

**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

BID DOCUMENTS

August 17, 2009

**Prepared For:
DIVISION OF SOLID WASTE MANAGEMENT
DEPARTMENT OF PUBLIC WORKS
GOVERNMENT OF GUAM**

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**On Behalf Of:
Receiver – Gershman, Brickner & Bratton, Inc.
Government of Guam, Solid Waste Management Division
Pursuant to the Order of the United States District Court of Guam
www.guamsolidwastereceiver.org**

**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

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INVITATION FOR BID

Gershman, Brickner & Bratton, Inc. (GBB) in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works, pursuant to the Order of the United States District Court of Guam, is soliciting bids for the construction of **Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, Project No. SWMD-09-02**. No work that is for the primary or explicit purpose of disposing, storing, treating, transferring, or processing solid waste will commence under any contract awarded pursuant to this procurement until a Solid Waste Facility Permit is approved by the Guam Environmental Protection Agency.

Sealed bids in duplicate will be received and time stamped at the Department of Public Works, Division of Highways 2nd Floor Conference Room, 542 N. Marine Corps Dr., Tamuning, Guam, 96913 until 2:00 pm on October 14, 2009 local Guam time. Bids will be publicly opened and read aloud shortly afterwards at the same location.

Contract time is Five Hundred (500) calendar days. All bids must be accompanied by a bid security in the amount of 15% of the total bid amount. Bid security may be a bid bond, certified check or cashier's check made payable to the Treasurer of Guam. *A non-refundable amount of \$100.00* is required as payment for each set of invitation for bid documents which can be obtained from the **Solid Waste Management Division – GBB Receiver Office, 2nd Floor, Solid Waste Management Building, Department of Public Works, 542 N. Marine Corps Dr., Tamuning, Guam, 96913** commencing on August 17, 2009. Invitation for bid documents will be issued in electronic form only, no hard copies. Payments are payable to the Treasurer of Guam and may be paid at any Treasurer of Guam office. Payments must reference Account No. 310060602 on the check. A receipt of payment should be obtained from the cashier before applying for the bid documents.

All Bidders are notified that the Government of Guam will affirmatively ensure that in any Contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color and national origin in consideration for an award. The Government reserves the right to reject any or all bids and to waive any imperfection in a bid in the interest of the Government of Guam.

A mandatory pre-bid conference will be held on August 31, 2009 at 9:00 a.m. local Guam time at the Department of Public Works, Division of Highways 2nd Floor Conference Room, 542 N. Marine Corps Dr., Tamuning, Guam, 96913. A field trip to the Project site, to allow prospective Bidders to familiarize themselves with the Project's site conditions, will be conducted immediately after the pre-bid conference. A second field trip to the Project site, to allow prospective Bidders to familiarize themselves with the Project's site conditions, will be conducted at 9:00 am local Guam time on **September 9, 2009**. It is mandatory that the Bidder attend at least one of the two field trips. A representative for a prospective Bidder is required to be present at both the pre-bid conference and at least one of the field trips to the Project site. The representative of the Bidder must be an employee of the Bidder or a person who has written authorization from the Bidder to represent the Bidder at the pre-bid conference and the field trip. The Bidder can be represented at the mandatory pre-bid conference by one of its employees via telephone. The Bidder must notify the Receiver at least two working days before the pre-bid conference they will be represented via

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telephone. The Bidder will be given a phone number and access code to call into the pre-bid conference. However, the mandatory field trip to the Project site must be physically attended by a representative of the Bidder. If a Bidder is not properly represented at both the mandatory pre-bid conference and at least one of the two field trips, they will be disqualified from submitting a bid. It is necessary that the Bidder attend both the pre-bid conference and a field trip to be adequately informed of the Contract requirements and project site conditions to prepare their bid.

For further information, you can go to www.guamsolidwastereceiver.org or contact Chris Lund (GBB) at 800-573-5801 or Tor Gudmundsen (TG Engineers) at 671-647-0808.

INSTRUCTIONS TO BIDDERS

1.0 RECEIPT AND OPENING OF BIDS

Sealed bids in duplicate for the **Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, Project No. SWMD-09-02**, will be received and time stamped by the Receiver – Gershman, Brickner & Bratton, Inc., in its capacity as Receiver for the Division of Solid Waste Management of the Department of Public Works, pursuant to the Order of the United States District Court of Guam at the **Department of Public Works, Division of Highways 2nd Floor Conference Room, 542 N. Marine Corps Dr., Tamuning, Guam, 96913** until **2:00 pm on October 14, 2009 local Guam time**. Bids will be publicly opened and read aloud shortly afterwards at the same location.

Bids shall be made on the forms furnished by the Government and shall be enclosed in a sealed envelope addressed to the Receiver – Gershman, Brickner & Bratton, Inc. and endorsed with the name of the Bidder and the title **“Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, Project No. SWMD-09-02”**.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No Bidder may withdraw a bid within ninety (90) calendar days after the actual date of the opening thereof.

Attention is called to the fact that Bidders not only offer to assume the obligations and liabilities imposed upon the Contractor in the Contract, but expressly make certain of the representations and warrants made therein. No effort is made to emphasize any particular provision of the Contract, but Bidders must familiarize themselves with every provision and its effect.

2.0 TIME OF COMPLETION

The Contractor shall commence work on or before the date specified in the Notice to Proceed. **The Project shall be completed within five hundred (500) calendar days, complete and ready for use**. In the event the Contractor does not complete the Work within the time specified, liquidated damages will be assessed as stated in Section 5 of the Special Provisions.

3.0 CONTRACT DOCUMENTS

It is hereby mutually agreed that the following list of Instruments, Plans, Specifications and Documents which are attached hereto, bound herewith or incorporated herein by reference, shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the Contract between the Parties hereto and they are as fully a part of the Contract as if they were set out verbatim and in full herein and are designated as follows.

1. Invitation for Bid
2. Instructions to Bidders
3. Bid Form
4. Bid Bond
5. Schedule of Values
6. Non-Collusion Affidavit
7. Affidavit Disclosing Ownership and Commissions
8. Certification of Non-Segregated Facilities
9. Bidder's Statement on Previous Contracts Subject to EEO Clause
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
11. Formal Contract
12. Performance and Payment Bond
13. Special Provisions
14. General Conditions
15. General Scope of Work
16. Prevailing Wage Rates
17. Technical Specifications
18. Addenda
19. Plans
20. Environmental Protection with Erosion Control Plan
21. Stormwater Pollution Prevention Plan

An additional four (4) sets of drawings and specifications will be furnished to the successful Bidder without additional charge.

4.0 PREPARATION OF BID

The Bidder must submit his bid on the forms furnished by the Government or copies thereof, and forms where required, shall be signed in ink. All blank spaces in the bid forms must be correctly filled in where indicated and the Bidder must state the prices in words and numerals for which he proposes to do each item of the Work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect, will govern.

Erasures or other changes in a bid must be explained or noted over the signature of the Bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the bid or irregularities of any kind may be rejected by the Government as being incomplete

The Bidder shall sign his bid in the blank space provided therefor. If this bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names and addresses of the partners or officers. If the bid is made by a partnership, it must be acknowledged by one of the partners, if made by a corporation, it must be acknowledged by one of the authorized officers thereof. If this bid is made by a limited liability

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

5.0 BID SECURITY

Each bid must be accompanied by a deposit in the amount of not less than fifteen percent (15%) of the total amount bid. Such deposit may be in the form of a bid bond, cashier's check or certified check made payable to the Treasurer of Guam. Such checks or bid bonds will be returned to all except the three lowest Bidders within ten (10) working days after the opening of bids, and the remaining checks or bid bonds will be returned promptly after the Receiver – Gershman, Brickner & Bratton, Inc., in its capacity as Receiver for the Division of Solid Waste Management of the Department of Public Works, pursuant to the Order of the United States District Court of Guam and the accepted Bidder have executed the Contract, or if no award has been made within 90 calendar days after the date of the opening of bids, upon demand of the Bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid. Should the successful Bidder fail or refuse to execute and deliver the Contract, performance and payment bond, insurance policies, Guam Contractor's license, and Guam Business license required within **fifteen (15) calendar days** after acceptance of his bid, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal, the security deposited with his bid.

If a bid bond is used as Bid Security, the surety company executing the bid bond must appear on the U.S. Treasury's most current list Circular 570 and be authorized to transact business on Guam.

6.0 NON-COLLUSION AFFIDAVIT

Each person submitting a bid for any portion of the Work covered by the bid documents shall execute an affidavit, in the form provided with the bid, to the effect that he has not colluded with any other person, firm or corporation in regards to any bid submitted. Such affidavit shall be attached to the bid.

7.0 RIGHT TO ACCEPT AND REJECT BIDS

The Government reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Government's interests. In the event that the successful Bidder fails to execute the Contract upon his part or to furnish satisfactory surety upon the Performance and Payment Bond and insurance policies, the Government, after declaring forfeited the Bid Security reserves the option to accept the bid of any other Bidder within ten (10) calendar days from such default, in which case such acceptance shall have the same effect as to such Bidder as though he was the originally successful Bidder.

8.0 METHOD OF AWARD

Bidding procedure involving only a BASE BID:

If the base bid is within the amount of funds available to finance the construction Contract, Contract award will be made to that responsible, responsive Bidder submitting the low base bid.

9.0 COMPETENCY OF BIDDERS

The Bidder shall present satisfactory evidence that he has sufficient experience and he is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to carry out the Contract satisfactorily.

Accordingly, the Bidder must submit for review the following information. Forms similar to the attached Bidder Qualification Forms can be used. The Confidential Bidder Qualification Form can be submitted in a sealed envelope within the sealed bid package if the Bidder desires to keep the financial information confidential. The Contracting Officer reserves the right to investigate the information submitted, as is deemed necessary, before a Contract is awarded, and to disqualify any Bidder if deemed in the best interest of the Government.

- a) Experience on similar work.
- b) Past performance of firm in accomplishing projects in agreed time.
- c) Availability of plant, machinery and other equipment necessary for work.
- d) Quality of work presently performed for Government of Guam, federal, and private projects.
- e) Contractor's diligence in carrying out responsibility.
- f) Record of good owner-contractor relationship.
- g) Previous record of bids qualification.
- h) Quality of supervisory personnel and areas of their performance.
- i) Record of past performance of contracts including record of default and nonpayment of obligations.
- j) Financial resources.

Financial resources report shall be dated not more than six (6) months prior to bid opening, must be prepared by a certified accountant and shall contain at least the following information:

- 1) Total Assets
- 2) Total Liabilities
- 3) Total Current Assets
- 4) Total Current Liabilities
- 5) Bonding Capability
- 6) Financial Statements including Balance Sheets and Income Statements for Last Two Years

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10.0 MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS

The right is reserved, as the interest of the Government may require, to revise the specifications or drawings or both prior to the date set for opening bids. Such revisions, if any, will be announced by an addendum or addenda to this Invitation for Bid. If the addenda are of a nature which requires material changes in quantities or prices to be bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable Bidders to revise their bids. In such cases, the addendum will include an announcement of the new date for opening bids.

11.0 REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The Bidder, Offeror or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in Section 11107 (Gratuities and Kickbacks) of the Guam Procurement Regulations (found at Title 2 Guam Administrative Regulations, Division 4).

12.0 REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES

The Bidder, Offeror or Contractor 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 Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act.

13.0 DISCLOSURE OF MAJOR SHAREHOLDERS AND COMMISSIONS

As a condition of bidding, any partnership, sole proprietorship, limited liability company, liability company or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, limited liability company, liability company or corporation at any time during the twelve (12)-month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship, limited liability company, liability company or corporation which have been held by each such person during the twelve (12)-month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the Bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying, and shall be submitted on or before the bid opening. ***Failure to submit the affidavit concerning shareholder disclosure and commissions shall be deemed nonresponsive and cause for rejection of the bid upon opening.***

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14.0 SUBCONTRACTORS

The Bidder is specifically advised that any person, firm, or other party to whom it proposes to award a subcontract under the Contract must be acceptable to the Contracting Officer and shall be required to submit all documentation as specified in the Contract Documents. A list of the proposed subcontractors and the work they are to perform must be submitted with the bid documents at the bid opening. Additional information regarding the subcontractors may be required after the bid opening.

The Bidder is required to submit all of the information required in Paragraph 9.0 Competency of Bidders and all of the information listed below for his Geosynthetics Installer Subcontractor. This information must be fully submitted with the sealed bid package. The Bidder is strongly encouraged to submit any additional information with the Bid documents that demonstrates the Geosynthetics Installer Subcontractor's technical expertise and overall capability to complete the work in a timely, professional manner in a remote location. If the Bidder's Geosynthetics Installer Subcontractor is deemed by the Owner to be non-responsive or non-responsible, then the Bidder will also be deemed to be non-responsive or non-responsible.

The Contractor or subcontractor proposed as Geosynthetics Installer for installation of geomembrane and other geosynthetic components of the liner system shall have installed geomembrane on a minimum of ten (10) different projects with a minimum total of not less than five million (5,000,000) square feet of geomembrane. The following information shall be submitted with Contractor's bid as demonstration of the Geosynthetics Installer's qualifications:

- A. Corporate background and information
- B. Description of installation capabilities:
 - a. Information on equipment (numbers and types), and personnel (number of Superintendents, number of crews).
 - b. Information on laboratory testing facilities to be used for this contract.
 - c. Average daily production anticipated.
- C. A list of at least ten completed facilities, totaling a minimum of 5,000,000 ft² for which the Installer has installed geosynthetics. For each installation, the following information shall be provided:
 - a. Name and purpose of facility, its location, and date of installation.
 - b. Name of owner, project manager, designer, manufacturer, fabricator (if any), and name of contact at the facility who can discuss the project.
 - c. Name and qualifications of the Superintendent(s) of the Installer's crew(s).
 - d. Type of geosynthetic and surface area installed.
 - e. Type of seaming and type of seaming apparatus used.
 - f. Duration of installation.
 - g. Available information on the performance of the lining system.

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15.0 METHOD OF BIDDING

This Contract will be solicited with a single fixed-price lump sum bid.

16.0 CONDITIONS OF WORK

Each Bidder must inform himself fully of the conditions relating to the services required and the employment of labor thereon. Failure to do so will not relieve a successful Bidder of his obligation to furnish all materials and labor necessary to carry out the provisions of the Contract. Insofar as possible, the Contractor, in carrying out his Work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

17.0 OBLIGATION OF BIDDER

At the time of the opening of bids, each Bidder will be presumed to have inspected the Project site and to have read and to be thoroughly familiar with the plans and Contract Documents (including all addenda). The failure or omission of any Bidder to inspect the Project site, or examine any Contract form, instrument or document shall in no way relieve any Bidder from any obligation in respect to his bid.

18.0 DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of the Bidder and the rejection of his bid or bids. The following causes are not the exclusive list of causes for disqualification of Bidders.

- (a) Non-attendance by a representative for the Bidder at either the mandatory pre-bid conference or at least one of the two field trips to the Project site. It is mandatory that the Bidder attend at least one of the two field trips. The representative of the Bidder must be an employee of the Bidder or a person who has written authorization from the Bidder to represent him at the pre-bid conference and the field trip. The Bidder can be represented at the mandatory pre-bid conference by one of its employees via telephone. The Bidder must notify the Receiver at least two working days before the pre-bid conference they will be represented via telephone. The Bidder will be given a phone number and access code to call into the pre-bid conference. However, the mandatory field trip to the Project site must be physically attended by a representative of the Bidder. If a Bidder is not properly represented at both the mandatory pre-bid conference and at least one of the field trips, they will be disqualified from submitting a bid.
- (b) More than one bid for the same Work from an individual, firm, partnership, limited liability company, liability company or corporation under the same or different names.
- (c) Unbalanced Bid Schedule of Values in which the prices for some items are out of proportion to the prices for other items.
- (d) Lack of competency as revealed by the financial statements, experience, plant and equipment statements or other information submitted as required by Section 9.0 Competency of Bidders.

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- (e) Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress.
- (f) Failure to submit the required Bid Security.

19.0 TELEGRAPHIC MODIFICATION

Any Bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the Owner prior to the closing time, and, provided further, the Owner is satisfied that a written confirmation of the telegraphic modification over the signature of the Bidder was mailed prior to the closing time. The telegraphic communication should not reveal the bid price but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened. If written confirmation is not received within two calendar days from the closing time, no consideration will be given to the telegraphic modification.

20.0 POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

21.0 ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any Bidder orally, and if any Bidder receives any oral interpretation from any Government employee or its representative, the oral interpretation may not be relied upon as an official statement or intention of the Government regardless of who made the statement.

Every request for any interpretation should be in writing addressed to the Contracting Officer.

In order to be given consideration, any request for interpretation must be received by the Government at least eight working days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will either be mailed by certified mail with return receipt requested to all Parties who paid for and picked up the Invitation for Bid and bid documents (at the respective addresses furnished for such purposes) or sent via facsimile or e-mail to the number or e-mail address provided to the Government at the time the Bidder picked up the Invitation for Bid. Such responses shall be sent to Bidders not less than five working days prior to the date fixed for the opening of bids. Failure of any Bidder to receive any such addendum or interpretation shall not relieve such Bidder from any obligation under his bid as submitted. All addenda so issued shall automatically become part of the Contract Documents, whether expressly set forth in the Contract or not.

22.0 LAWS AND REGULATIONS

The Bidder's attention is directed to the fact that all applicable federal and territorial laws, regulations, rules, licensure requirements, and permit requirements of all authorities having jurisdiction over this Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract and performance thereunder the same as though herein written out in full. Failure on the part of any Bidder to become aware of the applicable laws, rules, regulations, permits and licensure requirements shall not relieve the Bidder to meet such requirements and performance under the Contract if so awarded to the Bidder.

BIDDER QUALIFICATION FORM

Submitted to: _____

Name of Project: _____

Submitted by: _____

Name of Firm)

Address: _____

City: _____ State: _____ Zip: _____

1. TYPE OF WORK (File separate form for each Classification of Work):

General Construction Pipe, Refrigeration & Temperature Control System

Plumbing & Sewage Electrical Installations

Ventilating & Distribution for Conditioned Air Type of License:
 A B C
 Other (Specify):

Other (Please Specify): _____

CLASSIFICATION OF WORK WITH OWN FORCES (List trades):

2. TYPE OF FIRM:

Corporation Partnership Sole Proprietorship
 Limited Liability Company Liability Company

Years in Business: _____

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3. OFFICERS, PARTNERS, PRINCIPALS OR OWNERS & CONSTRUCTION EXPERIENCE:

<u>Name:</u>	<u>Title:</u>	<u>Years. Experience in Classification Work Listed:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. NUMBER OF PERSONNEL IN ORGANIZATION:

Administrative: _____ Engineering: _____ Office: _____
 Shop: _____ Field: _____ Other: _____

5. REFERENCES:

Bank(s) Maintaining Account(s):	Contact Name:	Phone No.:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Surety/Underwriter:

Other References:

11. HAVE YOU AT ANY TIME FAILED TO COMPLETE A CONTRACT?
[] Yes [] No

ARE THERE ANY JUDGMENTS, CLAIMS OR SUITS PENDING OR
OUTSTANDING AGAINST YOU? [] Yes [] No

IF THE ANSWER TO EITHER QUESTION IS YES, SUBMIT DETAILS ON
SEPARATE SHEET. [] Yes [] No

LIST ALL LAWSUITS YOUR FIRM HAS FILED, OR WHICH YOUR FIRM IS A
DEFENDANT, IN RELATION TO CONSTRUCTION CONTRACTS IN THE LAST
FIVE YEARS:

Pursuant to information for prospective Bidders for the above mentioned proposed Project, the Bidder is submitting the information as required with the understanding that it is for the Government's use only to assist in determining the qualifications of this organization to perform the type and magnitude of work included, and further, guarantees the truth and accuracy of all statements herein made. The surety herein named, any other bonding company, bank, subcontractor, supplier, or any other persons, firms or corporations with whom we have done business, or who have extended any credit to us are hereby authorized to furnish you with any information you may request concerning our organization, including, but not limited to, information concerning performance on previous work or credit standing with any of them. We hereby release any and all such parties from any legal responsibility whatsoever of having furnished such information to you.

Name of Organization: _____

By: _____

Title: _____

Date: _____, 20____

Attested to By: _____

Title: _____

corporations with whom we have done business, or who have extended any credit to us are hereby authorized to furnish you with any information you may request concerning our organization, including, but not limited to, information concerning performance on previous work or credit standing with any of them. We hereby release any and all such parties from any legal responsibility whatsoever of having furnished such information to you.

Name of Organization: _____

By: _____

Title: _____

Date: _____, 20____

Attested to By: _____

Title: _____

BID FORM

Date: _____

To: Receiver – Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works
Government of Guam
Tamuning, Guam 96913

Gentlemen:

The undersigned (hereafter called the Bidder), a _____
(Corporation, Partnership, LLC, LC or Individual)

organized and/or licensed to do business under the laws of the (State) (Territory) of _____, hereby proposes and agrees to enter into a Contract with the Government of Guam, in the form of the copy of the Contract, annexed hereto, and to furnish all the necessary labor, materials, equipment, tools and services necessary for construction of the **LAYON MUNICIPAL SANITARY LANDFILL, ENTRANCE AREA FACILITIES AND CELLS 1 AND 2, PROJECT NO. SWMD-09-02** all in accordance with the Contract Documents prepared for the Department of Public Works, in Lump Sum for the sum of _____ Dollars (\$ _____)

Lump Sum Price (In Words)

The Bidder has carefully examined the location of the proposed Work, the drawings, specifications and other Contract Documents and is familiar with the local conditions at the place where the Work is to be performed.

The Bid Security attached, without endorsement, in the sum of not less than fifteen percent (15%) of the amount of the bid, is furnished to the Government as a guarantee that the Contract will be executed and Bidder will furnish a Performance and Payment Bond, insurance policies, and other documents as may be specified in the bidding or Contract Documents within fifteen (15) calendar days after the acceptance of the bid of the Bidder. In the event that the Bidder shall fail to execute the Contract and furnish a satisfactory Performance and Payment Bond, insurance policies, and other documents as may be specified in the bidding or Contract Documents under the conditions and within the time specified in the Contract Documents, the Bid Security shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another Bidder, said being beforehand determined as being reasonable and containing no penalties.

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the Bidder within ninety (90) calendar days after the opening thereof, the Bidder agrees to execute the form of Contract included as one of the Contract Documents, to furnish a Performance and Payment

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Bond in an amount equal to one hundred percent (100%) of the total Contract amount, and furnish insurance policies, and other documents as may be specified in the bidding or Contract Documents all within fifteen (15) calendar days after receipt of such notice.

It is understood that the Bid Schedule of Values is intended principally to serve as a guide in determining and comparing the bids. It is further understood that the Government of Guam reserves the right to increase or decrease any amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Contracting Officer, and that the cost for all increased or decreased quantities of work shall be adjusted as provided for in the specifications.

If awarded the Contract, the Bidder agrees that he shall begin the Work on or before the date he is notified to commence with the Work, which date is indicated in the Notice to Proceed, and shall complete the Work within the Contract time stipulated in the Contract. The undersigned agrees shall finish the entire Project within the time prescribed.

The Bidder understands that the Government reserves the right to reject any or all bids or to waive any informality or technicality in any bids when in its opinion such rejection or waiver will be in the best interest of the Government.

Attached hereto is an affidavit in proof that the Bidder has not entered into any collusion with any person in respect to this bid or any other bid or the submitting of bids for the Contract for which this bid is submitted.

Receipt is hereby acknowledged and complete examination is hereby expressly guaranteed of the following listed items:

1. Invitation for Bid
2. Instructions to Bidders
3. Bid Form
4. Bid Bond
5. Schedule of Values
6. Non-Collusion Affidavit
7. Affidavit Disclosing Ownership and Commissions
8. Certification of Non-Segregated Facilities
9. Bidder's Statement on Previous Contracts Subject to EEO Clause
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
11. Formal Contract
12. Performance and Payment Bond
13. Special Provisions
14. General Conditions
15. General Scope of Work
16. Prevailing Wage Rates
17. Technical Specifications

BID FORM
Entrance Area Facilities and Cells 1 and 2
Project No. SWMD-09-02

- 18. Addenda
- 19. Plans
- 20. Environmental Protection with Erosion Control Plan
- 21. Stormwater Pollution Prevention Plan

Accompanying this Bid Form as the Bid Security is:
 (Check whichever is applicable)

- Bid Bond
- Cashier's Check
- Certified Check

The Bidder hereby acknowledges receipt of the following addenda:

ADDENDUM NO.	DATED
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The undersigned hereby certifies that the bid prices contained in the Bid Form and Bid Schedule of Values have been carefully checked and are submitted as correct and final.

NAME: _____
 (Name of Corporation, Partnership, LLC, LC or Individual)

TITLE: _____
 (Title of Authorized Representative)

SIGNATURE(S): _____
 (Signature of Bidder)

NOTE:

If Bidder is a CORPORATION, the legal name of the corporation shall be set forth above, together with the signature(s) of the Officer(s) authorized to sign contracts on behalf of the

corporation. Please attach to this page evidence of the authority of the Officer(s) to sign on behalf of the corporation.

If Bidder is a PARTNERSHIP, the true name of the firm shall be set forth above, together with the signature(s) of the partner(s) authorized to sign on behalf of the partnership.

If Bidder is a LIMITED LIABILITY COMPANY or LIABILITY COMPANY, the true name of the firm shall be set forth above, together with the signature(s) of the principal(s) authorized to sign on behalf of the company.

If Bidder is an INDIVIDUAL, his signature shall be placed above.

If signature is by an agent, other than an officer of a corporation or member of a partnership, a POWER OF ATTORNEY must be on file with the Government of Guam prior to the opening of bid or submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.

Business Address_____

Business Telephone_____

Dated_____, 200__.

BOND NO. _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we,

(Name of Contractor)

as Principal, hereinafter called the Principal and

(Name of Surety)

a duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety, are held and firmly bound unto the Government of Guam for the sum of _____ Dollars

(\$ _____), for payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the **LAYON MUNICIPAL SANITARY LANDFILL, ENTRANCE AREA FACILITIES AND CELLS 1 AND 2, PROJECT NO. SWMD-09-02.**

NOW THEREFORE, if the Government of Guam shall accept the bid of the Principal and the Principal shall not withdraw said bid within ninety (90) calendar days after the opening of bids, and shall within fifteen (15) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Government of Guam in accordance with the terms of such bid and give such bond or bonds, insurance policies, and other documents as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds and insurance policies, if the Principal shall pay to the Government of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Government of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this ____ day of _____, 200__.

(PRINCIPAL)

(SEAL)

By:

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

Countersigned by:

(RESIDENT GENERAL AGENT)

BID SCHEDULE OF VALUES
LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02

Item No.	Description	Unit	Cost
1	Mobilization	LS	
2	Construction Survey and Staking	LS	
3	Contractor Sampling and Testing	LS	
4	Soil Erosion Control	LS	
5	Watering for Dust Control	LS	
6	Maintenance of Temporary Access Road	LS	
7	Clearing and Grubbing	LS	
8	Entrance Area Earthwork	LS	
9	Entrance Area Drainage System & Pipe Culverts	LS	
10	Administration Building	LS	
11	Maintenance Shop	LS	
12	Generator & Pump Building	LS	
13	Site Parking, AC Pavement, Compacted Gravel Surface, Curbs, Wheel Stops & Related Facilities	LS	
14	Traffic Signs, Markers, Striping	LS	
15	Sanitary Sewer System & Lift Stations	LS	
16	Water System	LS	
17	Water Storage Tank	LS	
18	Fuel Storage Tank Pad	LS	
19	Site Electrical	LS	
20	Weigh Stations	LS	
21	Truck Mud Rack	LS	
22	Equipment Wash Rack / Sediment Basin	LS	
23	Oil / Water Separator	LS	
24	4" Thick Topsoil & Grass Seeding at Entrance Area	LS	
25	Leachate Storage Tank and Collection & Pump System	LS	
26	Earthwork for Liner Grades	LS	
27	Cells 1 & 2 Subdrain System Including Catchment Tank & Road to Tank	LS	
28	Cells 1 & 2 Liner & LCRS	LS	
29	Gas Collector System	LS	
30	Perimeter Road Extension	LS	
31	Pond 2 & Drainage Facilities	LS	
32	Fence & Gates	LS	

BID SCHEDULE OF VALUES
Entrance Area Facilities and Cells 1 and 2
Project No. SWMD-09-02

33	Miscellaneous Work	LS	
34	Field Office	LS	
TOTAL BID			\$
<p>NOTE: Contractor shall submit, along with this Bid Schedule of Values, his and his major subcontractor(s) standard rates for employees, equipment, overhead, profit, etc. These standard rates shall be used for negotiating any Change Orders that may arise.</p>			

Notes:

1. The Bidder shall prepare its own estimate to correspond to the required scope of work and quantities for all Work required to complete the Project, based on the Contract Plans, Specifications, and Documents.
2. The Bid Schedule of Values is intended principally to serve as a guide in evaluating and comparing the bids. The Bidder awarded the Contract shall prepare a more detailed Schedule of Values for the purpose of progress billings.
3. All other items of Work not qualified and not listed in the Bid Schedule of Values are to be included in the item with which it is closely associated. Contractor's overhead, profit, taxes, and other non-listed expenses are to be included in the items of the Bid Schedule of Values.

NON-COLLUSION AFFIDAVIT

TERRITORY OF GUAM)

)ss.

AGANA, GUAM)

_____, being first duly sworn, depose and say:

That he/she is _____ (a partner, officer, or principal of the firm of, etc.)

the party making the foregoing bid for LAYON MUNICIPAL SANITARY LANDFILL, ENTRANCE AREA FACILITIES AND CELLS 1 AND 2, PROJECT NO. SWMD-09-02, that such bid is genuine and not collusive or sham, that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any Bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the bid price of affiant or of any other Bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other Bidder, or to secure any advantage against the Government of Guam or any other Bidder, or to secure any advantage against the Government of Guam or any person interested in the proposed Contract; and that all statements in bid are true.

Signature of
Bidder, if the Bidder is an individual;
Partner, if the Bidder is a partnership;
Principal, if the Bidder is a limited liability company;
Principal, if the Bidder is a liability company;
Officer, if the Bidder is a corporation.

Subscribed and sworn to before me this _____ day of _____, 200__.

NOTARY PUBLIC

My commission expires _____, 20__.

NON-COLLUSION AFFIDAVIT
Entrance Area Facilities and Cells 1 and 2
Project No. SWMD-09-02

AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS

LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02

CITY OF _____)
STATE OF _____) ss.

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

The Bidder is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

The Bidder is a corporation, partnership, joint venture, limited liability company, liability company or association known as _____ *[please state name of Bidder company]*, and the persons, companies, partners, principals, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the bid are as follows *[if none, please so state]*:

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

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

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

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

Dated: _____

Signature of one of the following:
Bidder, if the Bidder is an individual;
Partner, if the Bidder is a partnership;
Principal, if the Bidder is a limited liability company;
Principal, if the Bidder is a liability company;
Officer, if the Bidder is a corporation.

SUBSCRIBED and SWORN to before me

this ____ day of _____, 20____.

NOTARY PUBLIC

My commission expires: _____

CERTIFICATION OF NON-SEGREGATED FACILITIES

This is to certify that _____, the Bidder for the **LAYON MUNICIPAL SANITARY LANDFILL, ENTRANCE AREA FACILITIES AND CELLS 1 AND 2, PROJECT NO. SWMD-09-02**, does not maintain or provide for his employees any segregated facilities at any of his establishments, and does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Contract. As used in this certification, the term "**Segregated Facilities**" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, lots, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where he has obtained identical certifications in duplicate from proposed subcontractors for specific time periods) he will obtain identical certifications in duplicate from proposed subcontractor(s) prior to the award of subcontract exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain the duplicate of such certification in his files. The subcontractor shall include the original in his Bid Package.

Name and Title of Signer

Signature

Date

**BIDDER'S STATEMENT ON PREVIOUS CONTRACTS
SUBJECT TO EEO CLAUSE**

**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

The Bidder shall complete the following statement by checking the appropriate boxes.

The Bidder has ___ has not ___ participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by the Executive Order 11246, as amended, of September 24, 1965.

The Bidder has ___ has not ___ submitted all compliance reports in connection with any such contract or subcontract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subcontractors will be obtained prior to award of subcontracts.

If the Bidder has participated in a previous contract or subcontract subject to the equal opportunity clauses and has not submitted compliance reports due under the applicable filing requirements, the Bidder shall submit a compliance report on Standard Form 100, "Employee Information Report EEO - 100 I" prior to award of the Contract.

Certification - The information above is true and complete to the best of my knowledge and belief.

Bidder

Name and Title

Signature

Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

The Bidder certifies, by submission of this bid or acceptance of the Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or Government of Guam department or agency. It further agrees by submitting this bid that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Bidder or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this bid.

Bidder

Name and Title

Signature

Date

CONTRACT NO. _____

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

CONTRACT FOR:

**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

Contractor

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

Contract for: **LAYON MUNICIPAL SANITARY LANDFILL, ENTRANCE AREA FACILITIES
AND CELLS 1 AND 2**

Project No. **SWMD-09-02**

Amount: **\$**

Place: **Layon, Inarajan, Guam**

FORMAL CONTRACT
Entrance Area Facilities and Cells 1 and 2
Project No. SWMD-09-02

FORMAL CONTRACT

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

WITNESSETH, That whereas the Government intends to construct the **Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, SWMD-09-02**, hereinafter called the "Project", in accordance with the drawings, specifications and other Contract Documents prepared by the Department of Public Works.

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

I. THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all the Work required for the construction of the Project, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Contract, including the following addenda:

Addendum No.

Dated

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

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

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

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

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

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

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

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

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

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

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

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

IX. INDEMNITY. Contractor agrees to indemnify, save harmless and defend the Government and Gershman, Brickner & Bratton, Inc. as Receiver and their respective officers, employees, agents, representatives, successors and assigns from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Contractor, or its

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officers, employees or agents, or subcontractors. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Government.

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

Furthermore:

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

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

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

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

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

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

To: CONTRACTING OFFICER:

To: CONTRACTOR:

XIII. TERMINATION FOR CONVENIENCE.

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

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

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

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

(4) Compensation.

(a) The Contractor shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by 2 G.A.R. Div. 4 §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Government may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Government and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 G.A.R. Div. 4 §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the Government and the Contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Government shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

- (i) Contract prices for services accepted under the Contract;
- (ii) Costs incurred in preparing to perform and performing the terminated portion of the Work plus a fair and reasonable profit on such portion of the Work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause;
- (iv) The reasonable settlement costs of the Contractor including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. Attorney's fees if for any reason it files suit against The Government must be paid by the Contractor. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the Contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

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

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

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

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

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

XIX. RESTRICTION ON EMPLOYMENT OF SEX OFFENDERS. The Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the Contractor relative to this Contract. If any person employed by the Contractor and providing services under this Contract is convicted subsequent to the Parties entering into this Contract, then the Contractor warrants that it will notify the Government of the conviction within twenty-four hours of

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

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

CONTRACTOR

Date: _____

FOR THE GOVERNMENT OF GUAM

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

Date: _____

Allotment No.: _____

Amount: \$ _____

CERTIFIED FUNDS AVAILABLE:

Certifying Officer
Bureau of Budget and Management Research

Date: _____

APPROVED:

ALICIA G. LIMTIACO
Attorney General, Guam

Date

FELIX P. CAMACHO
Governor of Guam

Date

CORPORATE CERTIFICATION AS TO AUTHORIZATION TO BIND

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

(CORPORATE SEAL)

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that _____

(Name of Contractor)

as Principal, hereinafter called the "Contractor", and _____

(Name of Surety)

a corporation or company duly organized under the laws of the State or Territory of _____ and authorized to transact business in Guam, as Surety, are held and firmly bound unto the Government of Guam, as Obligee, hereinafter called the "Government", for use and benefit of claimants as herein below defined, in the amount of _____ Dollars (\$_____) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written Contract dated _____, 2009 entered into a Contract with the Government for the **Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, Project No. SWMD-09-02**, in accordance with Drawings, Specifications, and Contract Documents prepared for the Department of Public Works, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Government provided the same is within the scope of the Contract.
- B. Whenever the Contractor shall be and is declared by the Government to be in default under the Contract, the Government having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly:
 - 1. Complete the Contract in accordance with its terms and conditions; or
 - 2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Government and the Surety jointly of the lowest

responsive, responsible bidder, arrange for a contract between such bidder and the Government, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph shall mean the total amount payable by the Government to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Government to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Government or successors of the Government.

- C. A claimant is defined as one having a direct contract with the Contractor or with a subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- D. The above-named Contractor and Surety hereby jointly and severally agree with the Government that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Government shall not be liable for the payment of any costs or expenses of any such suit.
- E. No suit or action shall be commenced hereunder by any claimant:
 - 1. Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following:

The Contractor, the Government, or the Surety above named, within one hundred twenty (120) calendar days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.
 - 2. After the expiration of one (1) year following the date on which the last of the labor was

performed or material was supplied by the party bringing suit.

3. Other than in a court of competent jurisdiction in and for the Territory of Guam.

F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS ____ day of _____, 200__, A.D.

IN THE PRESENCE OF:

(Note: If the Principals are Partners, each must execute the Bond)

(WITNESS)

(CONTRACTOR) (SEAL)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

SPECIAL PROVISIONS

1.0 GENERAL INTENTION:

It is the declared intention and meaning to construct the **Layon Municipal Sanitary Landfill, Entrance Area Facilities and Cells 1 and 2, Project No. SWMD-09-02.**

2.0 BID:

The Contractor and each and every subcontractor shall read the General Conditions immediately following these Special Provisions, and by the act of submitting a bid, shall be deemed to have accepted all conditions contained therein.

3.0 STANDARDS:

The standards referenced in this specification (including addenda, amendments and errata listed) shall govern in all cases where the references thereto are made. Any difference between the referenced standards and its accompanying drawings shall be called to the attention of the Contracting Officer before proceeding with work affected thereby. In case of a discrepancy, the Contracting Officer shall resolve the discrepancy.

4.0 TIME FOR COMPLETION:

It is hereby understood and mutually agreed, by and between the Contractor and the Government of Guam, that the date of beginning, rate of progress and the time for completion of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on or before the date to be specified in the Notice to Proceed (NTP) and continue until construction is **completed within five hundred (500) calendar Days after issuance of the NTP.** Time is of the essence for this Contract.

5.0 LIQUIDATED DAMAGES:

It is hereby understood and mutually agreed, by and between the Contractor and the Government of Guam, that liquidated damages shall be assessed for each calendar day the Work remains incomplete beyond the Contract completion date. The Contractor further agrees to pay to the Government the **sum of Three Thousand Three Hundred Dollars (\$3,300.00)**, not as a penalty, but as a reasonable liquidated damages for breach of this Contract by the Contractor by his failing, neglecting or refusing to complete the Work within the time herein specified and said sums shall be paid for each consecutive calendar day thereafter that the Contractor shall be in default after the time stipulated in the Contract for completing the Work ready for use and/or operation

The said amount is fixed and agreed upon by and between the Contractor and the Government of Guam because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Government of Guam would in such event sustain, and said

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amounts shall be retained from time to time by the Government of Guam from current periodical payments to the Contractor.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the Work is due:

- a) to any preference, priority or allocation order duly issued by the Government of Guam; or
- b) to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, acts of the Government of Guam, acts or another contractor in the performance of a contract with the Government of Guam, fires, floods, epidemics, quarantine restrictions, strikes by others than the Contractor or his subcontractors, freight embargoes, and unusually severe weather; or
- c) to any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

It is further provided that the Contractor shall, within seven (7) calendar Days from the beginning of delay, notify the Contracting Officer in writing of the causes of the delay who will ascertain the facts and extent of the delay and notify the Contractor within reasonable time of his decision in the matter.

Contractor must note that Guam by nature has frequent rainfall causing suspension of Work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe, see Section 7.3, Climatic Conditions, of the General Conditions.

6.0 GUAM CONTRACTOR'S LICENSE AND GUAM BUSINESS LICENSE:

After the Notice of Award is issued to the successful Bidder, the Bidder must obtain a Guam Contractor's License and Guam Business License, if it does not already have such licenses, before the Contract can be signed. The licenses must be obtained within the time frames specified in the Contract Documents.

7.0 COORDINATION WITH OTHER CONTRACTORS:

Contractor shall coordinate his work with the contractor for the Layon Municipal Sanitary Landfill, Access Road and Sewer System, Project No. SWMD-09-03 through the Contracting Officer.

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8.0 PAYMENT FOR CONSTRUCTION MANAGEMENT AND ARCHAEOLOGICAL SERVICES:

The Owner will pay for any Owner's inspection or construction management services beyond the normal, approved work hours. The Owner will pay for any Archaeological inspections or services required for the project.

9.0 DISPOSAL OF VEGETATIVE MATERIALS:

At the option of the Contractor, vegetative material from on-site clearing activities can be chipped and stockpiled for use on newly created slopes as an enhancement to erosion and sediment control efforts. The chipped material may be stockpiled at an area to be designated by the Contracting Officer. The Contractor shall submit an official request to elect this option with a stockpiling plan with corresponding proper erosion control measures conforming to the requirements of the Guam EPA. Materials permitted for stockpiling shall be limited to biodegradable green waste. Refuse from the Contractor's clearing and grading activities as well as general operations will not be permitted. Guam EPA has agreed to the use of on-site biodegradable green waste provided that it is addressed in the re-vegetation plan.

10.0 MAINTENANCE OF TEMPORARY ACCESS ROAD:

The Contractor is to maintain the coral based temporary access road to the landfill in the same passable condition as at the date of the Notice to Proceed. The Contractor is also responsible for maintenance of the erosion control measures for the coral based access road. The Contractor is responsible for maintenance of the road and erosion control features starting from the Notice to Proceed and ending when the road is taken out of service as shown on the drawings. In addition, the Contractor will be responsible for traffic control and for any damage caused by his operations to the concrete paved road going to Talofofo Falls Park. The Contractor is also responsible for keeping the Talofofo Falls Park road and road right-of-way clean by removing any dirt, debris, etc. caused by his operations. The Contractor is to thoroughly document the condition of the concrete road before he begins to use it.

11.0 DISPOSAL OF EXCESS CUT MATERIAL:

Any suitable excess cut material should be placed in the cover material stockpile in Cells 5 and 7 of the landfill and compacted to 90% relative density. The Contractor is responsible for developing a modified stockpile plan for approval by Guam EPA as part of the building permit as needed.

12.0 TESTING OF WATER AND SEWER LINES AND PUMP STATIONS:

The Contractor is responsible for operational tests of Sewer Pump Stations #1 and #2. The Contractor is also responsible for the specified testing of the water and sewer lines installed by the

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Contractor to the limits of this Contract, Station 10+60 of the Access Road.

13.0 SOIL EROSION CONTROL:

This work consists of furnishing, constructing, and maintaining permanent and temporary erosion and sediment control measures (a) as shown on the plans; (b) as required by the Guam EPA approved Environmental Protection Plan (EPP), Erosion Control Plan (ECP), and Stormwater Pollution Prevention Plan (SWPP); and/or (c) as ordered by the Contracting Officer during the life of the Contract to control water pollution, soil erosion and siltation through the use of berms, dikes, grasses, slope drains, drain inlet protection, silt fences, swale berms and other erosion control devices or methods.

The Contracting Officer shall submit the EPP, ECP, and SWPP to Guam EPA for review and approval at the time of applying for the building permit. The Contractor shall take ownership of these documents after award of the Contract and shall be responsible for fully implementing them and for any proposed or required modifications.

14.0 INSTALLATION OF CELL LINER SYSTEM:

Field installation of the cell liner system is not permitted to start until GEPA issues a Solid Waste Disposal Facility Permit for the Layon Municipal Sanitary Landfill. The estimated date for issuance of the Permit is around November 20, 2009. Though actual field work cannot begin on the cell liner system until the Permit is issued, the Contractor shall proceed with submittals, ordering, shipping, preparatory work, and any other required actions so field installation of the cell liner system can commence without delay once the Permit is issued. Time is of the essence for these tasks. The Owner is guaranteeing payment for all purchases of material and work completed on the cell liner system pending approval of the Permit.

The length of the Contract has been calculated on the premise that the Permit will be issued no later than December 31, 2009. If the Permit is issued before this date there will be no extension of the Contract period. If the Permit is issued after this date, the Contracting Officer and Contractor shall negotiate if any Contract time extension is warranted and the length of any such extension. Factors to be considered in the negotiation include, but are not limited to, the extent of delay beyond December 31, 2009 in issuance of the Permit and cell liner system work that can be done during the rainy season.

The cell liner system is defined as work within Cells 1 and 2.

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GENERAL CONDITIONS

1.0 DEFINITIONS

1.1 BID SECURITY: The security, as designated in the Instructions to Bidders or in the Proposal form, furnished with the Proposal by the Bidder as a guaranty that he will enter into Contract and furnish a Performance and Payment Bond and insurance policies as required for the Contract to be awarded to him.

1.2 BIDDER: Any individual, firm, company or corporation, submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

1.3 CHANGE ORDER: A written order to the Contractor, signed by the Contracting Officer, ordering a change that has been found necessary in the Work from that originally shown in the Plans and Specifications but which is still within the general scope of the Contract. If the Work is of a nature involving an adjustment of unit prices, it will be an Amendment to the Contract. Change Orders duly signed and executed by the Contractor constitute authorized modification of the Contract.

1.4 CONTRACT: The written agreement executed between the Government and the successful Bidder, covering the performance of the Work and the furnishing of labor and materials, by which the Contractor is bound to perform the Work and furnish the labor and materials, and by which the Owner is obligated to compensate him therefore at the mutually established and accepted Proposal, Plans, Specifications, Contract Documents, and subsequently entered into rate or price. The Contract shall include the instruction to Bidders to complete the Work in accordance with the intent of the Plans and Specifications, in an acceptable manner.

1.5 CONTRACT DOCUMENTS: Those items so designated in the Contract. Only printed or hard copies of the items listed in the Contract are Contract Documents. Approved shop drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.6 CONTRACTING OFFICER: The term "Contracting Officer" as used herein means the Receiver – Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works and shall include its authorized representatives.

1.7 CONTRACTOR: The term "Contractor" as used herein means the party or parties who or which shall have duly entered into a Contract with the Government of Guam to perform the Work herein contemplated or his or their authorized assignee.

1.8 DAY: Unless specifically referenced as "work day", "day" shall mean "calendar day".

1.9 ENGINEER: The duly authorized representative of the Contracting Officer who is

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responsible for the administration of the Contract and for interpretations thereof on behalf of the Contracting Officer and for inspection of work in progress.

1.10 EPA: Means either the Guam Environmental Protection Agency or the US Environmental Protection Agency (may be used collectively to refer to both entities if applicable).

1.11 EQUIPMENT: All machinery, together with the necessary supplies for up keep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

1.12 INSPECTOR AND/OR CONSTRUCTION MANAGER: An authorized representative of the Government, assigned to make all necessary inspections of the Work performed or being performed or of the materials furnished or being furnished by the Contractor.

1.13 INTENTION OF TERMS: Whenever, in these specifications or upon the Plans, the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import, are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Contracting Officer is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved by, acceptable to, or satisfactory to the Contracting Officer, subject in each case to the final determination of the Owner.

Any reference to a paragraph or subparagraph within a section shall include the general provision of the section or sections and paragraph pertinent thereto.

1.14 LABORATORY: The official testing laboratories as may be designed by the Contracting Officer.

1.15 MIL SPECIFICATIONS: The Military Specifications and Standards, and indices thereto, are prepared and issued by the Department of Defense. These may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

1.16 NOTICE: The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to the last known business address of the person, firm, or corporation constituting the other party to the Contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelop addressed to such last known business address and deposited in a United States mail box or when sent via facsimile or e-mail to the number or e-mail address provided by the Contractor. The Contractor must provide and maintain a mailing address within the Territory of Guam and file the same with the Contracting Officer.

1.17 NOTICE OF AWARD: A written notice to the successful Bidder stating that his bid has been accepted and that, in accordance with the terms of the Specifications, he is required to execute the Contract and furnish a satisfactory Performance and Payment Bond, insurance

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policies as required by the Contract Documents, Guam Contractor's license, and Guam Business license.

1.18 NOTICE TO PROCEED: A written notice to the Contractor of the date on which, or before, he is to begin the prosecution of the Work for which he has contracted.

1.19 OWNER: The term "Owner" as used herein means the Government of Guam, Hatgana, Guam, and shall include the Governor of Guam, and/or his authorized representatives.

1.20 PERFORMANCE AND PAYMENT BOND: The approved form of security furnished by the Bidder and his Surety as a guarantee of good faith and ability on the part of the Bidder to execute the Work in accordance with the terms of the Plans, Specifications and Contract, and to pay in full all bills and accounts for materials and labor used in the construction of the Work, as provided by law.

1.21 PLANS: The official plans, working drawings, or supplemental drawings or exact reproductions thereof, approved by the Contracting Officer, which show the location, character, dimensions, and details of Work to be done and which are to be considered as a part of the Contract, supplementary to these Specifications.

1.22 PROJECT: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

1.23 SPECIAL PROVISIONS: The specific clauses setting forth conditions or requirements peculiar to the Project under consideration, covering work or materials involved in the Bid Proposal and estimate, which are not thoroughly or satisfactorily stipulated in the General Provisions or Technical Specifications.

1.24 SPECIFICATIONS: The directions, provisions, and requirements contained herein, supplemented by special provisions, pertaining to the method and manner of performing the Work, or to the quantities or the qualities of materials to be furnished under the Contract.

1.25 SUPERINTENDENT: English speaking executive representative for the Contractor present on the Work at all times, authorized to receive and fulfill instructions from the Contracting Officer and capable of superintending the work efficiently.

1.26 SURETY: The corporate body or individuals who are bound by the Performance and Payment Bond with and for the Bidder, and which engage to be responsible for the entire and satisfactory fulfillment of the Contract and for the payment of all debts incurred in fulfilling the Contract.

1.27 WORK: The term "WORK" shall be understood to mean the furnishing of all labor, materials, equipment, and other incidents necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contractor.

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2.0 CONSTRUCTION CONTRACT

2.1 Contract Documents

(a) The Contract Documents consist of the Formal Contract, the drawings, and specifications, including all addenda and alterations made in the documents prior to their execution.

(b) The Contract Documents shall be signed by the Owner, the Receiver, and Contractor in as many original counterparts as may be mutually agreed.

(c) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all. Any discrepancies between the Contract Documents shall be called to the attention of the Contracting Officer before proceeding with work affected thereby. In case of a discrepancy between the Contract Documents, the Contracting Officer shall resolve the discrepancy.

(d) It will be conclusively presumed that the Contractor has read, examined and agreed to each and every term, conditions, provisions, covenant or agreement in the drawings, specifications, proposals, Contract, and bond related to the Work to be carried on, said documents being on file in the Department of Public Works, Tamuning, Guam.

2.2 Drawings

(a) The general character and scope of the work are illustrated by the drawings. Any additional detail drawings and other information deemed necessary by the Contracting Officer will be furnished to the Contractor when and as required.

(b) In case of differences between small scale and large scale drawings, the large-scale drawings shall govern. Figured dimensions on the drawings shall be considered primary compared with measurements obtained through scaling of drawings. The Contractor shall verify all dimensions, and if any be lacking, he shall call the attention thereto and be governed by the decision of the Contracting Officer.

(c) Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.

(d) Where the word "similar" occurs on the drawings, it shall be interpreted in its general sense and not as meaning identical.

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2.3 Detail Drawings and Instructions

The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the Work included in the Contract. The additional drawings and instructions thus supplied to the Contractor shall be consistent with the Contract Documents and true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

2.4 Specifications and Drawings

(a) The Contractor shall keep on the Project site a copy of the drawings and specifications including all authorized Change Orders, and shall at all times give the Owner, Contracting Officer and their representatives access thereto.

(b) All drawings and specifications and copies thereof furnished by the Contracting Officer are his property and shall not be used on other projects without his consent. Upon completion of this Project all copies of the drawings and specifications except the signed Contract sets are to be returned to the Contracting Officer upon his request.

2.5 Special Requirements

(a) Where special requirements, provisions or specifications or detailed specifications are attached hereto or are included in the proposal, they shall be considered a part of these general conditions or specifications or detailed specifications as fully as if contained herein. Should any special provisions be in conflict with these general conditions or specifications or detailed specifications, said special requirements, provisions or detailed specifications shall govern.

(b) Person in charge of electrical wiring and installations shall be a licensed Master Electrician and/or registered electrical engineer in Guam.

2.6 Explanation to Bidders

No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Contracting Officer for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a Bidder will be in the form of an addendum to the Contract Documents which, if issued, will be sent as promptly as practicable to all persons to whom the drawings and specifications have been issued. All such addenda shall become part of the Contract documents.

3.0 BIDS, BIDDER RESPONSIBILITIES

3.1 Conditions at Site

(a) Bidders shall visit the Project site and shall be responsible for having ascertained pertinent conditions such as location, accessibility, and general character of the site, the character and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of his bid. No extra compensation will be made by reason of any misunderstanding or error as regards to the site, the conditions thereof, accessibility, or the amount or kind of work to be performed.

(b) If, in the performance of the Contract, subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications, or unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the attention of the Contracting Officer shall be called immediately to such conditions before they are disturbed. Upon such notice, or upon his own observation of such conditions, the Contracting Officer shall promptly make such changes in the drawings and specifications as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the work resulting from such changes shall be adjusted as provided in the Contract.

3.2 Withdrawal of Bids

Bids may be withdrawn on written or telegraphic request received from Bidders prior to the time fixed for opening. Negligence on the part of the Bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

3.3 Publicity of Bids

At the time fixed for the opening of bids, the contents of the bids will be made public for the information of Bidders and others properly interested who may be present either in person or by representation.

3.4 Policy In Favor of Local Procurement

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

(a) a licensed bonafide manufacturing business that adds at least twenty-five percent of the value of an item, not to include administrative overhead, using workers who are U.S. Citizens or lawfully admitted permanent residents or

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nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or

(b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or

(c) a business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000) whichever is less, of supplies and items of a similar nature to those being sought; or

(d) a service business actually in business, doing a substantial portion of its business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

3.5 Receipt and Opening of Bids

(a) Bids will be opened publicly at the time and place stated in the Invitation for Bids. The officer whose duty it is to open them will decide when the specified time has arrived and bids received thereafter will not be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified.

(b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to time set for opening.

3.6 Rejection of Bids

The Owner reserves the right to reject any and all bids when such rejection is in the interest of the Owner and to reject the bid of a Bidder who is not in a position to perform the Contract.

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3.7 Award of Contract

(a) The Contract will be awarded as soon as possible to the lowest responsive and responsible Bidder, provided it is in the interest of the Owner to accept his bid.

(b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner. The Owner also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by the Owner.

3.8 Cancellation of Award

The Owner reserves the right to cancel the award of any Contract at any time before the execution of same.

4.0 DUTIES OF CONTRACTING OFFICER AND CONTRACTOR SAFETY MEASURES

4.1 Authority of Contracting Officer

The Contracting Officer shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the Work. The Contracting Officer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to paid work and the construction thereof. The Contracting Officer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or specifications, the determination or decision of the Contracting Officer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

The Contracting Officer shall decide the meaning and intent of any portion of the specifications and of any Plans or drawings where the same may be found obscure or be in dispute.

Any difference or conflicts in regard to their work which may arise between the Contractor under this Contract and other contractors performing work for the Owner shall be adjusted and determined by the Contracting Officer.

4.2 Contractor's Obligations

The Contractor shall, in good workmanlike manner, do and perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work

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required by this Contract within the time herein specified in accordance with the Plans and drawings of the work covered by this Contract and any and all supplemental plans and drawings, and in accordance with the directions of the Contracting Officer as given from time to time during the progress of the Work. He alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any damage which may result from their failure or their improper construction, maintenance or operations. The Contractor shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications and shall do, carry on and complete the entire Work to the satisfaction of the Contracting Officer and the Owner.

4.3 Superintendence by Contractor

The Contractor shall give his personal superintendence to the Work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the Work at all times during progress with authority to act for him.

4.4 Subcontracts

(a) Nothing contained in the specifications, drawings, or Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the Owner. The division of sections of the specifications is not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be as fully responsible to the Owner for the acts and omissions of subcontractors and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

(c) The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged in his work.

(d) The Contractor shall, without additional expense to the Owner, utilize the services of specialty subcontractors on those parts of the Work which are specified to be performed by specialty subcontractors.

(e) The Owner will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

(f) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work including waiver of mechanics liens to bind subcontractors by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of subcontractors and to give the Owner any exercise over the Contractor under any provisions of the Contract Documents.

4.5 Subletting

Subletting part of the Work is permitted. However, Bidder must note that subletting in excess of the following is not allowed:

(a) Where the subletting is for both labor and material, the sum total cost of all sublet work shall not exceed 49% of the total Contract amount.

(b) Where subletting is for labor only, the sum total cost of all sublet work shall not exceed 40% of the total Contract amount. Information concerning subcontracts must form a part of the bid documents and shall be submitted to the Contracting Officer.

4.6 Assignments

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the written consent of the Owner and of all the sureties executing any bonds on behalf of the Contractor in connection with said Contract. In case the Contractor assigns the whole or any part of said Contract or assigns all or any part of any monies due or to become due under said Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor or otherwise shall be subject to all of the terms and conditions of said Contract or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of the law and to the liens of all persons, firms, companies, and corporations for services rendered or materials supplied in connection with the performance of said Contract.

4.7 Equal Opportunity

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The Contractor will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4.8 Hiring of Apprentices

The Contractor shall hire for performance of Work under this Contract apprentice(s) to be employed in the performance of Work under this Contract in accordance with Executive Order No. 2000-10, dated April 11, 2000.

4.9 Minimum Wage Rate

All persons employed on this Project shall be paid not less than minimum wage applicable to the corresponding skill or craft as determined by the Department of Labor, Government of Guam. Prevailing wage rates of Department of Labor, Government of Guam are attached herewith and shall be deemed a part of the Contract Documents.

4.10 Laws, Permits and Regulations

(a) The building permit for the Project will be procured and paid for by the Contracting Officer. The Contractor shall be responsible for procuring and paying for any other permits required for the Project.

(b) The Contractor shall pay all fees and charges for connection to outside service and use of property other than the site of the Work for storage of materials or other purposes.

(c) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to work hereunder unless in conflict with Contract requirements. If the Contractor ascertains at any time that any requirement of this Contract is a variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Contracting Officer and any necessary adjustment of the Contract shall be made by the Contracting Officer.

4.11 Contractor's and Subcontractor's Insurance

(a) The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained

and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

(b) Worker's Compensation and Employer's Liability Insurance - The Contractor shall take out and maintain during the life of this Contract the statutory Worker's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the Project under this Contract and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

(c) Bodily Injury Liability and Property Damage Liability Insurance - The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract from claims for damages for personal injury including accidental death, as well as from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than:

(1) Bodily Injury Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per person for injuries including wrongful death and in an amount not less than One Million Dollars (\$1,000,000.00) for injuries including wrongful death resulting from one accident.

(2) Property Damage Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for damages resulting from any one accident and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for damages resulting from all accidents.

(3) Bodily Injury Liability and Property Damage Insurance in an aggregate amount not less than Two Million Dollars (\$2,000,000.00).

(d) Owner's Protective Liability Insurance - The Contractor shall take out and furnish to the Owner and maintain during the life of this Contract complete Owner's protective liability insurance in amounts as specified in paragraph 4.11 (c), above for bodily injury liability insurance and for property damage liability insurance.

(e) Fire Insurance - The Contractor shall insure the building or other work included in this Contract against loss or damage by fire and against loss or damage covered by the standard extended coverage insurance endorsement, in an insurance company or companies acceptable to the Owner, the amount of the insurance at all times to be at least equal to the amount paid on account of work and materials and plus the value of work or materials furnished or delivered but not yet paid for by the Owner.

(f) Motor Vehicle Insurance - Prior to the commencement of any work under this

Contract, the Contractor shall furnish to the Contracting Officer adequate proof that all vehicles it intends to operate in the furtherance of performance under this Contract are adequately insured with amounts required by law and as indicated below, whichever is stricter. The Owner will not be responsible for harm or loss to any of the Contractor's vehicles.

(1) Vehicle Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury per person and Five Million Dollars (\$5,000,000.00) for property damage and in an amount not less than Five Million Dollars (\$5,000,000.00) for each accident.

(2) Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles.

(g) Excess Liability Insurance – Minimum Five Million Dollars (\$5,000,000.00) limit of liability. The excess liability coverage must be an occurrence following form policy including coverage for all required endorsements and no additional exclusions. The excess liability policy must extend over the general liability, automobile liability, and employer's liability policy forms. The excess liability policy must have concurrent effective dates with the primary coverage parts.

(h) Additional insurance requirements include the following.

(1) There shall be no exclusions for explosion, collapse or underground exposures on the Commercial General Liability Insurance Policy.

(2) The Owner shall be advised promptly in writing of the following changes in the insurance policies – (i) Setting up a new or retro date; (ii) Exhausting any aggregate limit under any of the policies; or (iii) Switching occurrence based coverage to claims made coverage or vice versa.

(3) Approval for deductibles higher than \$25,000 for the liability policies will be required from the Owner.

(i) Certificates of the insurance company as to the amount and type of coverage, terms of policies, etc., shall be delivered to the Owner before the Contract is signed.

Neither approval by the Government of any insurance supplied by a Contractor or subcontractor, nor failure to disapprove such insurance, shall relieve the Contractor or subcontractors of their obligation to maintain in full force during the life of the Contract all required insurance as set forth in this section. The Government may require other insurance as it deems necessary to perform under this Contract. If such insurance is required due to fault, error or omission on the part of Contractor, the Contractor shall be solely responsible to pay for such insurance. If however, the insurance is required by the

Government through no fault of the Contractor, the Government shall pay for the reasonable costs of the insurance not specified herein

4.12 Accident Prevention

(a) Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, and building and construction codes shall be observed. All hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.

(b) Should typhoon warnings be issued, the Contractor shall take every practicable precaution to minimize damage and/or danger to persons, to the Work, and to the adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work.

4.13 Protection of Work and Property

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the Contract Documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

4.14 Responsibility of Contractor to Act in Emergency

In case of an emergency which threatens loss of property or injury and/or safety of life, the Contractor shall act, without previous instructions from the Owner or Contracting Officer, as the situation may warrant. He shall notify the Contracting Officer thereof immediately thereafter of any compensation claimed by the Contractor. Substantiating documents regarding expenses shall be submitted to the Owner through the Contracting Officer and the amount of compensation shall be determined by agreement or as per the method described in Section 8.9(h), Changes in Work, of the General Conditions.

4.15 Mutual Responsibility of Contractors

If the Contractor or any of his subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor agrees to settle with such separate contractor by agreement, if he will so settle. If such separate contractor sues the Owner on account of any loss so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against any expenses or judgment arising therefrom.

4.16 Use of Premises and Removal of Debris

The Contractor expressly agrees to undertake at his own expense

- (a) to take every precaution against injuries to persons or damages to property;
- (b) to comply with the regulations governing the operation of premises which are occupied and to perform his Contract in such a manner as not to interrupt or interfere with the operation of other facilities;
- (c) to perform any work necessary to be performed after regular working hours or on weekends or legal holidays without additional expense to the Owner;
- (d) to store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (e) to place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work;
- (f) to frequently clean up all refuse, rubbish, scrap materials and debris caused by his operation so that at all times the site of the Work shall present a neat, orderly and workmanlike appearance;
- (g) to effect all cutting, fitting, or patching of his work required to make the same conform to the Plans and Specifications, and except with the consent of the Contracting Officer, not to cut or otherwise alter the work of any contractor; and
- (h) before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, equipment plant, and debris of every nature resulting from his operations, to put the Project site in a neat, orderly condition.

4.17 Obstructions

The Contractor shall at his own expense remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation and completion of all Work under this Contract.

4.18 Site of Contractor's Operations

The Contractor shall confine all construction operations within the vicinity of the Project site and shall arrange his work so that all construction materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience

inflicted upon the public and employees of the Government.

4.19 Barricades

The Contractor shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the Project site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.

4.20 Electrical Energy

The Contractor shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the Work. He shall provide all temporary wiring necessary.

4.21 Water

The Contractor shall make all necessary applications, pay all fees and charges, and obtain all necessary permits for construction of temporary water required for use on this Project. The nearest available source of water tap shall be verified by the Contractor. The Contractor shall be responsible for all expenses required for conveying water to the Project site from the available nearest source.

5.0 QUALITY OF WORK

5.1 Engineering and Layout

(a) The Contractor shall provide competent engineering services to execute the Work in accordance with the Contract requirements. He shall verify the figures shown on the drawings before undertaking any construction work and shall be responsible for the accuracy of the finished Work.

(b) The Owner has established or will establish such general reference points as will, in his judgment, enable the Contractor to proceed with the Work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in location without the written approval of the Owner. Any of them which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall be subject to prior approval by the Owner, be replaced and accurately located by the Contractor.

5.2 Shop Drawings, Materials and Workmanship

Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. All workmanship shall be first class and by persons qualified in the respective trades.

Shop Drawings

(a) The Contractor shall submit, for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawings and schedules shall be submitted in quadruplicate (unless otherwise specified) accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound insets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.

(d) The drawings submitted shall be marked with the name of the Project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the Contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal in order that if applicable, suitable action may be taken for proper adjustment. Otherwise, the Contractor will not be relieved of the responsibility for executing the Work in accordance with the Contract even though such shop drawings have been approved.

(e) If a drawing as submitted indicates a departure from the Contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the Contract price or time for performance, he may approve the drawings.

(f) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph 5.2 (e), shall not be construed (1) as permitting any departure from the Contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; or (3) as approving departures from additional details or instructions previously furnished by the

Contracting Officer.

5.3 Standards

(a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.

(b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to Bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.

(c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form or type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.

5.4 Samples

(a) The Contractor shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.

(b) No samples are to be submitted with bids.

(c) No materials or equipment of which samples are required to be submitted for approval shall be used on the Work until such approval has been given by the Contracting Officer, save only at the Contractor's risk and expense.

(d) Each sample shall have a label indicating the material represented, its place of origin and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.

(e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor to the Contracting Officer and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.

(f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any Contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the Work.

(g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this Contract any further samples of the same brand or make of that material.

(h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the Contractor for use in the Work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, or at the discretion of the Owner, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the Contract price. The cost of the tests will be borne by the Contractor except where laboratory tests as hereinafter specified are required by the specifications.

5.5 Laboratory Tests

Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Contracting Officer, and the reports of such tests shall be submitted to the Contracting Officer. The cost of the testing shall be paid for by the Contractor.

5.6 Methods

The Contractor shall use proper and efficient methods and appliances for the performance of all the operations connected with Work embraced under these specifications, drawings and Contract to secure a rate of progress which will secure completion of the Work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of Work or said rate of progress, the Contracting Officer may order the Contractor to increase their efficiency or to improve their character, and the Contractor must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the Contractor or his sureties from the obligations to secure such quality of Work and said rate of progress and the completion of the Work as required herein.

5.7 Labor and Materials

The Contractor shall furnish all labor, materials and equipment for the execution of the Work according to the drawings, specifications and Contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material finished for and used in the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the Contractor guarantees to accomplish same for the entire Work.

5.8 Guarantee of Work

(a) Except as otherwise specified all Work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract or upon disturbance of the work by other contractor hired by the Owner, whichever is earlier.

(b) If within any guarantee period, repairs or changes are required in connection with guaranteed Work which, in the opinion of the Contracting Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall promptly upon receipt of notice from the Owner and without expense to the Owner:

(1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects therein; and

(2) Make good all damage to the building or Project site or equipment or contents thereof which, in the opinion of the Contracting Officer, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract.

(c) In any case wherein fulfilling the requirements of the Contract or of any guarantee embraced in or required thereby the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Contracting Officer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.

(e) All special guarantees applicable to definite parts of the Work shall be stipulated in the specifications or other papers forming a part of the Contract and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

5.9 Defective Work

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of the Contracting Officer or the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the Work relieve the Contractor from the responsibility of securing the quality and progress of Work as required by these specifications.

Any defective work that may be discovered before the completion of the Work or within such time as required by the performance and payment bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and Contract.

The fact that the Contracting Officer or his representatives may have overlooked defective work shall not constitute the acceptance of Work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

The Contracting Officer may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve the Contractor from completing his Contract and shall not in any way terminate, cancel or abrogate the Contract or any part thereof, and the Government of Guam shall not in any way be responsible for the delay due to stopping the Work as aforesaid.

6.0 INSPECTION OF WORK

6.1 Access to the Work

The Contracting Officer and his representatives shall have access at all times to the Work for inspection and the Contractor shall provide proper facilities for such access and inspection.

6.2 Inspectors

Inspectors may be placed by the Contracting Officer to supervise each and every subdivision of the Work or any parts or process thereof. The Contracting Officer and the inspectors shall have free access to all parts of the Work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the

materials used or to be used.

The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the Contractor or the employees thereof shall be sufficient reason, if the Owner shall so decide, to annul the Contract.

6.3 As-Built Drawings

A Contract set of drawings shall be maintained at the Project site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. Upon completion of the Contract this set of drawings shall be delivered to the Contracting Officer.

6.4 Inspection

(a) All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and testing by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Contracting Officer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be satisfactorily replaced with proper materials and the Contractor shall promptly segregate and remove the rejected materials from the premises. If the Contractor fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in the Contract documents, the Contractor and surety being liable for any damage to the same extent.

(b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the Work. Special, full-size and performance tests shall be as described in the specifications. The Contractor shall be charged with any cost of inspection when material and workmanship are not ready at the time of inspection as requested by the Contractor.

(c) Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire Work to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If,

however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus fifteen percent (15%) shall be allowed the Contractor and he shall in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

6.5 Final Inspection

When the Work is substantially completed the Contractor shall notify the Owner, in writing, that the Work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Contracting Officer who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the Work will be ready for final inspection or tests on the date given but such endorsement shall not relieve the Contractor of this responsibility in the matter.

7.0 TIME FOR PERFORMANCE

7.1 Prosecution of the Work

The Contractor agrees that said Work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed by and between the Contractor and the Owner that the time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in the locality.

7.2 Suspension of Work

The Owner will furnish all land and rights-of-way necessary for the carrying out of this Contract and the completion of the Work herein contemplated. Should the Owner be prevented or enjoined from proceeding with the Work or from authorizing its prosecution, either before or after the commencement by reason of any litigation, the Contractor shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the Contract except by consent of the Owner, but time for completion of the Work will be extended to such time as the Owner determines will compensate for the time lost by such delay determination to be set forth in writing.

7.3 Climatic Conditions

(a) When so ordered by the Contracting Officer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

(b) Contract Completion Time. Time is of essence for this Contract. The Contract completion time for this Contract was calculated after allowing for the following number of lost work days in each month. Time extension on account of inclement weather will be

allowed only if the daily report of the Contracting Officer's inspector indicates the total number of lost work days for the tenure of the Contract exceeds the cumulative total of non-working days shown below for the tenure of the Contract. Time extension on account of inclement weather on weekends or holidays shall be granted only if the Contractor confirms in writing at least seven (7) calendar days in advance his intention to work on weekends or holidays.

<u>Month</u>	<u>Non-Working Days</u>	<u>Month</u>	<u>Non-Working Days</u>
January	07	July	10
February	05	August	11
March	05	September	12
April	04	October	10
May	05	November	07
June	06	December	07

7.4 Progress Report

The Contractor shall submit a monthly progress report in triplicate on or before the fifth (5th) working day of each month to the Contracting Officer briefly setting forth work accomplished.

7.5 Owner's Right to Stop Work or Terminate Contract, Delays, Damages

- (a) If:
 - (1) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or
 - (2) A receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within twenty (20) calendar days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said twenty (20) calendar days; or
 - (3) The Contractor shall refuse or fail, after Notice of Warning from the Contracting Officer, to supply enough properly skilled workmen or proper materials; or
 - (4) The Contractor shall refuse to prosecute the Work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or shall fail to complete the Work within said period; or
 - (5) The Contractor shall fail to make payments as specified to persons

supplying labor or materials for the Work; or

(6) The Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Contracting Officer or otherwise be guilty of a substantial violation of any provisions of this Contract, then, and in any such event, the Owner, upon the certificate of the Contracting Officer that sufficient cause exists to justify such action, and without prejudice to any other rights or remedy he may have may, with ten (10) calendar days notice to the Contractor, terminate the employment of the Contractor and his right to proceed, either as to the entire Work or (at the option of the Owner) as to any portion thereof as to which delay shall have occurred, and may take possession of the Work and complete the Work by contract or otherwise as the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment on that Work until the Work is finished. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, and inspection services and any liquidated damages for delay), such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is so terminated, the Owner may take possession of and utilize in completing the Work such materials, supplies, plant, and equipment as may be on the site of the Work and necessary therefore. The expenses incurred through the Contractor's default shall be certified by the Contracting Officer.

- (b) If the Owner does not terminate the right of the Contractor to proceed, the Contractor shall continue the Work, in which event the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages for each calendar day of the delay until Work is completed or accepted the amount as set forth in the Contract Documents and the Contractor and his sureties shall be liable for the amount thereof.
- (c) Provided that the right of the Contractor to proceed shall not be terminated, or the Contractor charged with liquidated damages because of any delays in the completion of the Work due to unforeseeable cause beyond the control and without the fault or negligence of the Contractor including, but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes by others than the Contractor or his subcontractors, freight embargoes, and unusually severe weather, or delays of subcontractors due to such cases, if the Contractor shall, within ten (10) calendar days from the beginning of any such delay (unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract) notify the Owner in writing through the Contracting Officer of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the Work when in his judgment the findings of facts justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto.

8.0 CLAIMS, PAYMENTS

8.1 Contractor's Title to Materials

No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payments.

8.2 Claims

The Contractor agrees whenever required to do so by the Owner to furnish satisfactory evidence that all persons, firms or corporations who have done work or supplied materials under these specifications have been paid or have been duly notified of the completion of the work and have been secured to their satisfaction before the said Contractor shall be entitled to Final Payment.

In case such evidence is not furnished or in case any claim is filed with the Owner or any suit or action is instituted against the Owner as defendant or garnishes against the Contractor in connection with the work performed or to be performed under the drawings, specifications or Contract, the Owner may retain from the money due or to become due to the Contractor such sum or sums as in the judgment of the Contracting Officer will fully protect the Owner from loss, charge or expense by reason of such claim, suit or action. The Owner without prejudice to any other and further rights, may make any and all deductions for any loss, charge or expense sustained by it to which it would be entitled under the Contract Specifications or Performance and Payment Bond, or otherwise before paying over the balance of the sum or sums retained as aforesaid, if any, to the Contractor, his creditor, or any successful claimant against the Contractor.

No payment made or retained under this Contract shall be held to relieve the Contractor and/or his sureties from his and/or their obligations under this Performance and Payment Bond to hold harmless and indemnify the Owner or its agents from any and all loss, charge or expense by reason of any unpaid claim whatsoever.

8.3 Waiver of Mechanics Liens

Contractor waives any right that he now has or in the future may have to claim a mechanic's lien against the real property or improvements thereon which are the subject of this Contract, to secure payment for labor and materials furnished or to be furnished by him under this Contract.

8.4 Contract Schedule of Values

Within three (3) working days after receipt of Notice of Award, the Contractor shall submit

for approval a detailed Contract Schedule of Values for the Work totaling the amount of the Contract. The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions. The Contract Schedule of Values shall be approved and attached to the Contract before the Contract is signed. The Contract Schedule of Values will be a more detailed version of the Bid Schedule of Values.

8.5 Taxes

The Contractor shall, without additional expense to the Owner, pay all applicable taxes. The successful Bidder will be required to comply with the applicable sections of Titles 11 and 21 of the Guam Code Annotated, as regards to licenses and taxes. In addition to the general Contractor's liability, subcontractors are also subject to these provisions. Subcontractors are also required to possess Guam Service Licenses. The Contractor will be required to submit a list of his subcontractors and the monetary amount of each subcontract.

8.6 Materials, Services and Facilities

It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, insurance, bonds, water, light, power, transportation, superintendence, temporary construction of every nature whatsoever necessary to execute, complete and deliver the Work within the specified time.

8.7 Patents

The Contractor shall hold and save the Owner and his officers, agents, servants, and employees and the Receiver harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the Contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

8.8 Extras

Except as otherwise herein provided, no charge for any extra work or materials will be allowed unless the same has been ordered in writing by the Owner and either the price is stated in such order or a definite acknowledgment is made that a change in price is involved subject to later determination.

8.9 Changes in Work

(a) The Contracting Officer, at any time, without notice to the sureties may, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to the following changes. However, no change will be made which increases the total Contract price

without notice to sureties.

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the Work;
- (3) In the Government-furnished facilities, equipment, materials, services for the Project site; or
- (4) Directing acceleration in the performance of the Work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instructions, interpretations or determination from the Contracting Officer) which causes any such change, shall be treated as a Change Order under this clause, provided that the Contractor gives the Contracting Officer written Notice stating the date, circumstances and source of the order and that the Contractor regards the order as a Change Order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a Change Order under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly, provided, however, that except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than twenty (20) calendar days before the Contractor gives written Notice as therein required. And provided further, that in the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) calendar days after receipt of a written Change Order under (a) above or the furnishing of a written Notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the Notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

(g) In making any change, the charge or credit for the change shall be determined by the following method:

- (1) The actual cost of:
 - I. Labor, including foreman
 - II. Materials entering permanently into the work

- III. Equipment rental cost during time used on extra work
- IV. Power and consumable supplies
- V. Insurance
- VI. To the above cost there shall be added a fixed fee to be agreed upon, but not to exceed 15% of the net cost. This fee shall be compensation to cover the cost of supervision, overhead, bond, profit and other general expenses.

(h) The Contractor shall, when required by the Owner, furnish to the Owner an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.

(i) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

(j) If any part of the work as installed is at variance with the Contract requirements, the Owner may, if he finds it to be in his interest, allow all or any part of such work to remain in place subject to a proper adjustment in the Contract price.

8.10 Payment to Contractor

(a) Unless otherwise provided in the specifications, the Owner will make partial payments to the Contractor after receipt and approval of the request for partial payment covering the work performed during the preceding calendar month. No payments for installed materials on the Project site will be made unless such request is accompanied by a receipt or certification showing that the Contractor has made payment in full for such work done. In preparing such requests, preparatory work done shall not be considered for payment. Materials delivered to the Project site shall be considered for payment subject to the following conditions:

(1) The material shall be kept in a safe, enclosed and bonded warehouse or area located on site with restricted access.

(2) The receipt and issue of material must be controlled by a stock card kept in the warehouse or Contractor's office.

(3) Insurance coverage required under Section 4.11 of the General Conditions shall include insurance of such material and shall include theft insurance.

(b) In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all Work covered by the Contract. However, if the Contracting Officer, at any time after 50 percent of the Work has been completed, finds that satisfactory progress is being made, he may authorize payment

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in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the Work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to the Contractor all or a portion of such excess amount.

(c) All materials and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

(d) Release of Claims - Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Contracting Officer a complete release of all claims against the Owner arising under and by virtue of this Contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the Contractor.

(e) Certificate of Completion - Upon completion and acceptance of all work whatsoever required and the release of all claims against the Owner as specified, the Contracting Officer shall file a written certificate with the Owner and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefor.

(f) Final Payment - Within thirty (30) calendar days after the filing of such certificate of completion, the Owner shall pay to the Contractor the amount therein stated less all prior payments and advances whatsoever to or for the amount of the Contract. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment which is throughout this Contract called Final Payment.

(g) Acceptance of Final Payment Constitutes Release - The acceptance by the Contractor of the Final Payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work, excepting the Contractor's claims for interest upon the final payments if this payment be improperly delayed. No payments, however, final or otherwise shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance and Payment Bond.

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9.0 MISCELLANEOUS

9.1 Prohibited Interests

(a) No member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

(b) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Government of Guam authorized to exercise any legislative, executive supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

9.2 Disputes

(a) All controversies between the Government and the Contractor which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within sixty (60) days after written request by the Contractor for a final decision concerning the controversy; provided, however that if the Procurement Officer 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 if an adverse decision has been received. The Procurement Officer for this Contract is the Director of the Department of Public Works or his authorized representative.

(b) The Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(c) Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the Superior Court of Guam.

(d) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of the Contract by the Government;

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provided, however, that in any event, the Contractor shall proceed diligently with the performance of the Contract where the Procurement Officer has made a written determination that continuation of work under this Contract is essential to the public health and safety.

9.3 Contracting Officer Field Office

The Contractor shall provide an office for the Contracting Officer as per Specification Section 01500 Temporary Facilities and Controls. Provision for the Field Office and all associated expenses is incidental to the cost of the Project and is therefore no additional cost to the Owner.

9.4 Sanitary Provisions

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Public Health and Social Services or of other authorities having jurisdiction.

9.5 Restriction on Employment of Sex Offenders

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

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**LAYON MUNICIPAL SANITARY LANDFILL
ENTRANCE AREA FACILITIES AND CELLS 1 AND 2
PROJECT NO. SWMD-09-02**

GENERAL SCOPE OF WORK

1.0 INTENT:

It is the intent of Gershman, Brickner & Bratton, Inc. in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works to seek bids for the construction of the **Entrance Area Facilities and Cells 1 and 2** at Layon, Inarajan, Guam.

2.0 DESCRIPTION OF WORK:

The Project includes construction of the entrance area facilities for the landfill consisting of the administration building, maintenance building, truck scales, water storage tank, generator and pump building, oil/water separator, and other ancillary facilities. The Project also includes installation of the Cells 1 and 2 liner system, leachate and gas collection systems, leachate storage tank, subdrain storage tank, and other features required to prepare the cells for receiving trash. Other work includes extension of the perimeter road, construction of Pond 2, installation of utilities, and other related work as necessary to make the Project complete and ready for use.

3.0 GENERAL REQUIREMENTS:

All items in this scope of work shall be completed and ready for use upon final acceptance and shall comply with all the provisions governing laws and regulations applicable to Guam. The Contractor shall be responsible in determining and performing the scope of works required based on the Contract plans and specifications.

4.0 SITE INVESTIGATION:

The Contractor shall verify existing site conditions and all pertinent information needed for the satisfactory performance of the scope of work prior to submitting a bid.

5.0 DISPOSAL:

1. Removal and disposal fees shall be paid by the Contractor.
2. The disposal site shall be a Guam EPA approved hardfill.



Office of the Governor of Guam

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FELIX PEREZ CAMACHO
Governor

MICHAEL W. CRUZ, MD
Lieutenant Governor

AMENDED
COMMON CONSTRUCTION PREVAILING
WAGE RATES FOR GUAM

Pursuant to 8 CFR 214.2(h)(b)(ii)(v)(F)(2) prevailing wage rates for common construction occupations in Guam must be approved by the U.S. Citizenship & Immigration Service (USCIS) Commissioner of Immigration prior to implementation. These Prevailing Wage Rates apply only to H-2B workers and similarly employed U.S. workers in Guam. USCIS has reviewed and reconsidered the Government of Guam's proposed rates and has approved new rates effective September 29, 2008 as follows:

Table with 2 columns: OCCUPATION and HOURLY WAGE RATES. Lists occupations like BRICKLAYER, CARPENTER, CEMENT MASON, etc., with corresponding hourly rates.

These prevailing wage rates are effective for both new and extension temporary labor certifications. The prevailing wage rate on Temporary Labor Certifications approved prior to the implementation of these new rates shall remain in effect for the duration of the existing labor certifications.

For further information, please contact Maria Connelley, Director of Labor, at (671) 475-7075, or Greg Massey, Administrator for the Alien Labor Processing & Certification Division (ALPCD) at (671) 475-7005.

Handwritten signature of Felix P. Camacho

FELIX P. CAMACHO
Governor of Guam

OCT 06 2008