

REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR
LAYON LANDFILL SYSTEMS, ENTRANCE FACILITIES AND ACCESS
ROAD AND UTILITIES
PROJECT NO.: RECEIVER-SW-09-03

PREPARED BY:

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

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REQUEST FOR PROPOSALS

I. INTRODUCTION

The purpose of this Request for Proposals (RFP) is to procure construction management services for the construction of the landfill systems, entrance facilities, access road and utilities and leachate pretreatment facilities for the Layon Municipal Solid Waste Landfill (Layon Landfill) in compliance with the Consent Decree (Federal Court Case CV02-0022). Gershman, Brickner & Bratton, Inc., in its capacity as Receiver (RECEIVER) for the Solid Waste Management Division (SWMD) of the Government of Guam (GovGuam or Government is the Owner) is soliciting Proposals from qualified firms for these services. The RECEIVER intends to contract with independent firm(s), hereinafter referred to as Consultant or Proposer.

This contract (Contract) will be an indefinite delivery, indefinite quantity (IDIQ) Contract for professional services.

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

The term of this construction management services Contract is for the duration of the Consent Decree construction activities, identified herein, commencing from the date of Contract signing, with a GovGuam option to extend the Contact as necessary, at the same terms and conditions. Significant aspects of the work for which the Consultant will provide construction management services have not been performed in Guam; therefore, firms located in Guam may not have all the requisite experience to provide construction management for this aspect of the work. While firms in Guam may compensate for any lack of needed experience by partnering with a firm with the requisite experience, the RECEIVER does not believe it is in the best interest of the Consent Decree projects to limit its review of qualified firms to those selected by local firms. This RFP seeks proposals from firms already licensed to do business on Guam and firms who are otherwise qualified and interested in performing the services requested but which are not yet licensed to do business on Guam.

Like most other jurisdictions, Guam's law requires that engineering and construction management firms be properly licensed in Guam in order to provide these services. In order to assure compliance with the licensing requirements and to allow for competition among all firms with the skills and experience needed to perform these services, the RECEIVER reserves the right to assign the contract awarded pursuant to this RFP to an existing contract for engineering services already available to the RECEIVER. Should this occur, the services of the existing engineering firm to whom the contract is assigned will be limited to assisting the Consultant chosen pursuant to this RFP in acquiring the needed Guam licensees and assisting the RECEIVER in administering the Contract.

Background

GovGuam has been out of compliance with the USEPA's Clean Water Act for approximately twenty-three (23) years. In 2004, GovGuam and the USEPA entered into a legally binding Consent Decree whereby GovGuam will design and build a sanitary landfill, close the existing Ordot Dump in an environmentally responsible manner, and implement a household hazardous waste operation ("the Consent Decree Projects"). The Federal District Court of Guam (Court) placed the SWMD under a federal receivership through its order (Document 239) on March 17, 2008 after GovGuam failed to comply with this Consent Decree. With that order, GBB, a solid waste management consulting firm headquartered in Fairfax, Virginia, was appointed by the Court as the RECEIVER for the SWMD and charged with implementing the Consent Decree Projects.

Currently, the RECEIVER has contracted with Maeda Pacific Corporation (in association with Sumitomo-Mitsui as major earthwork partner) to perform the mass grading of Cells 1 and 2 of the Layon Landfill to finish subgrade elevation and construct the landfill operations road and associated stormwater management features, including a large stormwater management pond. Notice to Proceed with this work was provided on February 25, 2009, and contract finish date is September 22, 2009. For this construction activity, TG Engineers, PC is contracted to perform the construction management services, including quality assurance activities for the duration of the earthwork contract and earthwork project closeout.

In addition to the improvements discussed above, the main construction activities for the Layon Landfill itself, entrance facilities and main access road remain to be constructed. To achieve a fully functioning landfill facility, the following improvements are planned:

- Landfill Liner Systems for Cells 1 & 2
- Leachate Collection/Storage and Removal System
- Leachate Pretreatment System
- Subdrain System
- Gas Collection System
- Stormwater Management Facilities (not being constructed by Maeda Pacific)
- Sewer Line from Landfill to Inarajan WWTP with Associated Pump Stations
- Entrance Area Grading and Paving
- Administration/Scale House Building
- Scale Relocation from Ordot Dump to Layon Landfill
- Maintenance Building
- Generator/Pump Building
- Water Storage Tank
- Oil/Water Separator, Wash Rack & Mud Rack
- Security Fencing
- Main Access Road and Dandan Road Improvements
- Utilities from Route 4 to Landfill Site
- Transfer Station/HHW Facilities

These improvements are expected to be completed in three concurrent phases, A, B and C, with different contracting mechanisms as described in Table 1 below. A site plan of the Phases A and B improvements is shown in Figure 1. A preliminary construction schedule is presented in Attachment A. The construction management (CM) contract will be awarded to the selected

consultant for three phases of work. The total construction cost for the three (3) phases is estimated to be approximately \$84 million.

Phases A, B and C construction have an anticipated completion date of July 2011.

It is possible that portions of Phase B construction may be contracted separately, such as the Sewer Line/Pump Station from Route 4 to the Inarajan WWTP.

Table 1: Layon Landfill Improvements and Construction Schedule

Construction Phase	Primary Improvements	Contract Mechanism	Anticipated Schedule
A	<ul style="list-style-type: none"> • Landfill Liner Systems for Cells 1 & 2 • Leachate Collection/Storage and Removal System • Subdrain System • Gas Collection System • Stormwater Management Facilities (not being constructed by Maeda Pacific) • Entrance Area Grading and Paving • Administration/Scale House Building • Scale Relocation from Ordot Dump to Layon Landfill • Maintenance Building • Generator/Pump Building • Water Storage Tank • Oil/Water Separator, Wash Rack & Mud Rack • Security Fencing 	Standard Invitation For Bid	Sept. 2009 – February 2011
B	<ul style="list-style-type: none"> • Main Access Road and Dandan Road improvements • Utilities from Route 4 to Landfill Site • Sewer line from Landfill to Inarajan WWTP with associated Pump Stations 	Standard Invitation For Bid	Sept. 2009 – February 2011
C	<ul style="list-style-type: none"> • Transfer Station/Household Hazardous Waste Facility 	Standard Invitation For Bid	Oct. 2009 – July 2011

It is the intent of the RECEIVER to contract with a qualified Consultant who can provide management and coordination, construction contract administration and closeout, change management, and field inspection professional services. These services include monitoring the adequacy of contractor safety and environmental controls and practices, utility coordination, quality assurance testing and coordination, schedule review and tracking, as-built drawing documentation and warranty management. In order for the Consultant to be considered qualified, the firm or project team must possess technical competency in the management of

landfill facility construction and demonstrate recent experience in the successful completion of projects of similar size and new landfill cell construction scope as identified herein.

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

The complete RFP is available at the following Internet address:

<http://quamsolidwastereceiver.org/>

Project Location

Phases A and B work will be performed within the Layon Landfill complex property (Lot B-3REM-2, municipality of Inarajan), the new landfill access road right-of-way, Dandan Road and Route 4 to the Inarajan WWTP. Phase C work is anticipated to be performed in Tamuning or Dededo.

Available Information

The following documents are available for review through the RECEIVER Web site:

- Construction Plans and Specifications for Cells 1 and 2 Mass Earthworks
- Draft Final Design Plans and Specifications for Landfill Systems & Entrance Facilities - Permitting and Bid Set
- Draft Final Design Plans and Specifications for Landfill Access Road and Utilities - Permitting and Bid Set

II. SCOPE OF WORK

It is the intent of the RECEIVER to select a Consultant who will coordinate and effectively manage the Phases A, B and C projects, as well as coordinate with the ongoing earthwork construction phase.

Task 1: Services Prior to Construction

The Consultant shall be responsible for providing certain services prior to the start of construction for each of the three construction project phases.

Services prior to construction shall include, but not be limited to:

Task 1.1 Review of contract documents including:

- Review of Phase A contract documents at 100% completion for familiarity with project plans, specifications, construction quality control plan;
- Review of Phase B contract documents at 100% for constructability and consistency between design disciplines and familiarity with project plans, specifications, construction quality control plan;

- Review of Phase C contract documents at 100% for constructability and consistency between design disciplines and familiarity with project plans, specifications, construction quality control plan; and
- Review and evaluation of Construction Quality Assurance requirements at 100% for completeness, compliance with minimum regulatory requirements for such plans regarding landfill construction and consistency between design disciplines.

Task 2: Construction Management Services

The Consultant shall be responsible for providing construction management services throughout the duration of each of the three construction project phases.

Services during construction shall include, but not be limited to:

Task 2.1 Project Management, including:

- Schedule preparation (schedule shall be coordinated with construction contractor's schedule);
- Schedule evaluation (actual vs. planned progress);
- Records management;
- Site coordination between contractors and operations staff, design consultant, and external utilities;
- Change Orders, including cost tracking and estimated vs. actual expenditures;
- Proposed Changed Modifications, including cost tracking and estimated vs. actual expenditures;
- Communication with contractor, RECEIVER project engineer, design engineer, operations staff and external utilities and GovGuam agencies as required; and
- Preparation and submittal of monthly Consultant progress reports with monthly progress payment request. The monthly progress report shall include:
 - o A short overview of work accomplished during the previous month;
 - o A short overview of work to be accomplished the following month;
 - o An updated schedule (based on contractor's schedule of values) showing work progress and completion percentage;
 - o A list of problem areas; if any; and proposed corrective actions; and
 - o A bar graph comparing the monthly invoiced amounts and cumulative billings with the total authorized construction management budget.

Task 2.2 Construction Contract Administration, including:

- Participation, including leadership, in the Preconstruction Conference for each project;
- Coordination of site meetings with the contractor, design engineer and RECEIVER, and preparation and distribution of meeting minutes;
- Review of contractor's contract execution for compliance with construction contract document requirements (i.e., certified payroll, labor compliance, etc.);
- Review of contractor's submittals for compliance with contract documents;
- Review of contractor's request for information and either providing information from contract documents back to the contractor or routing request to Design Engineer for resolution;
- Completion of daily logs;

- Review of Contractor's pay requests and making recommendations to the RECEIVER as to acceptability of request;
- Communication with contractor regarding acceptability of work; and
- Coordination of the contractor's test plan and start-up plan.

Task 2.3 Change Order Management, including:

- Review and evaluation of contract change order requests and submittals;
- Contract change order coordination between contractor and RECEIVER;
- Investigation and inspection of site conditions that differ from those described in the contract documents; and
- Review of submittals in support, and make recommendations for resolution, of claims and disputes.

Task 2.4 Field Inspection, including:

- Review and inspection of contractor's work for compliance with contract documents on a daily basis;
- Monitoring of corrective actions taken by contractor needed to fix work that is not in compliance with the contract documents;
- Keeping and updating field inspection diaries;
- Taking digital photos of work in progress and maintaining a photo log;
- Review of contractor's compliance with all regulatory permits and mitigation measures;
- Review of contractor's compliance with workplace safety and health standards and notification of RECEIVER of non-compliance; and
- Review and approval of contractor's survey layouts.

Task 2.5 Construction Quality Assurance, including:

- Execution of Construction Quality Assurance Plan; and
- Quality assurance materials testing services.

The RECEIVER reserves the right to contract for Task 2.5 separately to a Third Party as needed. See Construction Quality Assurance Section below for more detail on scope specifics.

The Consultant's construction manager shall be actively involved in all construction management tasks associated with each construction project. The Consultant shall organize his fee schedule for this Task by construction bid package.

Task 3: Services during Construction Closeout

The Consultant shall be responsible for providing services during construction closeout for each of the three construction phases.

Services during construction closeout shall include, but not be limited to:

Task 3.1 Substantial and Final Completion services, including:

- Site inspection to determine if facilities are complete and in compliance with contract documents;
- Preparation of punch list and inspection of punch list item corrective actions; and
- Recommendation to RECEIVER as to the release of payments and retention to contractor.

Task 3.2 Operation and Maintenance (O&M) Manual Submittal and Training Coordination with Contractor.

- Consultant shall coordinate the preparation of the O&M Manual submittal by the contractor and provide final review comments by the Consultant, Design Engineer and operator to be incorporated into the final O&M Manual for permit compliance.
- The Consultant shall coordinate with the contractor and operator to schedule and conduct startup training required by the construction contract and the operations contract.

Task 3.3 Records Compilation and Submittal, including:

- Preparation and submittal of a complete set of organized construction contract documentation; and
- Submittal of any record drawings made by Consultant during construction.

Task 3.4 Obtaining Warranty and Lien Release Information from Contractor.

- Track and follow up the submittal of these documents from the construction contractor in accordance with the specifications during project close-out.
- Warranties: The Consultant shall maintain a copy of warranties (original to be provided to SWMD) and compile associated manufacturer and contractor warranty documents. Warranty and Lien Release information shall be included in the final report (see section below on Construction Quality Assurance Plan for final report requirements).

Quality Control Plan

The Consultant shall have a Quality Control Plan (QCP) in effect during the entire time work is in progress, and shall have total responsibility for the accuracy, completeness, and timeliness of all meeting notes, contract change orders, progress payments, labor compliance documentation, reports and all other work performed under this Contract. The Consultant shall meet that responsibility through the implementation of a Quality Control Plan. Prior to beginning work, the Consultant shall submit to the RECEIVER two copies of its QCP. Deliverables that do not conform to the approved QCP will be returned to Consultant without review by the RECEIVER.

Construction Quality Assurance

Provide fulltime construction quality assurance during construction of the landfill systems consistent with the approved Construction Quality Assurance Plan (CQAP).

The Guam Environmental Protection Agency (GEPA) has required through the Solid Waste Management Facility permit that a CQAP be developed and implemented for the landfill liner

systems of these projects. The CQAP has been prepared in accordance with the requirements of the California Integrated Waste Management Board (IWMB) Section 20324. The CQAP is required to meet the California IWMB requirements because the GEPA regulations currently do not specify a CQAP requirement. Prior to its implementation, the Consultant will be required to review and certify that the CQAP has been prepared in accordance with the IWMB Section 20324. If the CQAP does not meet the requirements, then the Consultant shall make revisions for the plan to conform. The Consultant shall provide construction quality assurance as the 'CQA Monitor' per Title 27 of the California Code of Regulations.

The Consultant shall have a CQAP in effect during the entire time work is in progress, and shall have total responsibility for quality assurance performed under this Contract. The Consultant shall meet that responsibility through the implementation of the CQAP. Prior to beginning work, the Consultant shall submit to the RECEIVER either a certification of the existing plan or a revised plan that meets the regulatory requirements.

The Consultant shall provide the Final Construction Quality Assurance (CQA) Report including certifying that the as-built drawings are correct. The Final CQA Report shall contain a table of contents or index that references the Title 27 reference/requirement for CQA reports. The CQA Report shall meet the requirements of Title 27 and this scope of work.

III. CONSTRUCTION MANAGEMENT ORGANIZATION

The Consultant will report to the RECEIVER (for the Government of Guam - Owner) who reports to the Court. The Consultant shall not proceed with any work until the RECEIVER provides the Notice to Proceed (NTP) letter to the Consultant.

The RECEIVER directly handles project management and monitoring of the Consultant. The Court will hold all contracts and the Consultant will contractually report to the RECEIVER. The day-to-day management of the Consultant Contract will be by the RECEIVER.

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

The Consultant must comply with and follow all provisions of the Territory and federal laws as required (i.e., Professional Engineering License, Certificate of Authorization must be registered in Guam under 22 GCA Chapter 32, "The Professional Engineers, Architects and Land Surveyors Law"). A copy of the Certificate of Authorization (COA) issued by the Professional Engineers, Architects and Land Surveyors Board (PEALS Board) shall be included in the proposal.

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

All records and documents produced by the Consultant become the property of the Government of Guam.

IV. MINIMUM PROPOSAL CONTENT AND MANDATORY REQUIREMENTS

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

Specifically, the Proposer must:

- Have knowledge and experience derived from the performance of construction management and construction quality assurance services of municipal solid waste sanitary landfills and component systems per current industry standards and consistent with the regulations and permit requirements of GEPA, and/or similar regulatory agencies with U.S. EPA authorization to conduct the regulation of municipal solid waste sanitary landfill units under the Resource Conservation and Recovery Act (RCRA).
- Be financially capable to carry out the tasks of the Contract (refer to RFP Section VII.h.vii).
- Have or be able to establish a local project office in Guam.
- Have or be in the process of obtaining a local business license at the time of Notice of Award.
- Have, or be able to obtain, a Certificate of Authorization and Responsible Managing Employee approved by the PEALS Board for Construction Management .
- Have or obtain proper insurance for the work to be performed prior to execution of contract (See Attachment B).
- Have sufficient qualified personnel to conduct the Scope of Work.

Qualified personnel shall meet the minimum requirements as described below:

- a. Construction Manager: Must have qualifications to meet all the requirements of the PEALS Board on Guam as a professional engineer and Consultant firm should have successfully provided construction management and construction quality assurance services for landfill construction projects of similar size and complexity to the proposed project for at least three (3) projects in the last five years. Must have five (5) years progressively responsible engineering experience as a professional engineer, with at least three (3) years managerial experience. Must have a thorough knowledge of engineering fundamentals and applications, higher mathematics, computer programs with engineering applications, plans, construction procedures, inspection, specifications and testing requirements.
- b. Quality Assurance Engineer: Must have qualifications to meet all the requirements of the PEALS Board on Guam as a professional engineer and Consultant firm should have successfully provided construction quality assurance services, including Boutwell permeability field testing for landfill construction projects of similar size and complexity to the proposed project for at least three (3) projects in the last five years. Must have five (5) years progressively responsible engineering experience as a professional engineer with at least three (3) years managerial experience. Must have a thorough knowledge of engineering fundamentals and applications, higher mathematics, computer programs with engineering applications, plans, construction procedures, inspection, specifications and testing requirements. Must have excellent skills in verbal and written communications to convey complex ideas and concepts, and be capable in project administration, management and public relations. Shall possess considerable ability to plan, organize and direct the work of others, and maintain effective working relationships.

- c. Resident Engineers: Must have all the qualifications to meet the requirements to be registered with PEALS Board on Guam as a professional engineer. Must have at least five (5) years progressively responsible engineering experience as a professional engineer, with at least three (3) years managerial experience. Related graduate level education may be substituted on a year per year basis for professional experience. Must have a thorough knowledge of engineering fundamentals and applications, higher mathematics, computer programs with engineering applications, plans, construction procedures, inspection, specifications and testing requirements. Must have excellent skills in verbal and written communications, to convey complex ideas and concepts, and be capable of administration, and management. Shall possess considerable ability to plan, organize and direct the work of others, and maintain effective working relationships.
- d. Construction Inspectors: Must have graduated from high school or equivalent plus seven (7) years progressively responsible experience in civil engineering construction related work. Related college education or technical training may be substituted for experience on a year per year basis. Must have one (1) year managerial experience. Must have extensive knowledge of methods, materials, and procedures used in roadway construction and/or maintenance work. Must be skilled in the interpretation of construction plans and specifications, and possess the ability to oversee multiple projects, document all activities and events on a daily basis with complete and accurate inspection reports, coordinate quality assurance testing requirements, and maintain effective working relationships.

PROPOSAL REQUIREMENTS AND CONTENTS

Proposals submitted for this project are to follow the outline described below and must address all requested information. Any additional information that the Proposer wishes to include that is not specifically requested should be included in an appendix to the proposal. Proposers are encouraged to keep the proposals brief and to the point, but sufficiently detailed to allow evaluation of the project approach. Six copies of the proposal must be submitted.

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

Technical Proposal

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

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

Section 1 Project Understanding and Special Project Considerations (5 pages maximum)

Provide a narrative description of the project based on your proposed Scope of Work and information gathered about the project. Include any issues that you believe will require special consideration for this project. Identify any unique approaches or strengths that your firm may have related to this project. RECEIVER will assess Proposer's understanding of all aspects of the project based on the overview.

Section 2 Project Team (5 pages maximum)

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

- Identify all key members' roles, availability, qualifications, and responsibility for the project. Full resumes for all key members shall be provided within an appendix.
- All subconsultants shall be identified along with tasks assigned to them, including testing firms. Identify years of experience in construction management and/or QA/QC of landfills and related facilities.
- Identify any member(s) of the team who failed to remain on a project through completion of a contract during the past five years and provide an explanation.

Special Note: If the project team consists of several firms and/or subcontractors, it is to the Proposers' benefit in evaluation scoring of the proposal for the lead Proposer to be the firm with the landfill construction management experience.

Section 3 Detailed Scope of Work (10 pages maximum)

Provide a detailed description of the tasks and duties required to implement this Scope of Work, from review of plans and specifications through startup. Provide a listing of all assumptions made (by work task), including anticipated level of work assistance to be provided by the RECEIVER and the design engineer. Identify any steps required that have not been specifically identified in the scope of work. Also, identify any unique approaches or strengths that your team may have related to this project.

Section 4 Project Schedule (4 pages maximum)

Include a project schedule showing all key project milestones. A preliminary project schedule is included as Attachment A and is available in a Microsoft Project 2007 spreadsheet to Proposers. Include a list of all assumptions used in developing the schedule for the Scope of Work presented in Section 3, but not limited to the following:

- Project Meetings
- Design Milestones
- Construction Milestones
- Equipment and Material Procurement
- Training and Demonstration Periods
- Final Completion of the Work

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

Section 5 Project Management (2 pages maximum)

Describe how the project will be controlled and executed during each construction phase.

Section 6 Related Experience (5 pages maximum)

Include a description of projects in progress or completed over the last three (3) years that are comparable to this project. Identify project team members that worked on the project and their

role and responsibility. Only include those projects where there is significant involvement from individuals who are part of the proposed project team.

Provide the name of entities, as well as contact information, with whom the Consultant Team has associated in alternative delivery projects, including design build and design assist projects, fast track projects, or owner supplied equipment during the past five years. Provide a minimum of three (3) owner references of similar projects.

Recent experience with direct construction management and inspection in leachate controlled municipal solid waste landfills and landfill expansion projects will be given the highest weight in the evaluation. Include references with names, addresses, and phone numbers. In addition, provide a history over the past five (5) years for construction management or other related services that the Proposer is in litigation over or has been sued.

Section 7 Construction Management Plan Example Documentation

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

Section 8 Conflicts of Interest (1 page maximum)

Proposers submitting a Proposal must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm relative to the services to be provided under the Contract. If a Proposer has no conflicts of interests, a statement to that effect shall be included in the Proposal.

Section 9 Proprietary Information (1 page maximum)

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

Section 10 Financial Statements (pages as necessary)

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

Section 11 Insurance (1 page maximum)

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

Section 12 Litigation History (pages as necessary)

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

Section 13 Signature (1 page maximum)

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

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

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

Fee Proposal

In a sealed envelope, submit the Fee Proposal as a separate document to your Technical Proposal; provide 6 hardcopies and one electronic copy (MS Excel format) of a cost proposal individually listing the cost for each task and sub-task identified in the proposed Scope of Work. At a minimum, include a line item cost estimate for each task and sub-task outlined in the Scope of Work in Section II above. The spreadsheet shall be in a format that will permit RECEIVER to determine the key project team member(s) proposed for each task and sub-task and the number of management, engineering, technical, drafting and support personnel hours, cost per hour for each project team member and total cost Proposal for each task. The hourly rate, name of team member and staff classification shall be included in the column headings of the spreadsheet. When work on a scope item will be performed by sub-consultants, please indicate the firm, total sub-consultant fee for the task, and total sub-consultant hours proposed.

Identify all other costs to be billed to the project including project expenses (no mark-ups on expenses will be allowed). All Proposers are subject to the Guam Gross Receipts Tax (GRT) as part of complying with "applicable law". Therefore, it shall be included as a line item on the cost sheet. Include any proposed mark-up for sub-consultant fees. Include a copy of the proposed rate schedule(s) to be used throughout the duration of the project, including any adjustments that are predicted to occur during the life of the project.

V. GENERAL CONDITIONS

General Information

- a. **Pre-proposal Conference/Teleconference.** A pre-proposal conference will be held as stated in Section VI. PROPOSAL SCHEDULE at the Conference Room, Division of Solid Waste Management Division, Second Floor. All interested firms are encouraged to participate either in person or via telephone (see Section VI).
- b. **Proposals Due Date.** Sealed proposals in six (6) complete copies shall be submitted no later than the date and time stated in Section VI. PROPOSAL SCHEDULE. Proposals will not be accepted after that time. The Government of Guam reserves the right to seek new proposals when such is reasonable and in the best interest of the Government of Guam.
- c. **Indemnity.** Consultant agrees to indemnify, save harmless and defend the Owner 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 the Contract or any negligent act or omission or willful misconduct of the Consultant, or its officers, employees or agents, or subcontractors. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Owner.
- d. **Proposal Valid.** Proposals submitted in response to this RFP must remain valid for a minimum of 180 days, and Proposer must make this declaration in its Proposal cover transmittal letter.

Inquiries/Clarifications Regarding Proposal Process

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

Linda Ibanez
Government of Guam
Solid Waste Management Division
542 N. Marine Corps Drive
Tamuning, Guam 96913
Email: lindaibanez@gmail.com
(671) 647-4312 phone
(671) 649-3777 fax

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

Additionally, the Government of Guam prohibits communications, subsequent to the submission of Proposals, initiated by a Proposer with any Government of Guam official or

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

VI. PROPOSAL SCHEDULE

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

REQUEST FOR PROPOSALS RELEASE August 6, 2009
 MANDATORY PRE-PROPOSAL CONF./ TELECONFERENCE..... August 14, 2009, 9:00 A.M.
 DEADLINE FOR INQUIRIES/CLARIFICATIONS August 21, 2009, 4:00 P.M.
 RESPONSE ADDENDUM/ REPLIES FOR INQUIRIES /CLARIFICATIONS.....August 30, 2009
 DEADLINE FOR SUBMISSION OF PROPOSALSSeptember 30, 2009, 4:00 P.M.
 INTERVIEWS (OPTIONAL – AT RECEIVER’S DISCRETION)October 13, 24 2009
 ANTICIPATED LETTER OF INTENT TO AWARD October 27, 2009

Pre-proposal Meeting/Conference

Proposers or their representatives are required to attend a mandatory Pre-Proposal Conference, which will be held on August 14, 2009 at 9:00 AM at the Solid Waste Management Division second floor in the Department of Public Works compound, 542 N. Marine Corps Drive, Tamuning, Guam 96913. The time for this meeting is referenced below.

Date	Time	Time Zone
August 14, 2009	9 a.m.	Guam
August 13, 2009	4 p.m.	Pacific
August 13, 2009	6 p.m.	Central
August 13, 2009	7 p.m.	Eastern

Participants can call into the teleconference with the following information:

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

Any prospective Proposer intending to attend the Pre-Proposal Conference must pre-register for the Conference by contacting the GovGuam contact person, shown in Section V.2, at least 24 hours prior to the start of the Conference. Any prospective Proposer having difficulty connecting to the Conference or staying connected should contact the RECEIVER contact person ((703) 853-7806) immediately upon discovering the difficulty.

At this conference, representatives from the RECEIVER and design engineer will discuss the RFP Documents, site constraints, order of work, and other items specific to this project **Attendance at the entire Conference is mandatory for proposing on this project. Failure for non-attendance will result in the rejection of the proposal without evaluation for non-compliance with the RFP’s instructions to attend the conference.** The RECEIVER will

prepare and make available a set of conference minutes and responses to questions raised at the conference. Oral statements made during the conference but not confirmed by the minutes or responses may not be relied upon and are not binding or legally effective.

VII. EVALUATION OF PROPOSALS

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

- a. A Proposal Evaluation Committee (PEC) will be established by the RECEIVER to review and evaluate all Proposals submitted in response to this RFP by the deadline stated herein. All Proposals submitted will be evaluated and ranked by the criteria provided in this RFP.
- b. The PEC will first review each Proposal for compliance with the minimum proposal and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a Proposer.
- c. Proposals (interview may be part of the evaluation) will be evaluated and rated based on the criteria stated in this RFP, including but not limited to the following:
 - i. (35 points) Previous Projects/Team Experience - A record of past performance of similar landfill CM/CQA work and knowledge through experience of the local conditions.
 - ii. (30 points) Capacity/Project Team Organization - Ability to perform the services as reflected by the personnel capacity assigned and available for the Phases and specific tasks including subconsultants needed such as testing laboratories, and the qualifications and abilities of personnel proposed to be assigned to perform the services. Special note – It is to the benefit of the Proposer in this scoring category that the project team lead for the management of this project (if more than one firm and/or subconsultants are used) be that firm which has the landfill construction management experience ;
 - iii. (25 points) CM Plan Examples – Submit examples of previously used CM plans for landfill or other multidiscipline projects and associated field forms and project forms for reporting work progress and certification documentation. This can also include examples of progress reports, photo-documentation, etc. Material can be presented in pdf format on compact disk with proposal; and
 - iv. (10 points) Discussion of General Approach - Quality of the Project Management Plan for performing the required services;

1. First Step – Ranking (Each PEC member ranking evaluation)

Each PEC member evaluates the Proposals separately from other PEC members and ranks the Proposer based on the assigned points for each criterion stipulated above. Proposer(s) with the greatest total aggregate points from the PEC member shall be ranked number one (1) (i.e., highest ranked) in the PEC members ranking and the Proposer with the least total aggregate points shall be ranked lowest.

2. Second Step-Ranking Evaluation (Combined Ranking)

Each PEC member's ranking number shall serve as the points assigned to the Proposer (i.e. – a rank of 1 shall be assigned 1 point and so on). The aggregate total of the PEC for each Proposer shall determine the Proposer's rank order of preference. The Proposer with the least aggregate total shall be ranked number one (1) and the Proposer with the most aggregate total shall be ranked lowest and the least preferred. Based on this combined ranking result, the board shall select at least three Proposers (or such lesser number if less than three acceptable Proposals are received), in order of their respective qualification ranking to be the most qualified to provide the required services.

- d. At the discretion of the RECEIVER, the PEC may conduct interviews, prior to the ranking as part of the first step evaluation, with any Consultants/Proposers on a date, time and location to be determined. The RECEIVER reserves the right to interview only the most qualified. The Proposer must appear in person. A random drawing process will be used to determine the order of interviews. A digital presentation projector will be available for use by the Proposers. In addition, a phone will be made available should the Proposer need to contact personnel not present.
- e. After the conclusion of the evaluation and possible interviews, the RECEIVER shall select, in the order of their respective proposal ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable Proposals were received) deemed to be the best qualified to provide the required services.
- f. The RECEIVER shall negotiate compensation and a contract, first, with the highest rated Proposer for the required services at compensation determined in writing to be fair and reasonable. It is at the RECEIVER's discretion to negotiate each phase of work separately. It is possible to have reached agreement on one phase of work, and award accordingly, and not reach agreement on the next phase of work. Compensation must be in accordance Guam and applicable Federal law. If compensation, Contract requirements, and Contract documents can be agreed upon with the highest ranked Proposer, the first Contract for the negotiated phase(s) shall be awarded to that Proposer. If compensation, Contract requirements, or Contract documents cannot be agreed upon, the RECEIVER may enter into negotiations with the second highest ranked Proposer. The RECEIVER shall use the sealed fee proposals of the top three ranked Proposers in the development of the negotiated compensation. The sealed fee proposals of the Proposers not selected as the top three shall be returned unopened to the respective Proposers.
- g. In the interest of the Government, the RECEIVER reserves the right to initiate negotiations, award and enter into a contract with more than one qualified Proposer, in the order of their respective proposal ranking.

- h. The RECEIVER reserves the following rights to:
 - i. Require presentations or make investigations of the Proposals of Proposers as it deems appropriate, including, but not limited to, a background investigation.
 - ii. Request that Proposal be modified to more fully meet the needs of the RECEIVER or to furnish additional information as the RECEIVER may reasonably require.
 - iii. Accord fair and equal treatment with respect to any opportunity for discussions and revisions of Proposal. Such revisions may be permitted after submission of Proposal and prior to selection.
 - iv. Process the selection of the successful Proposer without further discussion.

Basis of Award

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

Once the Contract is awarded and specific tasks are defined and negotiated, the RECEIVER will execute the contract by task with the Consultant and issue a notice to proceed for each phase in accordance with the construction work Phases A, B and C. Additional task orders may be negotiated on either a Fixed Rate or Firm Fixed-Price basis.

VIII. SUBMITTAL OF PROPOSAL

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

Solid Waste Management Division, Government of Guam
c/o Receiver – Gershman, Brickner & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Linda Ibanez

Sealed Proposals will be received at the Office of Solid Waste Management until 4:00 pm on Tuesday, September 30, 2009. Proposals received after 4:00 pm shall be declined.

IX. RFP TERMS AND CONDITIONS

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

X. CONTRACT REQUIREMENTS

- a. Contract Term: The duration of these technical services is for an initial three (3) - year period (the anticipated duration of these construction activities identified herein under

the Consent Decree) commencing from the date of Contract signing with an option to extend the Contract for two (2) two-year periods at the same terms and conditions.

- b. Contract Termination:
 - i. The RECEIVER may, when in the interest of GovGuam, terminate the Contract in whole or in part, for the convenience of the Government. The RECEIVER shall give 90 calendar days' written notice of the termination specifying the part of the Contract terminated and when termination becomes effective.
 - ii. If the Consultant refuses or fails to perform any of the Contract provisions with due diligence or otherwise fails to timely and reasonably satisfy the Contract provisions, or commits any other substantial breach of the Contract, the RECEIVER may notify the Consultant in writing of the delay or non-performance and if not reasonably addressed in thirty (30) calendar days or any longer time as specified in writing by the RECEIVER, the RECEIVER may terminate the Consultant's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to perform. In the event of termination in whole or in part, the RECEIVER may procure similar services in a manner and upon the terms deemed appropriate by the RECEIVER. The Consultant shall continue performance of the Contract to the extent it is not terminated and shall be liable for all reasonable costs incurred by the RECEIVER and /or GovGuam in procuring similar services.
 - iii. In the event of Contract termination, the Consultant shall turn over all documents (paper and electronic) to the RECEIVER and transition the new Consultant.
- c. Addition/Deletion: Since the Consultant's services are to be provided on an "as-required" basis, the amount of services requested by the RECEIVER may be less than presently anticipated. The RECEIVER makes no guarantee whatsoever as to the minimum amount of Consultant's services that will be required under the Contract and no fee adjustment will be made if the amount of the services requested is less than anticipated. The RECEIVER reserves the right to add to or delete any item from this RFP or resulting Contract(s) when deemed to be in the best interest of the Government of Guam.
- d. Payment Method and Schedules: Payments will be made by the RECEIVER after receipt and acceptance of proper invoices and normal processing time. The RECEIVER or Government of Guam does not pay service charges or interest on late payments, except in accordance with law.
- e. Assignment: Consultant shall not assign his Contract or any rights or obligations hereunder without the written consent of the RECEIVER. In the event of approved sub consulting, the Consultant agrees to provide the RECEIVER with written documentation relative to sub Consultant(s) employed in this Contract.
- f. Professional Liability Insurance: Proposer shall submit certified true copy of Professional Liability Insurance of all the professionals employed by the Consultant in accordance with Attachment A with its Proposal.

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

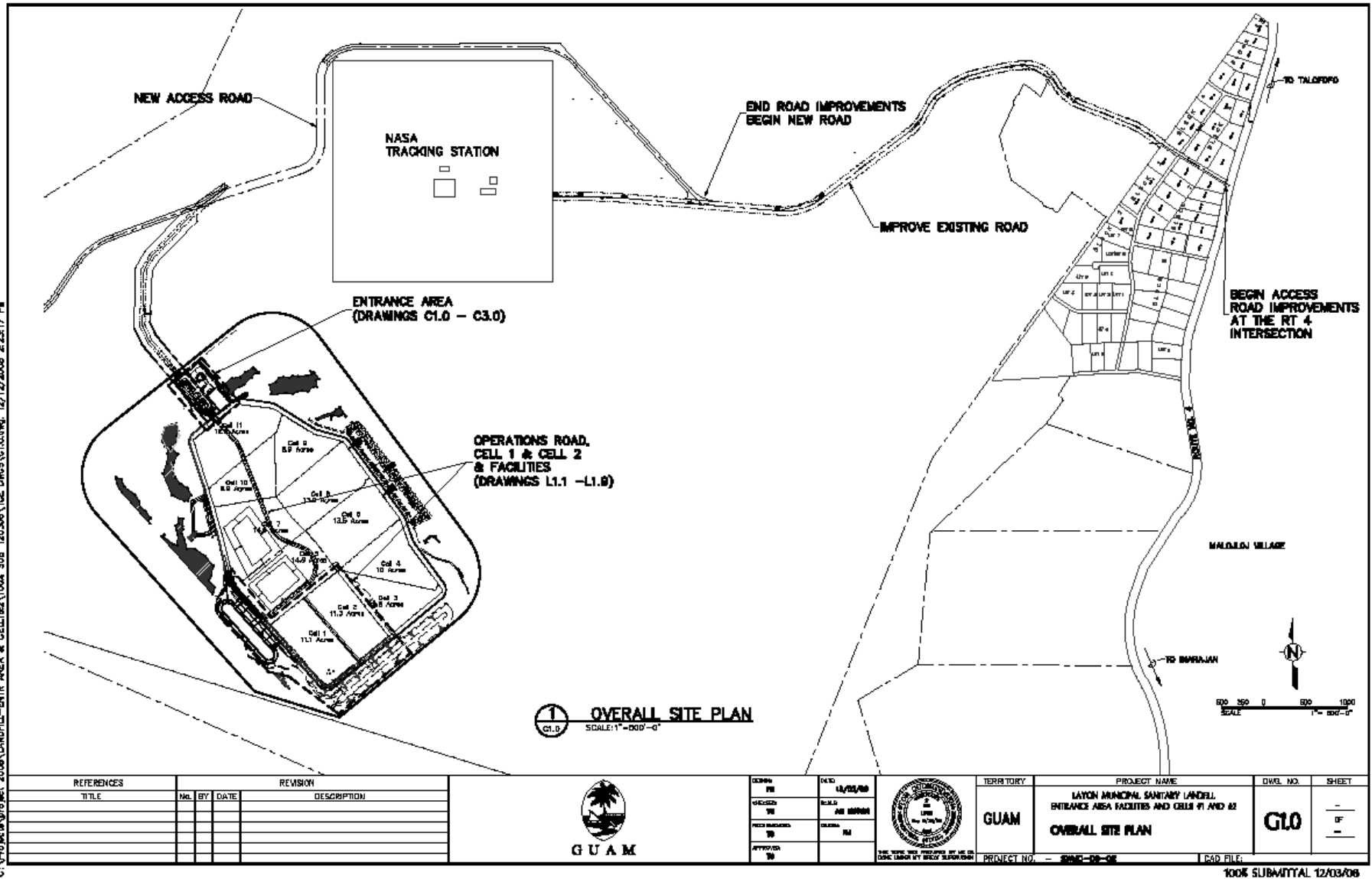
All contracts for services to agencies listed herein shall include the following provisions:

- a. Warranties that no person providing services on behalf of the contractor has been convicted of sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another

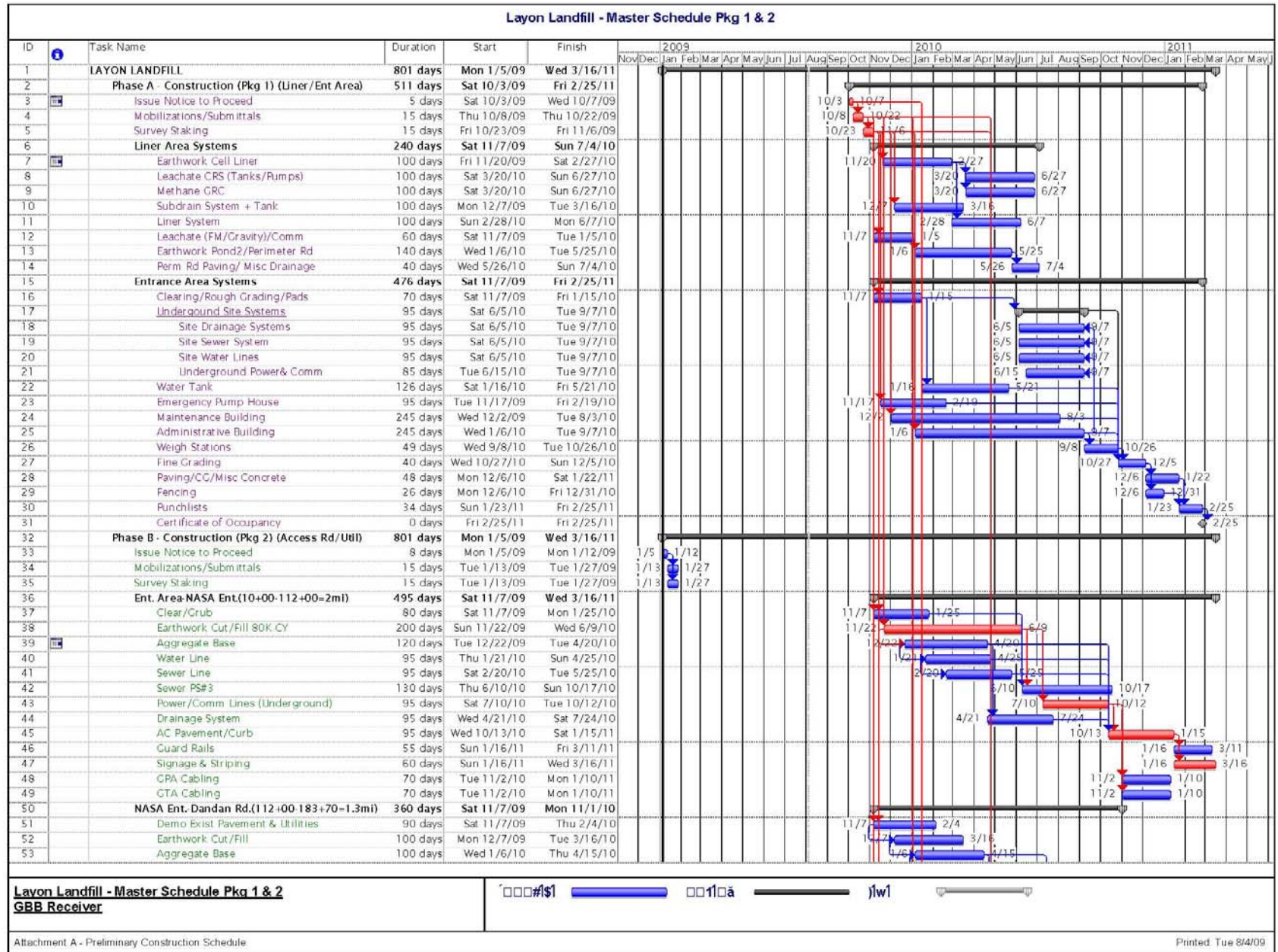
jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and

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

Figure 1: Overall Site Plan



ATTACHMENT A – PRELIMINARY PROJECT SCHEDULE



ATTACHMENT B – STANDARD INSURANCE REQUIREMENTS

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

A. General Liability

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

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

B. Automobile Liability

1. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
2. The limits of liability per accident shall not be less than:
\$1,000,000 as a Combined Single Limit.

C. Workers' Compensation

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

D. Professional Liability

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

E. Other Insurance Provisions and Miscellaneous Requirements

1. The General Liability policy shall contain the following provisions:
 - a. The RECEIVER, its officers, officials, employees, agents and volunteers shall be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied or used by the Consultant, or automobiles owned, leased, hired or borrowed by the Consultant.
 - b. The policies shall contain no special limitations on the scope of coverage afforded the RECEIVER, its officers, officials, employees, agents or volunteers.
2. For any claims related to the project, the Consultant's insurance coverage shall be primary insurances as respects the Government of Guam, the RECEIVER, its officers, officials, employees, agents or volunteers. Government of Guam's insurance and RECEIVER's insurance shall be excess of the Consultant's insurance and shall not contribute to it.

ATTACHMENT B
Insurance Requirements (cont'd)

3. Any failure to comply with the reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect coverage provided to the RECEIVER, its officers, officials, employees, agents or volunteers.
 4. The Consultant's Workers' Compensation and Employers' Liability policies shall contain a waiver of subrogation in favor of the Government of Guam, RECEIVER, its officers, officials, employees, agents or volunteers.
 5. Each insurance policy shall state that coverage will not be suspended, voided, cancelled by either party, reduced coverage in scope or in limits, non-renewed, or materially changed except after thirty (30) days prior written notice by mail has been given to the RECEIVER. Ten (10) days prior written notice by mail shall be given to the RECEIVER in the event of cancellation due to nonpayment of premium.
 6. Upon award of a Contract, the Consultant shall furnish the RECEIVER with Certificates of Insurance and original endorsements evidencing the coverage required by this section, and any supplementary conditions. If the RECEIVER requests, the Consultant shall furnish complete certified copies of all required insurance policies, including original endorsements specifically required. Approval of the insurance by the RECEIVER shall not relieve or decrease any liability by Consultant.
 7. The RECEIVER, at its discretion, may increase the amounts and types of insurance coverage required at any time during the term of the Contract by giving thirty (30) days' written notice to Consultant.
 8. If the Consultant fails to procure or maintain insurance as required by this section, and any supplementary conditions, or fails to furnish the RECEIVER with proof of such insurance, the RECEIVER, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the RECEIVER shall be deducted and retained from any sums due the Consultant under the Contract or RECEIVER may replace the Consultant with the next highest ranked Proposer or other qualified party.
 9. The failure of the RECEIVER to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Contract.
- F. Acceptability of Insurers Insurance is to be placed with a qualified insurer licensed to do business in the Territory of Guam.

All insurance documents are to be sent to:

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

With copy to RECEIVER at:

Solid Waste Management Division, Government of Guam
c/o Receiver – Gershman, Brickner & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Linda Ibanez

ATTACHMENT C – SAMPLE CONTRACT

CONTRACT NO. _____

DRAFT FORMAL CONTRACT

**CONTRACT FOR:
Construction Management Services
for
Capital Improvements Associated with
Layon Landfill and Ancillary Facilities**

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: Construction Management Services
Project No. SWMD-09-XXX
Amount: \$
Place: Layon, Inarajan, Guam**

CONTRACT

BETWEEN GOVERNMENT AND CONTRACTOR

THIS AGREEMENT AND FORMAL CONTRACT ("Contract") is 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 procure construction management services, hereinafter called the "Project," in accordance with the scope of work and other Contract documents prepared by the Government.

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:

Section 1. **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 management and construction quality assurance 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
1	
2	
Etc.	

Section 2. **COMPENSATION:** 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 (\$ _____) Not To Exceed, without prior written authorization**, 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.

The Government will compensate the Contractor for services rendered, pursuant to Attachment A, Scope of Work, as follows:

- A. The Government shall compensate the Contractor by progress payments based upon satisfactory delivery and acceptance of services performed pursuant to the scope of work and as described herein. Projects/tasks outside the primary responsibility of the

Contractor may be added at the Government's discretion upon written agreement (e.g., email of the Contractor to perform additional projects/tasks). The Contractor shall provide the service at the fees stated in the Cost Proposal, unless otherwise agreed in writing. The Cost Proposal contains the following information:

1. **Time and Materials:** The attached Cost Proposal (Attachment B) provides a current schedule of fees charged by the Contractor for personnel assigned to the Project, and also lists the basis for other Project related costs and reimbursement costs.
2. **Estimated Costs of Individual Task:** The Government shall compensate the Contractor in amounts not to exceed the fees for each task and subtask as listed in Cost Proposal.
3. **Reimbursable Costs:** Reimbursable costs shall be paid upon submittal of monthly invoices, based on the acceptance of the level of effort performed and the submittal of deliverables for the work. Invoices shall display breakdown of hours charged and work performed for each respective invoice period, and proof of purchase or receipts for all expenditures. All reimbursable costs shall be approved by the Government prior to expenditures, performance of work, and actual purchase of any items. Profit margin and overhead shall not be applied to reimbursable expenditures. Invoices should be sent to:

Solid Waste Management Division, Government of Guam
c/o Receiver – Gershman, Brickner & Bratton, Inc.
542 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Linda Ibanez

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

If the Government disputes any items in Contractor's invoice for any reason, including the lack of supporting documentation, the Government may temporarily delete the disputed item and pay the remaining amount of the invoice. The Government will promptly notify the Contractor of the dispute and request clarification and/or correction. After dispute(s) have been settled, the Contractor will include the disputed item to the

extent it is payable on a subsequent, regularly scheduled invoice, or on a special disputed items invoice; if the disputed item is found to be payable in whole or in part.

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

- F. The Government shall make payments to the Contractor of each invoice within forty-five (45) days of the receipt by the Government in accordance with the Court-authorized disbursement procedures for the Trust Account.

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

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

Section 5. **CONTRACT TERM:** Subject to Section 7, the term of this Contract shall commence after the Government signs the Contract and a Notice to Proceed is issued thereafter, and continue for a period of **Three (3) years with the Government's option to renew bi-annually, for two (2) additional 2-year periods but not to exceed four (4) additional years.** The option to renew will be based on the Consent Decree Team's (on behalf of the Government need) future need for technical assistance, completion of Consent Decree tasks, and the evaluation of performance of the Contractor during the previous year (s) of service.

Section 6. **CONTRACTOR AGREES:**

- A. That there shall be no employee benefits occurring from this Contract, such as:
 - 6.1 Insurance coverage provided by the Government;
 - 6.2 Participation in the Government of Guam retirement system; and
 - 6.3 Accumulation of vacation leave or sick leave.
- B. That there shall be no withholding of taxes by the Government. Contractor is obligated to pay taxes in accordance with the Laws of Guam.

Section 7. **SCOPE OF CONTRACT:** This Contract supersedes any and all other contracts, either oral or in writing, between the parties hereto with respect to the retainment of Contractor by the Government and contains all of the covenants and contracts between the parties with respect to such retainment in any manner whatsoever. Each party to this Contract acknowledges that no representation, inducements, promises or Contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be

valid or binding. Any modification of this Contract will be effective only if it is in writing and signed by the contractor and the Government/Receiver, and approved by the Attorney General and the Governor. If it is a modification involving compensation, funds have to be certified and the modification approved by BBMR. For the purposes of this paragraph and of the entire Contract, the signature of the Receiver is the only signature that will bind the Government.

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

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

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

Section 10. **COOPERATION WITH CONTRACTOR:** The Government agrees to cooperate fully with the Contractor on the Project.

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

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

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

Section 14. **GENERAL COMPLIANCE WITH LAWS:** The Contractor shall be required to comply with all Federal and territorial laws and ordinances applicable to the work. Contractor shall attach a copy of appropriate business license or a statement of exemption pursuant to Section 16024 of the Government Code Annotated.

Section 15. **CHANGES:** The Government may at any time by written order, make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Contract, or in the time required for

performance, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly.

Section 16. MANDATORY DISPUTES CLAUSE:

- A. The Government and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the Government to issue a final decision in writing within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties. Then, the Contractor may proceed as though the Government had issued a decision adverse to the Contractor.
- B. The Government shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- C. The Government's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.
- D. This subsection applies to appeals of the Government's decision on a dispute. For money owed by or to the Government under this Contract, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Claims Officer of the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by the Government or from the date when a decision should have been rendered. For all other claims by or against the Government arising under this Contract, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the Government. Appeals to the Office of the Public Auditor must be made within sixty (60) days of the Government's decision or from the date the decision should have been made.
- E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. The Contractor shall comply with the Government's decision and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where the Contractor claims a material breach of this Contract by the Government. However, if the Government determines in writing that continuation of services under this Contract is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Contract notwithstanding any claim of material breach by the Government.

Section 17. CLAIMS AGAINST GOVERNMENT: The Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor against the Government if the claim arises out of or in connection with this Contract. The Contractor also expressly recognizes

that all other claims by the Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

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

Section 20. **MANDATORY REPRESENTATION BY CONTRACTOR:**

- A. **ETHICAL STANDARD:** With respect to this Contract and any other contract that the Contractor may have, or wish to enter into, with any Government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any Government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.
- B. **PROHIBITION AGAINST GRATUITIES AND KICKBACKS:** With respect to this Contract and any other contract that the Contractor may have or wish to enter into with any Government of Guam agency, the Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.
- C. **PROHIBITION AGAINST CONTINGENT FEES:** The Contractor represents that it has not retained any person or agency upon an Contract or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Contract or any other contract with the Government of Guam or its agencies. For breach or violation of this warranty, the Government shall have the right to annul this Contract without liability, or, in its discretion to deduct from the Contract price of consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- D. **RESTRICTION ON EMPLOYMENT OF SEX OFFENDERS:** The Contractor warrants that no person in its employment who has been convicted of a sex offense under the provision of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide service on behalf of the Contractor relative to this Contract. If any person employed by the Contractor and providing service 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 (24) 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.

Section 21. **ACCESS TO RECORDS AND AUDIT:** The Contractor, including the Contractor's subcontractor, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such materials available at the Contractor's office at all reasonable times during the initial or renewal terms of the Contract and for a period of three (3) years from the date of the final payment under this Contract, for inspection by the Government or its agents. Each subcontract by the Contractor relative to this Contract shall include a provision containing the conditions of this paragraph.

Section 22. **EFFECTIVE DATE OF CONTRACT:** This Contract and any amendment to it shall take effect upon the date such is signed by the Governor of Guam and the date of this Contract shall be the date upon which the Governor affixes his signature.

Section 23. **GOVERNMENT NOT LIABLE:** The Government and its officers, agents, employees, Receiver and representatives assume no liability for any accident or injury that may occur to the Contractor, his agents', dependents, or personal property while en route to or from this territory or during any travel mandated by the terms of this Contract.

The 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.

Section 24. **ASSIGNMENT OF CONTRACT:** The Contractor shall not assign this Contract, or any sum becoming due the Contractor under the provisions of this Contract, without prior written consent of the Government.

Section 25. **MISCELLANEOUS PROVISIONS:**

- A. **Invalid or Unenforceable Provisions:** In the event any provisions of this Contract shall be held to be invalid and unenforceable, the remaining provision shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- B. **Delays:** Time is of the essence in completion of all work, including research that needs to be completed so as to allow sufficient time for completion of all elements of the work required. Contractor shall develop a schedule, which allows for timely completion of all work, including incidental works necessary to complete the Project. Delays caused by Contractor's negligence will be assessed accordingly by the Government.
- C. **Contract Priority, Time is of essence:** All work under this Contract shall be given top priority over all other works or contracts with the Government of Guam, as established in Executive Order Nos. 2004-02 and 2006-12. Time is of the essence in completion of the work under this Contract by the Contractor. Contractor shall be liable for any

stipulated penalties as detailed in the Consent Decree, including any interest thereon, to the extent that such delays are a direct result of the Contractor's negligence. A copy of the Consent Decree in the litigation case of *United States vs. Government of Guam*, Civil Case No. 02-00022 in the Federal District Court of Guam, is available on the Receiver web site at www.guamsolidwastereceiver.org.

Section 26. INDEMNITY AND LIMITATION OF LIABILITY: Contractor agrees to indemnify, save harmless and defend the Government and Gershman, Brickner & Bratton, Inc. as Receiver and their respective officers, employees, agents, representatives, successors and assigns from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Contract or any negligent act or omission or willful misconduct of the Contractor, or its officers, employees or agents, or subcontractors. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Government, its officers, agents, employees, Receiver and representatives.

Section 27. INSURANCE PROVISIONS:

Insurance Provisions for this Contract are provided in Attachment C.

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

Section 28. CONFLICT OF INTEREST: Contractor agrees that Contractor has not engaged or will not engage in participating or having an economic interest in any Guam Department of Public Works procurement which results from its contractual services.

Section 29. COUNTERPARTS: This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one Contract, but no counterpart shall be binding until copies of all counterparts shall have been received by the Office of the Attorney General or the of the Governor, and Governor affixes his signature to the Contract. Further, all original counterparts shall be delivered to the Solid Waste Management Division, Attention:

Linda Ibanez
Government of Guam
Solid Waste Management Division
542 N. Marine Corps Drive
Tamuning, Guam 96913
Email: lindaibanez@gmail.com
(671) 647-4312 phone
(671) 649-3777 fax

Section 30. **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 (RECEIVER REPRESENTATIVE):

Attn: _____

To: CONTRACTOR:

Section 31. **TERMINATION FOR CONVENIENCE:**

A. **TERMINATION:** The Government may when its interest so requires, terminate this Contract in whole or in part, for the convenience of the Government or the default of the Contractor. The Government shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when it is effective.

B. **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.

C. **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.

D. **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 section;
 - (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. 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.

Section 32. **SEVERABLE PROVISIONS:** If any provision of this Contract shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Contract and the Contract shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

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

CONTRACTOR

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: _____

Date: _____

CERTIFIED FUNDS AVAILABLE:

Allotment No.: _____

Amount: \$ _____

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 authorized to bind said corporation to the terms and conditions of this Contract.

Signed

Date

(CORPORATE SEAL)