was in excess of the amount of damages determined to be due to the RECEIVER/GSWA by the court, the RECEIVER/GSWA shall pay the amount wrongfully drawn in excess of the amount determined by the court to the Contractor together with interest thereon at the Overdue Rate calculated from the date of the drawing to the date of payment to the Contractor.
- (D) Step-In. In the event of a "Step-In" by the RECEIVER/GSWA in accordance with SECTION 11.03(D), the RECEIVER/GSWA may draw down the Letter of Credit or Performance Bond from time to time in such amount or amounts as it may determine to cover any expenses or losses to the RECEIVER/GSWA due to the "Step-In." However, any amounts drawn against the Letter of Credit or Performance Bond between a Step-In and the time allowed for the Contractor to cure in the normal course of operations shall be limited to those funds reasonably necessary to abate or manage any emergency conditions that may occur.

SECTION 7.02. Cost of Providing Security for Performance. The cost and expense for obtaining and maintaining the security instruments required under this Article as security for the performance of the Contractor's obligations hereunder shall be borne by the Contractor.

**ARTICLE VIII
COVENANTS AND WARRANTIES**

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

- (A) Each Party is duly organized and existing in good standing and each is duly qualified and authorized to enter into and perform the obligations set forth in this Agreement.
- (B) The execution and performance of this Agreement: (1) have been duly authorized by all required corporate or other action of such Party, (2) do not require any consent or approval not otherwise previously obtained, (3) will not violate any judgment, order, law or regulation applicable to such Party or any provisions of such Party's charter, ordinances, bylaws, or resolutions.
- (C) The execution of this Agreement and the performance of all obligations set forth herein do not conflict with, and will not, with the passage of time or the giving of notice, constitute a breach of or event of default under any charter, ordinances (with respect to the RECEIVER/GSWA) or resolutions of the Party, or any contract, indenture, mortgage, bond, instrument or Applicable Laws to which the Party is subject or by which such party is bound. This Agreement has been duly executed and constitutes a legal valid and binding obligation of each Party and is enforceable in accordance with its terms, except to the extent that the enforcement thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of principles of equity.
- (D) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the Party, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Party of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other contract or instrument entered into by the Party in connection with the transactions contemplated hereby.
- (E) Contractor is fully capable, financially and otherwise, to perform its obligations hereunder.

SECTION 8.02. Covenant of Contractor. The Contractor shall promptly notify the RECEIVER/GSWD of any action which is proposed in writing of which it has knowledge or the occurrence of any event of which it becomes aware, or which could reasonably be expected, to lead to the revocation or suspension of any Permits or Government Approvals.

SECTION 8.03. Liens. The Contractor shall operate the Household Hazardous Waste Facility according to prudent business practices in order to avoid the filing of vendor's, mechanic's, laborer's or materialman's statutory or similar lien against the Household Hazardous Waste Facility or any interest of the RECEIVER/GSWA or the Contractor therein by reason of work, labor, services or materials supplied or claimed to have been supplied to the Contractor or anyone holding the Household Hazardous Waste Facility or any part thereof through or under the Contractor (including but not limited to work, labor, services or materials supplied). If any such lien shall at any time be filed, the Contractor shall, within a forty-five Days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law or file a lawsuit in a court of competent jurisdiction seeking a discharge of such a lien. Upon filing the lawsuit to discharge a lien, the Contractor shall deposit into the registry of the court an amount equal to the outstanding lien sought to be discharged. If the Contractor shall fail to cause such lien to be discharged or deposited the appropriate amount in the registry of the court with competent jurisdiction within the period aforesaid, then, in addition to any other right or remedy of the RECEIVER/GSWA, the RECEIVER/GSWA may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event the RECEIVER/GSWA shall be entitled, if the RECEIVER/GSWA so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment for and in favor of the lienor with interest, cost and allowances. Nothing contained in this Agreement shall be deemed or construed in any way as constituting (i) the consent of the RECEIVER/GSWA to the filing of any such lien on the RECEIVER/GSWA's interest in the Household Hazardous Waste Facility or this Agreement or (ii) the consent or request of the RECEIVER/GSWA, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman or the performance of any labor or the furnishing of any materials that would give rise to the filing of such liens against the Household Hazardous Waste Facility. Any amounts paid by the RECEIVER/GSWA pursuant to SECTION 9.03 shall be reimbursed by Contractor to the RECEIVER/GSWA upon demand.

SECTION 8.04. No Warranties. The Contractor agrees that, except as expressly contained in this Agreement, no representations, statement or warranties, express or implied, have been made by or on behalf of RECEIVER/GSWA, in respect to the Household Hazardous Waste Facility, or the laws applicable to this Agreement, or any imposition payable with respect to the Household Hazardous Waste Facility, and that the Contractor has relied on no such representations, statements or warranties and that the RECEIVER/GSWA shall in no event whatsoever be liable by reason of any claimed misrepresentations, misstatements or breach of warranties.

ARTICLE IX
DAMAGE, DESTRUCTION TO THE HOUSEHOLD HAZARDOUS WASTE FACILITY

SECTION 9.01. Damage to or Destruction of all or any portion of the Household Hazardous Waste Facility. In case of damage to or destruction of the Household Hazardous Waste Facility by fire or any other cause, similar or dissimilar, insured or uninsured, that is caused by the Contractor due to the Contractor's negligence, the Contractor shall be responsible for all cost incurred by the GSWA to restore, repair, replace or rebuild the Household Hazardous Waste Facility as nearly as practicable to the value, condition and quality existing immediately prior to such damage or destruction. If insurance proceeds, if any, are less than the cost of any restoration, repairs, replacement or rebuilding by this Agreement, then the Contractor shall pay any deficiency.

SECTION 9.02. No Abatement. Subject to the provisions of SECTION 14.10 of this Agreement, the Contractor's responsibility to perform all other covenants and agreements under this Agreement, shall not be affected by any such damage to or destruction of the Household Hazardous Waste Facility provided such damage or destruction does not totally impair Contractor's operations at the Household Hazardous Waste Facility for a period of more than thirty (30) consecutive Days. However, if Contractor's operations at the Household Hazardous Waste Facility are totally impaired for a period of more than thirty (30) consecutive Days (a) by any such damage to or destruction of the Household Hazardous Waste Facility other than due to Contractor fault, or (b) by reason of Force Majeure as described in SECTION 14.10 of this Agreement, then, beginning on the thirty-first Day of such impairment, Contractor's obligation to perform all other covenants and agreements under this Agreement shall be abated, suspended and excused during the remaining time Contractor's operations at the Household Hazardous Waste Facility are totally impaired. The GSWA may wish to revert to the Interim HHW collection plan in the event of this situation.

ARTICLE X
EVENTS OF DEFAULT REMEDIES

SECTION 10.01. Remedies for Breach. The Parties agree that, except as otherwise provided in SECTION 11.02 and SECTION 11.03 with respect to termination rights, in the event that either Party breaches this Agreement, the other Party may exercise any legal rights it has under this Agreement, under the security instruments and under Applicable Laws to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither Party shall have the right to terminate this Agreement for cause except upon the occurrence of an Event of Default. In the event either Party shall have the right to terminate this Agreement as provided herein, this Agreement may be terminated (except by expiration of the Term of this Agreement) only by a written instrument of termination executed by the appropriate Party and delivered to the non-terminating Party.

SECTION 10.02. Events of Default by the Contractor.

(A) The following shall constitute Events of Default on the part of the Contractor except to the extent caused by the occurrence of RECEIVER/GSWA Fault:

- (1) the failure by the Contractor to timely perform any material obligation under the terms of this Agreement, except the obligations which are described in subsection 11.02(A)(3) hereof, and the continuance of such failure for a period of thirty (30) Days after written notice thereof has been provided by the RECEIVER/GSWA specifying such failure and requesting that such condition be remedied or such longer time as is required to remedy such failure if Contractor promptly initiated and is diligently pursuing reasonable actions to cure such non-performance; or
- (2) the Contractor is in violation of Applicable Laws (other than an Alleged Violation Resolved) which results in the Household Hazardous Waste Facility or Interim HHW Facility, either (i) being a public nuisance, or (ii) causing environmental harm which may adversely affect the health of residents either within or outside the vicinity of the Household Hazardous Waste Facility or Interim Household Hazardous Waste Facility, and such violation is not cured promptly following notice of such violation; or
- (3) failure to pay amounts which are owed by the Contractor to the RECEIVER/GSWA under the terms of this Agreement within ten (10) Days following the receipt of written notice from RECEIVER/GSWA that amounts are due and payable, giving due regard to the provisions of SECTION 11.04 hereof; or
- (4) the Contractor's being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the

benefit of its creditors or consenting to or acquiescing in the appointment of a receiver trustee, or liquidator for a substantial part of its property; (ii) a bankruptcy winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by the Contractor, under the laws of any jurisdiction or against the Contractor, if the Contractor does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) Days of the institution of such proceeding; (iii) any action or answer by the Contractor approving of, consenting to, or acquiescing in, any such proceeding; or (iv) the event of any distress, execution, or attachment upon the property of the Contractor which shall substantially interfere with its performance hereunder; or

- (B) If an Event of Default by the Contractor occurs and is not cured as provided herein, then the RECEIVER/GSWA shall have the right without further notice to terminate this Agreement, and at the RECEIVER/GSWA's option, the RECEIVER/GSWA may proceed against the surety on the Letter of Credit or Performance Bond and any other guaranty provided by the Contractor.
- (C) For the purposes of this SECTION 10.02, the following acts or omissions by the Contractor shall constitute failure to perform material obligations under this Agreement:
 - (1) failing to comply with its obligations under this Agreement relating to keeping the Household Hazardous Waste Facility and Interim Household Hazardous Waste Facility property permitted and operated materially in accordance with Applicable Laws and other Permits or rules and regulations;
 - (2) refusing to accept Household Hazardous Waste meeting the requirements of this Agreement;
 - (3) failing to maintain, or provide the RECEIVER/GSWA with timely evidence of the Letter of Credit and/or Performance Bond in the amounts or form required herein;
 - (4) failing to maintain, or provide the RECEIVER/GSWA with timely evidence of insurance in the amounts or form required herein;
 - (5) failing to indemnify the RECEIVER/GSWA as required herein; or
 - (6) falsifying of (but not unintentional mistakes in) records or reports provided to the RECEIVER/GSWA, GEPA, Territorial or federal governments.
- (D) Notice of Corrective Action. RECEIVER/GSWA shall, as soon as practical, notify the Contractor of any failure on the Contractor's part to abide by the terms and conditions of this Agreement. After receipt of notice from the

RECEIVER/GSWA, the Contractor shall acknowledge receipt of such notice within seven (7) Days and within seven (7) Days shall provide the RECEIVER/GSWA with notice of what corrective action has or shall be taken by the Contractor, within a period of time that is reasonable, in light of the circumstances. Failure to promptly provide acknowledgement of receipt of notice, or notice of planned corrective action as required by this subsection (D) shall constitute an Event of Default.

SECTION 10.03. Remedies of RECEIVER/GSWA.

- (A) The right of termination provided under SECTION 11.02(B) upon an Event of Default by the Contractor is not exclusive. If this Agreement is terminated by the RECEIVER/GSWA for an Event of Default by the Contractor, the RECEIVER/GSWA shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the security instruments and under Applicable Laws. Without limiting the foregoing, upon any termination of the Contractor for an Event of Default, the damages payable by the Contractor to the RECEIVER/GSWA shall include the reasonable costs of (i) making all repairs and replacements to the Household Hazardous Waste Facility, (ii) remediating any public health and safety problems, and (iii) paying all unpaid fines and penalties payable to any Governmental Entity, in each case to the extent such actions are necessitated or costs incurred as a result of the breach of this Agreement by the Contractor.
- (B) In the event that the RECEIVER/GSWA successfully pursues an action to enforce any remedy provided in this ARTICLE XI, the Contractor shall be liable to the RECEIVER/GSWA for payment of all costs and expenses which are incurred by the RECEIVER/GSWA in connection with such action.
- (C) In the Event of Default, the RECEIVER/GSWA shall have the right, in addition to all other rights and remedies under this Agreement, to require the Contractor to cease all or any portion of the Contractor's operations at the Household Hazardous Waste Facility until such time as the default is remedied and the Contractor provides assurances reasonably satisfactory to the RECEIVER/GSWA that the practices that resulted in the default have been modified to prevent recurrences of the default.
- (D) Step-In Provision. In the event the RECEIVER/GSWA determines that a breach of this Agreement has occurred and the nature of the breach in the RECEIVER/GSWA's opinion is such that the public health and safety are endangered, and after Contractor has been given written notice and a reasonable opportunity to correct the deficiency not to exceed a thirty (30)-Day time period except in the event of an emergency condition as determined by the RECEIVER/GSWA, the Contractor shall cooperate completely and immediately with the RECEIVER/GSWA to effect an immediate "Step-In" or takeover by the RECEIVER/GSWA of Contractor's operations, including the

use of any equipment located at the Household Hazardous Waste Facility or employees that work at the Household Hazardous Waste Facility.

Such "Step-In" or takeover shall be effected within not more than twenty-four (24) hours after such finding of breach as determined by the RECEIVER/GSWA. The Contractor shall not be prohibited from disputing any such finding of breach through litigation; provided, however, that such litigation shall not have the effect of delaying, in any way, the immediate takeover of operations by the RECEIVER/GSWA. Neither shall such dispute by the Contractor delay the RECEIVER/GSWA's access to the funds made available by the Letter of Credit or the Performance Bond. However, any amounts drawn against the Letter of Credit or made available under the Performance Bond between a Step-In and the time allowed for the Contractor to cure in the normal course of operations shall be limited to those funds reasonably necessary to abate or manage any emergency conditions that may occur.

These provisions are specifically stipulated and agreed to by both Parties as being reasonable and necessary to the protection of public health and safety, and any legal dispute concerning the finding that a breach has occurred shall be initiated and shall take place only after the emergency "Step-In" or takeover has been completed, and shall not under any circumstances delay the process of the emergency "Step-In" or takeover or the RECEIVER/GSWA's access to performance guaranty funds as needed by the RECEIVER/GSWA to finance said "Step-In" or takeover of operations.

Failure on the part of the Contractor to cooperate fully with the RECEIVER/GSWA to effect a safe and smooth takeover of operations shall itself constitute a breach of this Agreement. The existence of such a breach by the Contractor, whether or not public safety and health is endangered, shall entitle the RECEIVER/GSWA to require the immediate release of all or a portion of the funds secured by the Letter of Credit or Performance Bond upon written request of the RECEIVER/GSWA in the amount or amounts as determined by the RECEIVER/GSWA. Nothing in this Article shall operate to limit the RECEIVER/GSWA's remedies under law, including those rights and remedies contained elsewhere in this Agreement.

A contingent lease agreement for takeover of Contractor's equipment in event of such breach is also required as a pre-condition of the Agreement.

- (E) This Section shall survive the termination of this Agreement.

SECTION 10.04. RECEIVER/GSWA Convenience Termination Election in Certain Circumstances.

- (A) Convenience. The RECEIVER/GSWA shall have the right to terminate this Agreement, in its sole discretion, for convenience and without cause following the Contract Date upon one hundred eighty (180) Days prior written notice to

the Contractor. If the RECEIVER/GSWA exercises its right to terminate the Agreement during the Initial Term pursuant to this subsection, the RECEIVER/GSWA shall pay to the Contractor on the termination date the amount set forth in Appendix 4, as applicable.

- (B) Consideration for Convenience Termination Payment. The right of the RECEIVER/GSWA to terminate this Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Agreement, and the Contractor hereby waives any right it may have under Applicable Laws to assert that the RECEIVER/GSWA owes the Contractor a duty of good faith dealing in the exercise of such right.
- (C) Completion or Continuance by RECEIVER/GSWA. After the date of any termination under Subsection 11.04(A), the RECEIVER/GSWA may (but without any obligation to do so) take any and all actions necessary or desirable to continue the operation services so terminated, including, without limitation, entering into contracts with other contractors, with or without public letting.

SECTION 10.05. Payment Disputes. If a Party disputes any amount that is payable under this Agreement, the Party disputing such amount shall provide written notice to the other Party of such disputed amount, together with sufficient information to enable the other Party to understand the nature of the dispute. Such notice shall be delivered by the Party disputing such amount no later than the date that such amount is due and payable (or, if later, within ten (10) Days after the date on which the disputing Party has information necessary to determine that it has a dispute) and, as applicable, the Party disputing such amount shall make payment of any undisputed amount on the due date thereof. If the amount that is in dispute is ultimately determined to be due and payable, such disputed amount, together with interest thereon (at the Overdue Rate) shall be paid by the Party disputing such amount within three (3) Days of such determination.

SECTION 10.06. Cumulative Remedies. The rights and remedies granted in this Agreement to the RECEIVER/GSWA and the Contractor upon an Event of Default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Agreement. No waiver of any breach or default shall be deemed or construed by a court of law to constitute a waiver of any other breach or default or of any other breach or default of any of the other terms, provisions, and covenants contained herein.

SECTION 10.07. Obligations of the Contractor upon Termination or Expiration. (A) Upon a termination of the Contractor's right to perform this Agreement under ARTICLE XI, any other termination provision of this Agreement, or upon the expiration of this Agreement under ARTICLE II, the Contractor shall:

- (1) cease any activity on the date and to the extent specified by the RECEIVER/GSWA;

- (2) promptly take all commercially reasonable action to protect and preserve all materials, equipment, tools, facilities and other property that belongs to the RECEIVER/GSWA;
- (3) promptly remove from the Household Hazardous Waste Facility all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Contractor (including, but not limited to sheds, trailers, workshops and portable toilets), and repair any damage caused by such removal;
- (4) leave the Household Hazardous Waste Facility in a neat and orderly condition;
- (5) subject to subsection (B) of this Section, promptly remove all employees of the Contractor and any subcontractors and vacate the Household Hazardous Waste Facility;
- (6) deliver to the RECEIVER/GSWA all electronic data used at the Household Hazardous Waste Facility in the performance under this Agreement in a format compatible with the RECEIVER/GSWA's then existing information system, including all revisions and updates thereto;
- (7) deliver to the RECEIVER/GSWA a copy of all books, records engineering and architectural plans in its possession relating to the performance of the services under the Agreement;
- (8) deliver to the RECEIVER/GSWA current maps engineering and architectural plans of the Household Hazardous Waste Facility;
- (9) provide the RECEIVER/GSWA with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;
- (10) advise the RECEIVER/GSWA promptly of any special circumstances which might limit or prohibit cancellation of any subcontract;
- (11) promptly deliver to the RECEIVER/GSWA copies of all subcontracts, together with a statement of:
 - (a) the items ordered and not yet delivered pursuant to each agreement;
 - (b) the expected delivery date of all such items;
 - (c) the total cost of each agreement and the terms of payment; and
 - (d) the estimated cost of canceling each agreement;

- (12) assign to the RECEIVER/GSWA any subcontract that the RECEIVER/GSWA elects in writing, at its sole election and without obligation, to have assigned to it. The RECEIVER/GSWA shall assume, and the Contractor shall be relieved of its obligations under, any subcontract so assigned;
 - (13) terminate all subcontracts which the RECEIVER/GSWA has not directed the Contractor to assign, and make no additional agreements with subcontractors;
 - (14) as directed by the RECEIVER/GSWA, transfer improvements to the RECEIVER/GSWA by appropriate instruments of title;
 - (15) promptly transfer to the RECEIVER/GSWA all warranties given by any manufacturer or subcontractor with respect to particular components of the agreement or the equipment;
 - (16) notify the RECEIVER/GSWA promptly in writing of any legal proceedings against the Contractor by any subcontractor or other third parties relating to the termination of the Agreement or disposal services (or any subcontracts);
 - (17) provide for, at Contractor's expense, a method for an immediate and uninterrupted transition of data to the RECEIVER/GSWA without any degradation of the data;
 - (18) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of insurance required under SECTION 7.01 (with a copy of each such notice to the RECEIVER/GSWA), but permit the RECEIVER/GSWA to elect to continue such policies in force thereafter at its own expense, if possible; and
 - (19) take such other actions, and execute such other documents as may be reasonable and necessary to effectuate and confirm the foregoing matters.
- (B) Hiring of Contractor Personnel. Upon termination or expiration of this Agreement under any provisions hereof, the RECEIVER/GSWA or any successor Contractor of the Household Hazardous Waste Facility designated by the RECEIVER/GSWA shall have the right to offer employment on any terms it may choose to the facility manager, or any other Contractor employee employed full-time at the Household Hazardous Waste Facility. No Contractor employment agreement, job offer, letter or similar document may contravene this right. The RECEIVER/GSWA or its designated successor contractor shall extend any such job offer within thirty (30) Days of the expiration or termination of this Agreement. The Contractor shall assist and cooperate with any such employee transition.

- (C) Continuity of Service. Upon the termination of the Contractor's right to perform this Agreement or upon the expiration of this Agreement under ARTICLE II, the Contractor, at the request and direction of the RECEIVER/GSWA, shall provide for an effective continuity of service and the smooth and orderly transition of management back to the RECEIVER/GSWA or other contractor, at the RECEIVER/GSWA's direction. Such service shall be for a period of up to ninety (90) Days and shall include providing advice and support and delivering any plans, drawings, blueprints, operating manuals, spare parts or other information useful or necessary for the RECEIVER/GSWA or other contractor to perform Household Hazardous Waste services.
- (D) RECEIVER/GSWA Right to Acquire Contractor Equipment. Upon the termination of the Contractor's right to perform this Agreement or upon the expiration of this Agreement under ARTICLE II, the RECEIVER/GSWA shall have the right, but not an obligation, to acquire some or all equipment owned and used by the Contractor in connection with its operation of the Household Hazardous Waste Facility pursuant to this Agreement. The Contractor shall be entitled to compensation equal to the fair market value of the equipment the RECEIVER/GSWA elects to acquire from the Contractor. In the event of a dispute as to the fair market value of any or all of the equipment to be acquired by the RECEIVER/GSWA from the Contractor, the Parties shall agree on an independent appraiser qualified to establish said fair market value and agree to accept the appraiser's findings as binding.

SECTION 10.08. No Consequential or Punitive Damages. In no event shall RECEIVER/GSWA be liable to the Contractor or obligated in any manner to pay to the Contractor any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of the RECEIVER/GSWA's obligations under this Agreement, or the material falseness or inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between the RECEIVER/GSWA and the Contractor, and specifically is not intended to limit the scope of the indemnity provisions in ARTICLE VII, which indemnification includes all claims by third-parties irrespective of the nature thereof or the relief sought thereby.

SECTION 10.09. No Waiver of Rights. No failure by the RECEIVER/GSWA or by the Contractor to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement or to exercise any right or remedy hereunder, and no acceptance by the RECEIVER/GSWA of full or partial payment of any compensation under this Agreement during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by the RECEIVER/GSWA or by the Contractor, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to the RECEIVER/GSWA and the Contractor. No waiver of breach shall affect or alter this Agreement, but each and every

term, covenant, agreement, provision, condition and limitation of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

SECTION 10.10. Survival of Certain Provisions Upon Termination. All representations and warranties of the Parties contained in this Agreement, the Contractor's indemnity obligations in this Agreement with respect to events that occurred prior to the termination date, the rights and obligations of the Parties hereto pursuant to SECTION 3.03, SECTION 6.01, SECTION 6.03, SECTION 7.01, SECTION 10.02, SECTION 10.03, SECTION 10.04, SECTION 10.07, SECTION 10.12, SECTION 13.12, and SECTION 13.13, and all other provisions of this Agreement that so provide shall survive the termination of this Agreement. No termination of this Agreement shall (1) limit or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination, or (2) preclude either Party from impleading the other Party in any legal proceeding originated by a third-party as to any matter occurring during the Term of this Agreement.

SECTION 10.11. RECEIVER/GSWA's Right to Perform Contractor's Covenants. If at any time Contractor shall fail, within thirty (30) Days after notice from the RECEIVER/GSWA (except in case of emergency such number of Days' notice which are reasonable in the circumstances shall suffice), to pay any imposition required herein, or to take out, pay for, maintain or deliver any of the insurance policies provided in ARTICLE VII, or to cause any lien of the character referred to in SECTION 9.03 to be discharged as therein provided, or to perform any other act on its part to be performed as provided in this Agreement, then, without further notice or demand upon Contractor and without waiving any other right or remedy of the RECEIVER/GSWA, the RECEIVER/GSWA may, but shall not be obligated to, perform any such obligation on behalf of Contractor; provided, however, that except for matters arising under ARTICLE VII, the RECEIVER/GSWA has determined that doing so is reasonably necessary to protect against a significant threat to the Household Hazardous Waste Facility or the safety of the Household Hazardous Waste Facility users or the general public. All sums paid by the RECEIVER/GSWA in connection with the RECEIVER/GSWA's performance of any obligation of Contractor and all reasonably necessary out-of-pocket incidental costs and expenses paid or incurred by the RECEIVER/GSWA in connection with the performance of any such act by the RECEIVER/GSWA, together with all reasonable attorney's fees and together with interest thereon at the Overdue Rate from the date of making such expenditures by the RECEIVER/GSWA, shall be payable by Contractor to the RECEIVER/GSWA on demand. This Section is in addition to the RECEIVER/GSWA's "Step-In" rights provided for in SECTION 11.03(D).

SECTION 10.12. Additional Remedy of the RECEIVER/GSWA.

- (A) Upon any termination of this Agreement, Contractor shall quit and peacefully surrender the Household Hazardous Waste Facility to the RECEIVER/GSWA, and the RECEIVER/GSWA, upon or at any time after any such termination, shall have the right, without further notice, to enter upon and re-enter the Household Hazardous Waste Facility and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess

Contractor and remove Contractor and all other persons and property from the Household Hazardous Waste Facility and may have, hold and enjoy the Household Hazardous Waste Facility and the right to receive all income of and from the same.

- (B) If this Agreement is terminated by reason of the occurrence of any Event of Default, such expenses as the RECEIVER/GSWA may incur for legal expenses, attorney's fees and disbursements shall become immediately payable by the Contractor.

SECTION 10.13. Service Delivery. Contractor expressly contracts that, in the event of breach of this Agreement by the Contractor, Contractor will work with the RECEIVER/GSWA to ensure continuous and uninterrupted delivery of services, regardless of the nature or causes underlying the breach. Contractor agrees and contracts that there is an obligation to assist RECEIVER/GSWA in every effort to ensure uninterrupted and continuous service delivery in the event of breach, even if Contractor disagrees with the determination of the breach by the RECEIVER/GSWA.

**ARTICLE XI
NOTICES**

SECTION 11.01. Notices. Except as otherwise expressly provided by Applicable Laws, any and all notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed duly served and given when (i) hand delivered, (ii) delivered by nationally recognized overnight courier, or (iii) on the third Day after it is deposited in the United States mail, first-class postage prepaid, return receipt requested:

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

Guam Solid Waste Authority {insert address}

With a copy to:
Office of the Attorney General of Guam
{insert address}

- (b) If to the Contractor:

Name: _____

Address _____

With a copy to the Guarantor:

Attn: General Counsel

Either Party may by notice given, as set forth above, direct that notices or communications be sent to a different address. Notwithstanding any provision of this SECTION 11.01, any report to be given by Contractor to the RECEIVER/GSWA may be given by electronic mail in addition to the means of delivery set forth herein.

ARTICLE XII LIQUIDATED DAMAGES

SECTION 12.01. Liquidated Damages Deemed Reasonable. Contractor understands and contracts that the failure to comply with any time, performance or other requirement or standard in this Agreement will result in damage to the RECEIVER/GSWA and that it is and will be impracticable to determine the actual amount of such damage whether in the event of delay, nonperformance, failure to meet standards or any other deviation. Therefore, Contractor and RECEIVER/GSWA contract that the liquidated damages specified in this Agreement are reasonable. It is expressly understood and agreed that the liquidated damages amounts are not to be considered a penalty, but shall be deemed, taken and treated as reasonable liquidated damages. It is also expressly understood and agreed that the remedies of RECEIVER/GSWA in the event of Contractor's default or minor or major breach of any term of this Agreement are not limited to liquidated damages provisions. All liquidated damage amounts may be withdrawn from the Letter of Credit/Performance Bond provided by Contractor in accordance with this Agreement.

SECTION 12.02. Liquidated Damages. The Receiver/GSWA shall monitor the Contractor's performance of its obligations during each Operating Year throughout the Term of Agreement. The Contractor shall provide timely and complete responses to requests for documents, electronic files, explanations, and access to Contractor's personnel associated with the Receiver/GSWA's performance monitoring.

The Receiver/GSWA will consider all relevant aspects of Contractor's performance including without limit: any existing areas of concern; proposed actions necessary to address areas of concern; the actions taken by Contractor to address previously noted areas of concern, if any; any liquidated damages imposed on Contractor during the current and prior Operating Year; a summary of any Violations and associated penalties imposed by any Governmental Entity relative to the Household Hazardous Waste Facility and any awards or commendations received by, or favorable comments made about, Contractor in the course of performing its duties under the Agreement.

The Government of Guam and the customers of the GSWA will sustain real and substantial damages as a result of the Contractor's failure to perform its obligations under the Agreement in a timely manner. Since it would be impractical or extremely difficult to fix the actual damages so sustained, the following amounts will be imposed as liquidated damages under the Agreement for the Contractor's failure to timely perform Contractor's obligations under the Agreement.

- (A) General Operational Matters. Liquidated damages in the following amounts will be imposed with respect to the Household Hazardous Waste Facility where the following failure of performance occurs, for each Day of such failure of performance:
 - (i) Maintenance of Equipment in Operable Manner. Twenty-five hundred (\$2,500) shall be imposed for each failure to provide for substitute equipment, make necessary repairs to, or replace equipment that becomes inoperable, located at the Household Hazardous Waste

Facility or Interim Household Hazardous Waste Facility as provided for in the Agreement.

- (ii) Submission of Reports/Documents. Three hundred dollars (\$300) shall be imposed for failure to submit required reports and/or documentation, as specified in the Agreement, for each Day of said violation per report and/or document; provided, however, that if the violation continues beyond five Days, the liquidated damages shall increase to one thousand dollars (\$1,000) per Day of said violation per report and/or document for each Day after five (5) Days.
 - (iii) Other. It is deemed unreasonable to list each and every task the Contractor is to perform under the terms of the Agreement, and to assign a corresponding liquidated damage to be assessed for failure to timely perform such tasks. Therefore, for failure to timely perform any task required of the Contractor by the Agreement, which is not specifically listed in this section (either herein above or below), the Contractor shall pay three hundred dollars (\$300) as liquidated damages for each Day of said violation.
- (B) Failure to Turn Over Records on Termination of Agreement. In the event that Contractor fails to turn over all records relating to the Household Hazardous Waste Facility on termination of the Agreement, as required by the Agreement, liquidated damages in the amount of two-hundred fifty thousand dollars (\$250,000) shall be assessed and shall be due and payable to the GSWA.
- (C) Liquidated Damages Regarding Customer Service. Should Contractor, through repeated actions or inaction, cause formal, written complaints to be received by Receiver/GSWA regarding Contractor's performance of its obligations under the Agreement, including without limitation in responding to inquiries, requests for information, or complaints, the following provisions shall apply:
- (i) Notice. Receiver/GSWA shall, upon Receiver/GSWA's reasonable determination as to the legitimacy of such complaint(s), deliver a written notice to Contractor by certified mail, return receipt requested, requesting Contractor's written explanation within seven (7) Days, and correction within fifteen (15) Days, of the issue(s) raised in the complaint.
 - (ii) Liquidated Damages. Contractor shall be assessed liquidated damages in the amount equal to three hundred dollars (\$300) per Day for the first five (5) Days, and one thousand dollars (\$1,000) per Day for each Day after five (5) Days; for each Day beyond seven (7) Days after receipt of the notice that Contractor fails to respond to Receiver/GSWA's written request.

- (D) Liquidated Damages for Regulatory Violations and Fines. Should Contractor receive any Notice of Violation from the Guam Environmental Protection Agency, or be found in violation of Applicable Laws by a Governmental Entity, resulting in fine or monetary penalty, Contractor shall be assessed liquidated damages in the amount of one thousand dollars (\$1,000) for each Notice of Violation and two times the amount of such fine or monetary penalty.

**ARTICLE XIII
MISCELLANEOUS**

SECTION 13.01. RECEIVER/GSWA Rights as Governmental Entity. The Contractor acknowledges that the RECEIVER/GSWA is a Governmental Entity and as such has certain rights, powers and duties that may affect the Contractor's rights or obligations under the Agreement. The Contractor agrees that no action or failure to act by the RECEIVER/GSWA acting in its governmental capacity shall be construed as a breach or default by the RECEIVER/GSWA under this Agreement, nor shall any such action excuse the Contractor from performance of its obligations under this Agreement.

SECTION 13.02. Condemnation. If during the term of this Agreement, all of the Household Hazardous Waste Facility is taken for a public purpose by condemnation, or sold to a condemning authority under threat of condemnation, this Agreement shall terminate. Contractor shall not be entitled to any condemnation award.

SECTION 13.03. Assignment.

- (A) This Agreement, in whole or in part, may not be assigned, transferred, sold, or disposed of, in whole or in part, by voluntary sale, merger, consolidation, or otherwise or by forced or involuntary sale, without the prior written consent of the governing body of the RECEIVER/GSWA, and then only on such conditions as may therein be prescribed. The RECEIVER/GSWA is hereby empowered to take legal or equitable action to set aside, annul, revoke, or cancel this Agreement or the transfer or assignment of this Agreement, if such transfer or assignment is not made in accordance with the procedures contained herein, or is not in the best interest of the RECEIVER/GSWA or the public. Upon termination of the Receivership, the Receiver/GSWA may assign this Agreement to the Guam Solid Waste Authority of the Department of Public Works, Government of Guam, or its successor in interest, and the Contractor shall not object to the assignment. However, if at the time the Receivership is terminated by the District Court, the funding necessary to assure payment to the Contractor is not placed under the control of an independent trustee to assure timely payment, the Contractor may, with ninety (90) Days' written notice, terminate the Agreement.

- (B) Any sale, transfer or assignment shall be made by a bill of sale or similar document, an executed copy of which shall be filed in the office of the RECEIVER/GSWA, within thirty (30) Days after any such sale, transfer or assignment. The RECEIVER/GSWA shall not withhold its consent unreasonably; provided, however, the proposed assignee agrees to comply

with all provisions of this Agreement and such additional conditions as the RECEIVER/GSWA may prescribe and provided that the assignee is able to provide proof of financial responsibility, in the form of an audited financial statement prepared by an independent certified public accountant or a certified public accounting firm for its most recently completed fiscal year, legal qualifications and technical capability satisfactory to the RECEIVER/GSWA.

- (C) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or entity of twenty percent (20%) of the voting shares of Contractor if such Person or group of persons does not already own twenty percent (20%) of the voting shares of Contractor or Guarantor. Every change, transfer, or acquisition of control of the Contractor shall make the Agreement subject to cancellation unless and until the RECEIVER/GSWA shall have consented thereto.
- (D) The Contractor shall promptly notify the RECEIVER/GSWA of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Contractor. Every change, transfer, or acquisition of control of the Contractor shall make the Agreement subject to cancellation unless and until the RECEIVER/GSWA shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the RECEIVER/GSWA may inquire into the qualifications of the prospective controlling party, and the Contractor shall assist the RECEIVER/GSWA in any such inquiry. In the event that the RECEIVER/GSWA denies its consent and such change, transfer or acquisition of control has been effected, the RECEIVER/GSWA may cancel the Agreement unless control of the Contractor is restored to its status prior to the change, or to a status acceptable to the RECEIVER/GSWA.
- (E) The consent of the RECEIVER/GSWA to any sale, transfer, lease, trust, mortgage, or other instrument of hypothecation shall not constitute a waiver or release of any of the rights of the RECEIVER/GSWA under this Agreement.
- (F) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this Agreement.
- (G) Nothing herein shall require approval for Contractor's assigning the Agreement to or selling its stock to wholly-owned subsidiaries or to an

Affiliate under the same ultimate control and ownership as existed prior to the assignment.

- (H) If consent for any action is required by the RECEIVER/GSWA pursuant to this Section, the RECEIVER/GSWA shall be reimbursed by Contractor all reasonable costs and charges, including, but not limited to, reasonable attorneys fees and administrative costs, associated with any review or consideration of the Contractor's or Guarantor's actions invoking this Section regardless of whether the consent is actually provided by the RECEIVER/GSWA.

SECTION 13.04. Parties Bound. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and assignees when permitted by this Agreement.

SECTION 13.05. No Third Party Rights. This Agreement is exclusively for the benefit of the RECEIVER/GSWA and the Contractor and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 13.06. Governing Law and Applicable Venue. This Agreement is made and performable in Territory of Guam, United States of America, and shall be interpreted in accordance with the laws of Guam and the United States. Venue for any legal action arising out of this Agreement shall lie in any court of competent jurisdiction in Guam.

SECTION 13.07. Non-Discrimination. The Contractor shall not unlawfully discriminate against any Person.

SECTION 13.08. Entire Agreement. This Agreement contains all of the covenants, statements, representations and promises agreed to by the Parties. To the extent of any conflict, this Agreement supersedes the terms, conditions, and representations set forth in the RECEIVER/GSWA's Request for Proposals _____ and the Contractor's proposal. No agent of either Party has authority to make, and the Parties shall not be bound by, nor liable for, any covenant, statement, representation or promise not set forth herein. The Parties may amend this Agreement only by a written amendment executed by both Parties.

SECTION 13.09. Partial Invalidity. In the event one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in it.

SECTION 13.10. Force Majeure. In case by reason of "Force Majeure" the RECEIVER/GSWA or Contractor shall be rendered unable wholly or in part to carry out its obligations under this Agreement, and if such Party shall give notice of such "Force Majeure" in writing to the other Party within a reasonable time after occurrence of the event or cause

relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure shall be temporarily suspended during the continuance of the inability then claimed, but for no longer periods, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, acts of public enemy, terrorist attacks, orders of any kind of the Government of the United States or the Government of Guam or any civil or military authority provided such order is not as a result of a violation or breach of any kind under this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, or any other causes not reasonably within the control of the Party claiming such inability.

SECTION 13.11. Dispute Resolution.

- (A) The RECEIVER/GSWA and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the RECEIVER/GSWA in writing to issue a final decision within sixty (60) days after receipt of the written request. If the RECEIVER/GSWA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the RECEIVER/GSWA had issued a decision adverse to the Contractor.
- (B) The RECEIVER/GSWA shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- (C) The RECEIVER/GSWA's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.
- (D) This subsection applies to appeals of the RECEIVER/GSWA's decision on a dispute. For money owed by or to the RECEIVER/GSWA under this Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the RECEIVER/GSWA or from the date when a decision should have been rendered. For all other claims by or against the RECEIVER/GSWA arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the RECEIVER/GSWA. Appeals to the Office of the Public Auditor must be made within sixty (60) days of the RECEIVER/GSWA's decision or from the date the decision should have been made.
- (E) The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with Applicable Laws.

- (F) The Contractor shall comply with the RECEIVER/GSWA's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Contractor claims a material breach of this Agreement by the RECEIVER/GSWA. However, if the RECEIVER/GSWA determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the RECEIVER/GSWA.

SECTION 13.12. Claims against Government. The Contractor 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 Contractor against the Government if the claim arises out of or in connection with this Agreement. The Contractor also expressly recognizes that all other claims by the Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

SECTION 13.13. Consent to Jurisdiction. The Contractor 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 Agreement, except as otherwise may be provided by the Guam Procurement Law. The Contractor waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

Section 13.14. Mandatory Representations by Contractor.

- (A) General Ethical Standards (2 GAR Div. 4 § 11103(b)). With respect to this Agreement and any other contract that the Contractor may have, or wish to enter into, with any Government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any Government 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 (2 GAR Div. 4 § 11107(e)). With respect to this Agreement and any other contract that the Contractor may have or wish to enter into with any Government of Guam agency, the Contractor represents that he 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 (2 GAR Div. 4 § 11108(h)). The Contractor represents that it has not retained a person or anyone upon an agreement 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 for the purpose of securing business.
- (D) Restriction on Employment of Sex Offenders (5 GCA § 5253)). The Contractor warrants that no person in his employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the Contractor relative to this Agreement. If any person employed by the Contractor and providing services under this Agreement is convicted subsequent to the parties entering into this Agreement, then the Contractor warrants that it will notify the RECEIVER/GSWA of the conviction within twenty-four hours of the conviction, and will immediately remove such

convicted person from providing services under this Agreement. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the RECEIVER/GSWA shall give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the RECEIVER/GSWA, and the Contractor shall notify the RECEIVER/GSWA when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the RECEIVER/GSWA, then the RECEIVER/GSWA in its sole discretion may suspend this Agreement temporarily.

Executed this ____ day of _____, 2013.

(Name of Contractor)

BY: _____

Name: _____

Title: _____

ATTEST:

Name, Title

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

BY: _____

Name: _____

Title: _____

ATTEST:

Name, Title