

**AGREEMENT TO OPERATE THE ORDOT FACILITY**

**BY AND BETWEEN**

**GERSHMAN, BRICKNER & BRATTON, INC.,**

**IN ITS CAPACITY AS**

**RECEIVER FOR THE GUAM SOLID WASTE AUTHORITY,**

**GOVERNMENT OF GUAM, as Owner,**

**AND**

\_\_\_\_\_, as Operator

**Dated as of \_\_\_\_\_, 2017**

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**AGREEMENT**

THIS AGREEMENT TO OPERATE THE ORDOT FACILITY (hereinafter this "Agreement") entered into this \_\_\_\_ day of \_\_\_\_ 2017, by and between GERSHMAN, BRICKNER & BRATTON, INC. ("GBB"), in its capacity as Receiver ("RECEIVER") for the Guam Solid Waste Authority ("GSA"), Government of Guam, and NAME OF OPERATOR, as Operator (the "Operator").

**WITNESSETH**

WHEREAS, pursuant to the March 17, 2008, Order (the "Receivership Order") of the United States District Court for the District of Guam (the "District Court") in Civil Case No. 02-00022, GBB was appointed as RECEIVER for the Government of Guam Solid Waste Management Division of the Department of Public Works (the "Solid Waste Management Division"), which is now the GSWA, in order to enforce the terms of the February 11, 2004, Consent Decree issued by the District Court in that case (the "Consent Decree"); and

WHEREAS, the RECEIVER has full power and authority to enforce the Terms of the Consent Decree and assume all of the responsibilities, functions, duties, powers, and authority of the GSWA; and

WHEREAS, RECEIVER, on behalf of GSWA, issued a Request for Proposals (RFP No. RFP001-17 (together with all addenda thereto, the "RFP") for the operation of the ORDOT FACILITY (such term and other capitalized terms used herein having the meanings set forth in Article I); and

WHEREAS, Operator submitted a proposal on [Date, 201\_], responding to the RFP, and made certain revisions and qualifications to the proposal by letters dated [DATE(s), 201\_]; and

WHEREAS, following an evaluation and selection process, Operator was selected as the best evaluated Proposer relating to the operation of the ORDOT FACILITY;

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

**ARTICLE I**

**DEFINITIONS**

SECTION 1.01. Definitions. Unless the context clearly indicates otherwise, the terms below are defined for this Agreement as follows:

'Adjustment Factor' means the methodology to adjust certain costs, prices and fees as described in Section 3.2.9.

## Ordot Facility Operation Agreement

'Agreement' as used herein means this Agreement to Operate the ORDOT CLOSURE FACILITY, together with all Appendices and amendments.

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

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

'Business Day' means any calendar Day of each month excepting Saturdays, Sundays, and official holidays as observed by the Government of Guam.

'Contract Date' means the date of execution and delivery of the Agreement by the RECEIVER/TRUSTEE after it has been executed by Operator.

'Change in Law' means the enactment, adoption, promulgation, modification, change of interpretation or repeal after the Contract Date of any federal or Guam statute, ordinance, regulation or executive order (excluding those relating to taxes on income) that was not so enacted, adopted, promulgated, modified, interpreted or repealed on or before the Contract Date, and that establishes requirements that increase the cost of Operator's operation and/or performance at the ORDOT CLOSURE FACILITY for which Operator does not otherwise receive compensation.

'Closure' means the cessation of the disposal of Solid Waste and related materials at the Ordot Dump, and also includes the installation of the structures, systems and the activities required to prevent contamination of air, land, or water in connection with the Ordot Dump after the cessation of all disposal of Solid Waste.

'Cover Material' means soil or other approved suitable material that is used in the cover of the ORDOT CLOSURE FACILITY.

'Contract Date' means the date of execution and delivery of this Agreement by the RECEIVER/TRUSTEE after it has been executed by Operator.

'Day' means calendar day, unless otherwise specified.

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

## Ordot Facility Operation Agreement

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

'Final Post-Closure Monitoring Plan' or FPCMP" means the plan for the operation, maintenance and compliance monitoring and reporting for the Ordot Closure Facility, during the post-closure care period, that is appended to this Request for Proposals No. RFP001-17.

First Renewal Term' means the first five (5)-year term following the Initial Term.

'Governmental Approvals' means all licenses, certificates, Permits and approvals required from any Governmental Entity for operation of Post Closure Care of the ORDOT CLOSURE FACILITY and the performance of the Operator's obligations under the Agreement.

'Governmental Entity' means, as appropriate, any one or several courts of competent jurisdiction, the United States of America, the Territory of Guam and/or any appropriate jurisdiction over the Operator or the RECEIVER/TRUSTEE or their activities relating to the ORDOT CLOSURE FACILITY; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the Operator, the ORDOT CLOSURE FACILITY or the operation thereof, or any services or utilities related to any of the foregoing.

'Green Wastes' means leaves, grass clippings, vegetative and garden debris, brush, including clean woody vegetative material that result from landscaping maintenance and land-cleaning operations. The term does not include stumps, roots, or shrubs with intact root balls, which is also Bulky Waste and would be handled as a Bulky Waste.

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

'Guam Solid Waste Authority' or 'GSWA' means an autonomous public corporation established pursuant to Guam public Law 31-20, as the successor to the Solid Waste Management Division of the Department of Public Works.

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

'Guaranty' means the Guaranty Agreement executed by the Guarantor.

'Guaranty Agreement' means an agreement provided by the Operator substantially in the form attached hereto as Appendix 1, executed by the Guarantor that provides financial

## Ordot Facility Operation Agreement

backing for the performance and payment obligations of the Operator if the Operator fails to execute such obligations under this Agreement.

'Hauler' means any business or governmental organization which has received a permit to collect and transport Solid Waste in accordance with Applicable Laws and regulations.

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

1. is Hazardous Waste as defined in the Solid Waste Disposal Act, 42 USC §6901, et seq., as amended, replaced or superseded and the regulations implementing same,
2. is a hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601, et seq.,
3. is material the Disposal of which is regulated by the Toxic Substances Control Act, 15 USC §2601, et seq., as amended, replaced, or superseded, and the regulations implementing same,
4. is special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954,
5. is pathological, infectious or biological waste,
6. is treated as Hazardous Waste or as a hazardous substance under applicable law, or,
7. requires a Hazardous Waste or similar permit for its storage, Treatment, incineration, or Disposal.

'GWA' has the meaning set forth in Section 5.05.

'Independent Engineer' means an engineer employed by or a contract consultant of the RECEIVER/TRUSTEE with responsibility to assist the RECEIVER/TRUSTEE in evaluating the work performed by the Operator under this Agreement and such other duties as may properly be assigned to the Independent Engineer by the District Court of Guam or the RECEIVER/TRUSTEE.

'Initial Term' has the meaning set forth in Section 2.01.

'Invoicing Period' means one (1) month, unless the Agreement clearly indicates to the contrary.

'Landfill Gas' or 'LFG' means a mixture of gases generated in the buried Solid Waste at the Ordot Closure Facility.

'Liquidated Damages' means those amounts set forth as payments by the Operator in lieu of actual damages in the Agreement.

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'Mandate' means an expenditure or action imposed on the RECEIVER/TRUSTEE, Government of Guam or the Operator by a Governmental Entity, which is directly related to the Post Closure Care operation of a closed solid waste facility, mandatory in nature, and adopted or implemented subsequent to the execution of the Operation Agreement.

'Monitoring Well' means an artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, gases or fluids below the surface of the ground. The term shall not include any well which is used in conjunction with the production of oil, gas (except Landfill Gas), or any other minerals.

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

'Non-Routine Services' means Services and maintenance that cannot be performed by the staffing assigned to carry out Routine Services and the other duties of the operator. Non-Routine Services require expertise or other resources not required of the Operator as it carries out its day-to-day duties and responsibilities. Non-Routine Services shall include, but are not limited to, the Services enumerated in Appendix F. Any disputes with respect to determination of what is or is not a Routine Service shall be resolved pursuant to the provisions of Section 16.11 of this Agreement.

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

'Agreement' as used herein means the Agreement to Operate the Ordot Closure Facility, together with all appendices and amendments as included in Appendix A.

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

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

'Operational Record' means the entire document records and reporting history of the Ordot Closure Facility recorded in accordance with the Post Closure Care Operations Plan of the Solid Waste Facility.

'Operator' means the company or organization awarded the Agreement to operate and maintain the Ordot Closure Facility during the Post-Closure Care period.

'Ordot Dump' means the former solid waste disposal facility located on Lot 3390-R2 on Dero Drive located in the Municipalities of Ordot-Chalan Pago and Asan, Guam.

'Ordot Closure Facility' means the landfill closure facilities, equipment and property located on the site of the Ordot Dump and related contiguous properties on Dero Drive located in the Municipalities of Ordot-Chalan Pago and Asan, Guam and all other real property that may now

or in the future be acquired for Post Closure Care operations as designated by the RECEIVER/TRUSTEE, and all improvements and appurtenances thereto.

'Parties' mean the RECEIVER/TRUSTEE and Operator.

'Party' means the RECEIVER/TRUSTEE or the Operator, as indicated by the context.

'Pass-Through Costs' means certain costs incurred and paid by Operator for leachate treatment and hauling services pursuant to Section 5.03(F), stand-by water trucks pursuant to Section 5.05(J)(iv), and utilities pursuant to Section 5.30(E), and for which Operator provides cost substantiation acceptable to RECEIVER/TRUSTEE; provided that in no event shall Pass-Through Costs include any mark-up, costs resulting from the negligence of, intentional act or omission of, or breach of this Agreement by Operator.

"Performance Bond" means the bond securing the Operator's performance obligations hereunder as described in Section 10.02.

'Permits' means the applicable approvals, permits, authorizations, registrations, certifications, and licenses issued by Governmental Entities required by the Operator for the operation and maintenance of the ORDOT CLOSURE FACILITY, and with respect to any other obligations necessary to be carried out under this Agreement.

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

'Post-Closure Care' means the requirements placed upon Disposal sites after Closure to ensure their environmental safety for at least a thirty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation).

'Post Closure Care Permits' means all Permits and approvals required for the operation of the Ordot Closure Facility, as the same may be modified, amended and supplemented from time to time.

'Proposer' means a party that submits a proposal in response to this RFP001-17 .

'RECEIVER/TRUSTEE' is a term referring to the contracting entity for this Agreement. Under the terms of the Receivership Order and applicable subsequent Orders of the District Court of Guam, "the Receiver shall have full power and authority to enforce the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and authority of the Solid Waste Management Division." GSWA is the successor to the Solid Waste Management Division and as such is under the same control of the Receiver. If this Agreement survives the termination of the Receivership by the District Court of Guam, the term shall mean the Trustee or any successor organization designated by the District Court of Guam to hold the Ordot Closure Facility in trust for GSWA and to ensure that the post-closure care of the Ordot Facility is executed in compliance with the approved post-closure plan and all applicable laws and regulations.



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'Receivership Order' means the March 17, 2008, Order and applicable subsequent Orders of the United States District Court of Guam in Civil Case No. 02-00022 granting GBB full power and authority to enforce the terms of the Consent Decree and appointing GBB assume all of the responsibilities, functions, duties, powers, and authority of the SWMD, (now the GSWA).

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

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

'Representative' means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

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

'Routine Services' –means all Services and maintenance, including preventive maintenance and the monitoring of all equipment and systems required to assure the continuous and effective operation of the Ordot Closure Facility meeting or exceeding all of the environmental requirements for a closed disposal facility. Routine Services shall also include complete documentation of all Routine Services and Non-Routine Services. Specifically, Routine Services shall include, but are not limited to, the services enumerated in Appendix E. Any disputes with respect to determination of what is or is not a Routine Service shall be resolved pursuant to the provisions of Section 16.11 of this Agreement.

'Second Renewal Term' means the five (5)-year term following the First Renewal Term.

'Services' means all labor, transportation or other Services and materials related to Operator's performance under this Agreement, including any equipment or supplies utilized by the Operator in fulfilling its obligations under this Agreement.

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

'Solid Waste Facility Permit' means the GEPA issued Approval for the Ordot Closure Facility to be operated and maintained during Post Closure Care period of operations. This same may be amended, modified and supplemented from time to time.

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

'USC' means United States Code.

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

'Vehicle' means every device in, upon, or by which any Person or property is or may be transported or drawn upon a public highway, or other rolling stock used in Post-Closure Care operation of the ORDOT CLOSURE FACILITY.

'Violation' means any determination by a Governmental Entity, after notice to and permitted contest by the RECEIVER/TRUSTEE, the Government of Guam or the Operator of the Ordot Closure Facility, that the Ordot Closure Facility is in violation of or not in compliance with any portion of the Ordot Closure Facility Approvals, Permits or Applicable Law, under its jurisdiction; however, an Alleged Violation Resolved shall not constitute a Violation.

'Yard Waste' means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than four inches in diameter, that result from landscaping maintenance and land-cleaning operations. The Term does not include stumps, roots, or shrubs with intact root balls.

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

## **ARTICLE II**

### **TERM**

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

SECTION 2.02. Renewal Term. The term of this Agreement shall be extended beyond the Initial Term until the earlier of (i) 11:59 p.m. on the date that is the Day before the fifth (5<sup>th</sup>) anniversary of the Day following the end of the Initial Term, or (ii) the date this Agreement is terminated pursuant to ARTICLE XIII or otherwise as permitted herein (the "First Renewal Term"); and the term of this Agreement shall be extended beyond the First Renewal Term until the earlier of (i) 11:59 p.m. on the date that is the Day before the fifth (5<sup>th</sup>) anniversary of the Day following the end of the First Renewal Term, or (ii) the date this Agreement is terminated pursuant to ARTICLE XIII or otherwise as permitted herein (the

"Second Renewal Term"); provided, however, either Party may give written notice of its decision not to extend this Agreement beyond the Initial Term or the Renewal Term. Such notice of a decision not to extend the term of this Agreement must be delivered, in writing, to the other Party at least one (1) year prior to the scheduled expiration of the Initial Term in the case of a decision by either Party not to extend this Agreement for the First Renewal Term and at least one (1) year prior to the scheduled expiration of the First Renewal Term in the case of a decision by either Party not to extend this Agreement for the Second Renewal Term. All other terms and conditions of this Agreement will remain the same during the Renewal Term unless stated otherwise herein or otherwise agreed by the Operator and the ~~RECEIVER/GSW~~RECEIVER/TRUSTEE in writing in connection with the renewal.

### ARTICLE III

### COMPENSATION

#### SECTION 3.01. Operating Fee.

- (A) Formula. Commencing with the first Invoicing Period after the Operation Commencement Date and for each Invoicing Period thereafter, ~~RECEIVER/GSW~~RECEIVER/TRUSTEE shall pay the Operator a monthly Operating Fee for the Services provided by the Operator under the terms of this Agreement in accordance with the formula below:

$$OF = RBOF + NROF + PTC + CILC - LD +/- RA$$

Where:

RBOF = Routine Base Operating Fee  
NROF = Non-Routine Operating Fee  
PTC = Pass-Through Costs  
AC = Additional Compensation  
CILC = Change in Law Compensation  
LD = Liquidated Damages  
RA = Resolved Amount

Each component of the Operating Fee shall be computed in accordance with this Article and may be adjusted from time to time as provided in this Agreement.

- (B) The Routine Base Operating Fee. The Routine Base Operating Fee for any Invoicing Period shall be an amount equal to one-twelfth of **WRITE OUT FEE AMOUNT (\$FEE AMOUNT NUMERICAL)**, which dollar amount shall be adjusted on each anniversary of the Operation Commencement Date by the Adjustment Factor.
- (C) Non-Routine Operating Fee. The Non- Routine Operating Fee shall be paid (if applicable) as set forth in this subsection to the extent the Operator has

performed Non-Routine Services in an Operating Year. RECEIVER/TRUSTEE shall issue task orders for the performance of Non-Routine Services. These Task Orders shall be issued for work that has been negotiated on a case by case basis. The work proposed shall be submitted in the form of a proposal by the Operator. This proposal may be either of two forms; fixed price lump sum or time and materials with a not-to-exceed cost. The form the proposal shall be mutually agreed upon between the Operator and RECEIVER/TRUSTEE. Unless otherwise agreed to by the Parties, the Non-Routine Operating Fee for each Invoicing Period shall be based on the percentage of the work that has been physically completed in the Invoicing Period. The Non-Routine Operating Fee shall be billed separately.

- (D) Pass-Through Costs. Pass-Through Costs for any Invoicing Period shall be equal to the sum of the costs of any items for which RECEIVER/TRUSTEE is obligated to pay as a Pass-Through to the extent paid or incurred by the Operator during such Invoicing Period and to the extent the Operator provides cost substantiation therefor; provided, however, the Operator shall not be entitled to any mark up or other additional charge with respect to any Pass-Through Costs.
- (E) Change in Law Compensation. If a Change in Law shall occur, Operator shall submit an analysis of its incremental cost resulting from such Change in Law. If the RECEIVER/TRUSTEE finds the incremental cost submitted by the Operator to be reasonable, additional compensation in the amount of the incremental cost shall be paid to the Operator. If the RECEIVER/TRUSTEE does not find the incremental cost submitted by the Operator to be reasonable, the RECEIVER/TRUSTEE shall pay the Operator that portion of the incremental cost determined to be reasonable by the RECEIVER/TRUSTEE and the disputed amount of incremental cost shall be subject to dispute resolution in accordance with Section 16.11.
- (F) Liquidated Damages. The Operator shall be required to pay any Liquidated Damages that may be assessed by RECEIVER/TRUSTEE as set forth in ARTICLE XV, which shall first be assessed through a reduction of the Operator's invoiced Operating Fee for any Invoicing Period for which Liquidated Damages were assessed to the Operator.
- (G) Resolved Amount. A Resolved Amount is a payment owed to one of the Parties as a result of resolving a dispute. The Operating Fee shall be increased or decreased to compensate the appropriate Party for the Resolved Amount.

SECTION 3.02. Invoicing of Operating Fee. Invoicing Statements. For each Invoicing Period the Operator shall render a statement to the RECEIVER/TRUSTEE by the 10th Day of the following Invoicing Period, which shall set forth each component of the Operating Fee. Each invoicing statement shall also include, for such Invoicing Period, (1) all other amounts

payable by RECEIVER/TRUSTEE to the Operator hereunder, (2) all amounts payable by the Operator to the RECEIVER/TRUSTEE hereunder, and (3) with respect to items (1) and (2) above the balance due to or from RECEIVER/TRUSTEE. Subject to Section 3.04(B), the RECEIVER/TRUSTEE shall pay undisputed portions of the Operating Fee due to the Operator within thirty (30) Days after receipt by RECEIVER/TRUSTEE of the invoicing statement that complies with the requirements of this Agreement in form and substance.

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

SECTION 3.04. RECEIVER/TRUSTEE Payment Obligation.

- (A) Payment for Services. The RECEIVER/TRUSTEE shall pay the Operator the Operating Fee as provided hereunder pursuant to the terms of this Agreement; provided, however, that RECEIVER/TRUSTEE shall have no obligation to pay the Operating Fee if the Operator is not performing Services.
- (B) Disputes. If the RECEIVER/TRUSTEE disputes any amount invoiced by the Operator in any invoice, the RECEIVER/TRUSTEE shall pay that portion of the invoice amount which is not in dispute and shall provide the Operator with written objection within fifteen (15) Days of the receipt of such invoice indicating the portion of the invoiced amount that is being disputed and providing all reasons then known to the RECEIVER/TRUSTEE for its objection to or disagreement with such amount. If the RECEIVER/TRUSTEE and the Operator are not able to resolve such dispute through mutual agreement after the RECEIVER/TRUSTEE's objection, the dispute shall be resolved in accordance with SECTIONS 16.11 and 16.12 of this Agreement, as applicable. If any such amount is adjusted in the Operator's favor, the RECEIVER/TRUSTEE shall pay the amount of such adjustment to the Operator, with interest thereon at the Overdue Rate from the date such disputed amount was due the Operator to the date of payment in full of such amount, unless such interest payment and amount is otherwise limited by Applicable Laws. Nothing contained in this subsection shall limit the authority of any authorized officer of the RECEIVER/TRUSTEE or any other governmental agency to raise a further objection to any amount invoiced by the Operator pursuant to an audit conducted pursuant to Applicable Laws.

SECTION 3.05. Adjustment of Fees.

(A) Upon each anniversary of the Operation Commencement Date, throughout the Term of this Agreement, the Routine Base Operating Fee will be adjusted by the Adjustment Factor. The Adjustment Factor shall be a composite of a fixed component without adjustment and three indices, including the Employment Cost Index ("ECI") and the Construction Machinery and Equipment ("CME") series and Gasoline Fuel ("GF") series of the Producer Price Index ("PPI"), all published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS").

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

The percentages of the percentage change in the indices that shall constitute the basis for the adjustment of the Routine Base Operating Fee pursuant to this Agreement are as follows:

<b>Index</b>	<b>Percent to be Applied Routine Base Operating Fee</b>
Fixed Component – No Adjustment	18%
Employment Cost Index (ECI) Category: Production, Transportation, and Moving Material	37%
Construction Machinery & Equipment of PPI (CME) Series ID: WPU112	30%
Gasoline Fuel of PPI (GF) Series ID: WPU0571	15%
	<b>100%</b>

The Adjustment Factor shall be the sum of the Fixed percentage and the percentage change in the value of each of the other three indices between an anniversary of the Operation Commencement Date and the immediately prior anniversary of the Operation Commencement Date multiplied by the percentage factor applicable to each index (as shown in the table above), so that, by way of example, the Adjustment Factor for the Base Operating Fee calculated in Operating Year Y will be:  $(0.37 \times ([\text{value in applicable quarter of ECI for Operating Year Y} - \text{value in applicable quarter of ECI for Operating Year Y-1}] \div [\text{value in applicable quarter of ECI for Operating Year Y-1}]) + (0.18$

$X [0]) + (0.30 \times ([\text{Value in applicable month of CME for Operating Year Y minus value in applicable month of CME for Operating Year Y-1}] \div [\text{value in applicable month of CME for Operating Year Y-1}]) + (.15 \times ([\text{value in applicable month of GF for Operating Year Y minus value in applicable month of GF for Operating Year Y-1}] \div [\text{value in applicable month of GF for Operating Year Y-1}])),$  and shall be expressed as a percentage as demonstrated in the example in Appendix 3.

Since some BLS data are not finalized for several months, the adjusted value of the Adjustment Factor at the end of the Operating Year may be based on preliminary indices. When an adjustment has been based and paid on preliminary indices and BLS data for indices are issued as final, the Operator shall determine the difference in the payment amount and include that amount in the Operating Fee for the Invoicing Period. If BLS changes the methodology for calculating ECI, CME, or GF, which causes historical data used to calculate the value of the Adjustment Factor for any Operating Year to be restated, such changes shall only apply to future adjustments and not to adjustments already implemented.

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

Within thirty (30) Days after the later to occur of (a) the anniversary of an Operating Year throughout the Term of Agreement, or (b) the final issuance of all relevant index values for the month or quarter immediately preceding such anniversary, the new Adjustment Factor shall be implemented by Operator sending to the RECEIVER/TRUSTEE a comparative statement setting out the Adjustment Factor determined through use of the indices set forth above and the methodology described above and shown in the example in Appendix 3, and the adjusted fees which will be charged by the Operator.

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

Any applicable Pass-Through Costs will be deducted from the Base Operating Fee prior to calculating any annual cost adjustment.

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

- (B) Example of Adjustment Factor. By way of example only, the Adjustment Factor shall be calculated and applied as provided in the example shown in Appendix 3.

**ARTICLE IV**

**CLOSURE FACILITIES**

SECTION 4.01. Facility Provided by RECEIVER/TRUSTEE. Operator acknowledges and agrees that all buildings, paved roads, permanent drainage structures and all other facilities needed for providing the Services in accordance with all Governmental Approvals and all Applicable Laws have been constructed and are available for use. Operator further acknowledges and agrees that the facilities provided are in good condition and working order, and, if properly maintained and operated, will be suitable for use during the Term of this Agreement.

**ARTICLE V**

**OBLIGATIONS OF OPERATOR**

SECTION 5.01. Transition Period Responsibilities. During the period between the Contract Date and the Operation Commencement Date (the "Transition Period"), the Operator shall be responsible for the following, as well as all other items required by Sections 5.02 through 5.04:

- (i) Obtain the required number, type, and size of equipment to be used at the ORDOT FACILITY;
- (ii) Demonstrate that all equipment and machinery are in good working order;
- (iii) Hire and train the Operator's employees and train others who will be using the site as required;
- (iv) Transfer from Owner to Operator all permits that are required to be in Operator's name;
- (v) Provide report and invoice templates that are satisfactory to the RECEIVER/TRUSTEE;
- (vi) Develop operating procedures and obtain approval of them by the RECEIVER/TRUSTEE; and
- (vii) Submit to the RECEIVER/TRUSTEE the Site-Specific Facility Operations Plan.

SECTION 5.02. Transition Period. As part of the mobilization process, the Operator shall provide necessary management, personnel and equipment prior to the Operation Commencement Date to become familiar with the entire site and operating systems at the ORDOT FACILITY, and to perform routine site maintenance on these systems, and compliance monitoring. The Operator shall take the initiative to contact current site contractors and



engineering firms to receive orientation training and/or instructions from them on the basic operations and locations of the leachate collection system, gas collection and control system, water supply system, leachate and wastewater conveyance system for discharge to Hagatna Wastewater Treatment Plant, emergency generator, and other infrastructure components on the site before site contractors and engineering firms demobilize from the site. Compliance monitoring (regulatory) is a major aspect of this transition requiring a transfer of compliance monitoring document files, reporting files, schedules, and permit documents. It is expected that the Operator will be onsite at the Facility when the current interim operations and maintenance team perform certain tests to show all systems are functional and in working order. It is anticipated that these tests will be conducted in April and/or May 2016, and the RECEIVER/TRUSTEE will provide the specific schedule to the Operator. Immediately upon full release of the ORDOT FACILITY by RECEIVER/TRUSTEE, the Operator will take responsibility for the ORDOT FACILITY and provide all site security, personnel with appropriate equipment to perform all operations, compliance monitoring and routine maintenance such as grass cutting, road cleaning, and keeping storm-water management structures cleared of excessive sediment and debris that may impede water flow. This work shall include maintaining a 50-ft fire break around the perimeter of the ORDOT FACILITY. It is anticipated that this Transition Period will start on or about \_\_\_\_\_, 2017, and will continue until the Operation Commencement Date, when the full provision of Services by the Operator will commence. All of the Operator's activities under this section shall be governed in accordance with the terms of this Agreement, including those within Article IX.

SECTION 5.03. Conditions Precedent to Operation Commencement Date. It shall be a condition precedent to the Operation Commencement Date that each of the following shall have occurred and that each Party shall use its good faith efforts to satisfy such conditions so the Operation Commencement Date may occur as soon as practicable but on or before \_\_\_\_\_, 2017.

(A) Conditions Precedent:

- (i) The Operator provides evidence to the RECEIVER/TRUSTEE that Operator is authorized to operate the ORDOT FACILITY under Applicable Laws, including, but not limited to, all required business and contractor licenses;
- (ii) The Operator has certified in writing to the RECEIVER/TRUSTEE that it is prepared to assume operation of the ORDOT FACILITY;
- (iii) The Operator has submitted to the RECEIVER/TRUSTEE's satisfaction evidence and documentation for contingent equipment, contractor and subcontractor agreements and other provisions necessary for operation during times of emergency, and to demonstrate the Operator's arrangements to provide equipment and personnel, and to maintain uninterrupted service during mechanical breakdowns;

- (iv) The Operator has delivered to the RECEIVER/TRUSTEE a properly executed Guaranty Agreement no later than fifteen (15) Days after the Contract Date;
  - (v) The Operator has demonstrated, to the RECEIVER/TRUSTEE's sole satisfaction, that the Operator has not experienced a change in the financial position represented in its proposal that may hinder its performance hereunder;
  - (vi) The Operator has provided evidence that it is not involved in any action, lawsuit, or legal action that may prevent or hinder its performance under this Agreement;
  - (vii) The Operator has submitted evidence to the RECEIVER/TRUSTEE that the Performance Bond and all other financial instrument(s) necessary for its performance under this Agreement have been secured no later than fifteen (15) Days after the Contract Date;
  - (viii) The Operator has submitted evidence to the RECEIVER/TRUSTEE that it has met all insurance requirements contained herein and has submitted to RECEIVER/TRUSTEE certificate(s) of insurance evidencing the same no later than fifteen (15) Days after the Contract Date; and
  - (ix) The Operator's evidence of insurance is approved by the RECEIVER/TRUSTEE.
- (B) Certification of Operation Commencement Date. The Parties shall give each other prompt notice when all of the conditions precedent to the Operation Commencement Date has been achieved. Upon the receipt of such notice by both Parties, such notices shall collectively constitute Certification of Operation Commencement Date.
- (C) Liquidated Damages. Failure by the Operator to accomplish all conditions precedent contained in SECTION 5.03(A) by the date contained in said subsection shall subject Operator to Liquidated Damages as provided for in ARTICLE XV.

SECTION 5.04. **[Intentionally omitted.]**

SECTION 5.05. Facility Operating Requirements.

- (A) ORDOT FACILITY, General Requirements. The Operator shall operate and maintain the ORDOT FACILITY in compliance with Governmental Approvals and Applicable Laws. The Operator shall be solely responsible for all costs of engineering, consulting, permitting, insurance, interconnections, materials, labor, Solid Waste collection and disposal, telephone, internet, and similar items, as well as damages, fines and penalties (whether assessed against the RECEIVER/TRUSTEE or the Operator) associated with the ORDOT FACILITY and

the equipment utilized by Operator at the ORDOT FACILITY, except for those Pass-Through Costs identified in 3.01.(D), which shall be direct billed to, and paid by, the RECEIVER/TRUSTEE. Operator shall be responsible for the daily operation and maintenance of the ORDOT FACILITY and all associated property over the Term of this Agreement. Additional operations requirements are presented herein.

- (B) Obligations Regarding Site Operations and Maintenance. Operator shall be responsible for the daily operation and maintenance of the ORDOT FACILITY and all associated property over the Term of Agreement which includes, but is not limited to, the scope of services as presented in Exhibit [1]. [Note: Exhibit [1] is the Post-Closure Care Operations Plan, and any addendums associated with this RFP.]
- (C) ORDOT FACILITY Costs. The Operator shall acquire at its own cost and expense, all machinery, equipment, rolling stock, material, supplies, services, labor, utilities, telephone systems, furniture, electronic equipment, computers, software, databases and other equipment necessary or appropriate for performing the Services under this Agreement.
- (D) Operation of ORDOT FACILITY. The Operator shall operate and maintain the ORDOT FACILITY (i) in a safe and sound manner, (ii) in a manner that is in compliance with all Government Approvals, (iii) in a manner that will provide unobstructed and safe access for Vehicles to the ORDOT FACILITY, and (iv) as otherwise required by Applicable Laws and the Post-Closure Care Operations Plan, and other design plans and specifications, unless such are modified as mutually agreed to by the Parties.
- (E) Operator's Managers. The Operator shall identify a full-time Site Manager who shall hold the appropriate licenses and certifications from all appropriate Governmental Entities. The Site Manager shall be trained and experienced in the management and operation of facilities comparable to the ORDOT FACILITY, shall be deemed acceptable by the RECEIVER/TRUSTEE, and shall have been employed in similar positions prior to working at the ORDOT FACILITY. The Site Manager's employment responsibility shall be managing the Operator's operation of the ORDOT FACILITY.
  - (i) The Site Manager shall have completed or have employed a staff member who shall have completed a Solid Waste Association of North America Landfill Gas Systems Operation & Maintenance 2-day training course or equivalent.
  - (ii) The Site Manager shall be certified, or employ a staff member who is certified, as a Wastewater Operator II from GEPA or equivalent certification.

- (iii) The Site Manager shall be responsible for all communications with the RECEIVER/TRUSTEE, and shall be accessible twenty four (24) hours per Day, seven (7) Days per week.
  
- (F) Leachate and Condensate Collection Services. The Operator shall perform, or cause the performance of, all leachate and condensate collection, management, monitoring, pre-treatment (as needed), and disposal services, whether such leachate is discharged to the Guam Waterworks Authority ("GWA") system, or delivered to an authorized treatment facility by truck, or otherwise in accordance with all Governmental Approvals, requirements of the GWA and Applicable Laws. GEPA may require a wastewater operator certification for at least one of Operator's staff persons responsible for the operation and maintenance of the leachate management system, and the cost of such staff person and obtaining and maintaining such certification shall be borne solely by Operator and shall not be a Pass-Through Cost to the RECEIVER/TRUSTEE. The Operator shall deliver the collected leachate and condensate that is to be disposed of to the wastewater collection system or authorized treatment facility of the GWA. The Operator shall collect leachate and condensate in a manner consistent with prudent leachate collection system management practices and Governmental Approvals, and shall take all reasonable measures to minimize the production of leachate and condensate at the ORDOT FACILITY. Operator shall operate, maintain, repair or replace all leachate collection and pre-treatment (as needed) systems. Operator will maintain the pumps, sump facilities, conveyance lines, tanks, appurtenances, electrical and control equipment in accordance with the operation and maintenance manuals for said systems, and test such equipment regularly as recommended by the manufacturer, or as necessary to ensure proper operation. Utility lines and backup generators are considered part of the leachate collection system. Operator shall be responsible for monitoring the ORDOT FACILITY as required for the presence of leachate leaks. Should a leachate leak be found, Operator shall take immediate action to control and remediate the leachate leak in a manner consistent with the Governmental Approvals. Operator shall enter into and maintain a contract with a leachate hauling service for the removal of leachate from the Facility as backup operational support for leachate removal when the leachate cannot be removed from the Facility by Facility pumps, or for any reason what so ever. The primary purpose of this backup is to provide continuous ability to remove leachate from the Facility. This service shall be made available 24 hours a day, seven (7) days a week. The entire cost of this hauling service shall be the responsibility of the Operator and not a Pass-Through Cost to the RECEIVER/TRUSTEE when such service is the result of the leachate collection and removal system not being fully operational. The RECEIVER/TRUSTEE shall be responsible for that portion of the treatment cost up to the current rate charged by GWA for leachate treatment when the leachate pumps are fully operational. Any additional costs for treatment as a result of hauling leachate to the GWA treatment facility when leachate cannot

be removed from the Facility by normal functioning of the closure system as a result of conditions beyond the control of the Operator (i.e., at the direction of GWA) shall be the responsibility of the RECEIVER/TRUSTEE.

- (G) Gas Collection and Control System Services. The Operator shall perform all gas collection and control operations, maintenance, monitoring, reporting, and repair as required of the RECEIVER/TRUSTEE and the Post-Closure Care Operations Plan in conformance with Government Approvals.
- (H) Gas and Water Monitoring Wells Systems Services. The Operator shall perform all gas and water Monitoring Well operations, maintenance, monitoring, compliance, reporting, and repair as required by the RECEIVER/TRUSTEE and the Post-Closure Care Operations Plan in conformance with Government Approvals.
- (I) Facility Site Roads. Operator shall construct any and all required temporary access roads, haul roads, and fire break roads. Operator shall maintain all temporary access roads, haul roads, and fire break roads, whether or not constructed by Operator, that are necessary for the proper and safe operation of the ORDOT FACILITY. Access roads to any monitoring location utilized by Operator or RECEIVER/TRUSTEE are included in this requirement. Operator's maintenance shall ensure that each road can be utilized for the purpose intended at all times. Temporary access and haul roads shall be all-weather, free of protruding objects, bumps (excluding those installed for speed control), ruts and depressions and otherwise provide continuous access for the Operator and its agents as intended by this Agreement. The roads shall be constructed and maintained to promote positive drainage to avoid localized ponding.
- (J) Nuisance Control. Operator shall be solely responsible for maintaining the Facility in a sanitary condition in compliance with all regulatory requirements, and shall correct any public nuisance created as a result of operations. Nuisance control requirements applicable to the Operator include the specific items listed below.
  - (i) Noise Control. Operator shall comply with all provisions of any Governmental Approvals and Applicable Laws relating to noise applying to the ORDOT FACILITY.
  - (ii) Operator shall control all Vectors at the ORDOT FACILITY. Use of any chemical sprays, traps and similar measures shall be approved by GEPA and/or the Guam Department of Agriculture, as applicable. Operator shall obtain approval from all Governmental Entities with jurisdiction before any chemical is deployed for Vector control. Application of any of the Vector control substances shall be

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performed in compliance with all applicable local and federal wildlife protection regulations and any other Applicable Laws. If GEPA allows the use of chemicals for Vector control, Operator shall submit to the RECEIVER/TRUSTEE and GEPA a record of the quantity used, location applied and date applied for each Vector control material used.

- (iii) Operator shall inspect, maintain, repair and replace, as necessary, all existing fences and gates at the Facility. Operator shall also install and maintain locks on all gates. Fence maintenance includes, but is not limited to, chain link replacements, vertical and horizontal post replacements, post cap replacements, and tear repairs. Operator shall inspect and repair the access and perimeter fencing, and remedy all burrowing or erosion under fencing to ensure overall fencing integrity. Operator shall take immediate action to repair or replace the affected RECEIVER/TRUSTEE property. If such repairs are not made within seven (7) Days, the RECEIVER/TRUSTEE may use private or RECEIVER/TRUSTEE personnel to repair or replace said fencing, which shall be done at the sole expense of Operator. RECEIVER/TRUSTEE may deduct said expenses from any payment RECEIVER/TRUSTEE is required to make to the Operator under this Agreement.
- (iv) Operator shall enter into and maintain a contract for a water supply pumper truck with on-call availability 24 hours a day, 7 days a week, to provide emergency and first responders with capability to provide fire suppression for outdoor wildfires. Additionally, Operator must provide, and have onsite at all times, at least one gas powered utility pump and fire hose capable of withdrawing water from the FACILITY ponds for fire suppression in an emergency. Additionally, Operator's emergency response shall call upon local fire authorities as well as part of the Emergency Response Plan. Costs incurred pursuant to this subsection 5.05(J)(iv) shall be Pass-Through Costs.
- (v) Operator shall maintain all existing and future signs in a clean and readable condition, and repair or replace all damaged information, regulatory, and warning road signs and markers. Operator shall provide any and all additional signs that may be required. Any such additional signs shall be consistent with existing signage formats and subject to the approval of the RECEIVER/TRUSTEE.
- (vi) Operator shall provide for the service, maintenance, and replacement of internal water supply and wastewater systems; well pumps; water hydrants; backflow and shut off valves; and shall test

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such equipment regularly as recommended by the manufacturer, and as necessary to insure proper operation.

- (vii) Operator agrees to carefully use and maintain the Facility during the Term of Agreement at the sole expense of Operator, with the exception of certain support facilities and equipment that is owned and/or maintained by RECEIVER/TRUSTEE or other RECEIVER/TRUSTEE contractors.
- (1.) Operator shall perform all necessary preventive and ongoing maintenance functions for the ORDOT FACILITY and fixed equipment in order to keep them in good working order, including, but not limited to, conforming with warranties and guidelines for the use of equipment, and shall comply with all necessary and required inspections and reporting as required under Applicable Laws and regulations, and manufacturer's recommendations.
  - (2.) Operator shall repair or replace (with items of equal quality and/or capacity), as necessary, all or portions of the Facility or fixed equipment during the Term of Agreement, including, but not limited to, all road surfaces and walkways, heating, ventilation, and air conditioning (HVAC) systems, electrical systems, plumbing systems, diesel and gasoline tanks and monitoring systems, and any and all other portions of the Facility and fixed equipment. Any replacement facilities or fixed equipment shall be acquired in the name of, and shall be the property of, and belong to, the GSWA without payment of any sum to Operator by RECEIVER/TRUSTEE. The only exceptions to this requirement shall be for support facilities and fixed equipment not directly related to the Operator's requirements under this Agreement.
  - (3.) Operator shall be responsible for any damage attributed to its operations caused to the ORDOT FACILITY or fixed equipment. Operator shall repair or replace GSWA property and Operator's own property promptly when the damage or loss of such property impairs or impedes the Operator's ability to operate perform its obligations under this Agreement. Other repairs or replacement shall be done in a timely manner as mutually agreed between RECEIVER/TRUSTEE and the Operator. Operator shall promptly repair or replace GSWA property, at its sole expense, if Operator or its representative is given notice thereof by the RECEIVER/TRUSTEE to do so. If Operator

shall fail to promptly make such repair or replacement, the RECEIVER/TRUSTEE may use private or RECEIVER/TRUSTEE personnel to repair or replace said RECEIVER/TRUSTEE property, which shall be done at the sole expense of Operator.

- (K) Non-Routine Services. Whenever Non-Routine Services are required, the Operator shall notify the RECEIVER/TRUSTEE, and shall prepare a scope of work describing the required services, the cost of the Non-Routine required services and the time-frame for providing these services. If subcontractors are required, the subcontractors shall be listed together with all the information required by Section 5.22. If the RECEIVER/TRUSTEE approves, the Operator shall prepare a Task Order for the services and the Operator, upon final approval of the Task Order, the Operator shall proceed with the work as provided in the approved Task Order.

The RECEIVER/TRUSTEE retains the right, if it determines not to accept the Non-Routine Services offered by the Operator, to accept proposals from other qualified providers of the required Non-Routine Services. Should the RECEIVER/TRUSTEE determine to contract with another qualified provider of these services, it shall be the duty of the Operator to facilitate and fully cooperate with that provider to achieve a successful and timely resolution of the problem that originally gave rise to the need for the Non-Routine Services.

- (L) Independent Engineer. It shall be the duty of the Operator to facilitate the work of and fully cooperate with the Independent Engineer as the Independent Engineer evaluates the work of the Operator and such other duties as may be assigned to the Independent Engineer.

SECTION 5.06. Odor Control Requirement. In operating the ORDOT FACILITY, the Operator shall comply with all requirements established by Applicable Laws with respect to odor control associated with the ORDOT FACILITY.

SECTION 5.07. Maintenance of Equipment and Vehicles.

- (A) The Operator shall maintain, at Operator's expense, all of its properties, facilities and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition and as necessary to comply with Applicable Law. Equipment selected for use at the ORDOT FACILITY shall meet or exceed federal emission standards or other standards set by the applicable Governmental Entity. All rolling stock used at the Facility by the Operator shall have no more than 4,000 hours of use and be in good working order on the Operations Commencement Date.
- (B) Operator shall inspect each piece of equipment used at the ORDOT FACILITY daily to ensure that all equipment is operating properly. Equipment that is not



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operating properly shall be taken out of service until it is repaired and does operate properly; and Operator shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule.

- (C) Availability of equipment is essential for operation of the ORDOT FACILITY and protection of public health and the environment. Operator shall repair, or arrange for the repair of, all of its equipment and Vehicles for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition.
- (D) Sufficient backup equipment shall be available at all times to prevent delays in operations caused by equipment breakdowns. Such backup equipment and the suppliers of that equipment shall be subject to approval of the RECEIVER/TRUSTEE and shall be available within one (1) Day.
- (E) Equipment Maintenance and Repair. Operator is expected to provide and maintain equipment, which will operate with a minimum of downtime. A piece of equipment which is non-operational for more than 1 week shall be considered broken, and Operator shall promptly notify the RECEIVER/TRUSTEE, and promptly secure the use of substitute equipment within one (1) Day, replace the equipment within one (1) Day, or ensure repair of the equipment within one (1) Day. RECEIVER/TRUSTEE may require that a piece of equipment be permanently replaced in the event that it breaks down more than three times in any thirty (30)-Day period, or four times in any ninety (90)-Day period. Operator shall be fully responsible for all costs of all equipment maintenance, replacements, and repairs, including parts and labor. Equipment repairs shall be started and completed in a timely manner. Operator shall be responsible for the costs of repairs due to normal wear and usage, fire, theft, accident or vandalism. Operator shall promptly repair all fluid leaks in the equipment. Without limiting the generality of the foregoing, a piece of equipment shall be considered non-operational if the equipment develops a leak such that visible ground stains occur.
- (F) Equipment Storage. Operator shall maintain a covered equipment storage and maintenance area in a neat and orderly manner. Rainwater will not be allowed to contact this maintenance and storage area. Operator shall minimize fluid spillage to the ground from storage containers, maintenance activities and other activities involving fluids. Operator shall promptly clean up or remediate any fluid spillage in conformance with all Applicable Laws, and Governmental Approvals. Equipment or property, which is not being used or necessary for, the required operations may not be stored at the ORDOT FACILITY. Operator shall provide employee Vehicle parking at a designated location.

SECTION 5.08. Personnel Standards. The following standards for Operator's employees working at the ORDOT FACILITY shall apply:

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- (A) The Operator shall furnish such qualified operators, mechanical, supervisory, technicians and other personnel as may be necessary to provide the Services. All Services provided at the Facility shall be done in a safe, economical and efficient manner and in accordance with all Governmental Approvals.
- (B) The Operator shall provide applicable and necessary operational and health and safety training for all of its employees who work at the Facility under this Agreement. Documents showing training for all onsite employees shall be submitted to the RECEIVER/TRUSTEE prior to that employee beginning work at the ORDOT FACILITY. All equipment operators shall be suitably trained and qualified in the operation of the equipment
- (C) Operator shall conduct, at its own expense, a minimum of one training meeting per month for all Operator employees. The purpose of these training meetings is to continually improve the training of employees related to Agreement requirements such as Governmental Approvals, Facility operation procedures, and safety. Operator shall submit to the RECEIVER/TRUSTEE an annual schedule of safety training at least fifteen (15) Days prior to the start of each Operating Year, and shall submit as part of its quarterly report, documentation of the completed monthly training within fifteen (15) Days of the end of each calendar quarter. The quarterly report shall include a brief description of the meeting topics and signatures of all employees attending. The RECEIVER/TRUSTEE may attend and monitor any or all training meetings. Records for all site personnel shall be available in the Operational Record as documentation for audit or regulatory inspection purposes.
- (D) The Operator shall not, nor shall it permit its employees to, demand or solicit, directly or indirectly, any additional compensation or gratuity from any person, business or other organization for Services provided under this Agreement. The Operator shall ensure that all employees present a neat appearance and conduct themselves in a courteous manner. The Operator shall regularly train its employees in courtesy, and shall prohibit the use of loud or profane language. In the event that any Operator employee fails to conduct duties in a courteous and efficient manner, fails to conduct operations in a proper manner at the ORDOT FACILITY, or permits or causes any Violation of this Agreement, Operator agrees to take appropriate disciplinary action, which shall include suspension or termination of employment of such person at the ORDOT FACILITY, and Operator shall replace such person, if terminated, within a reasonable time, not to exceed fifteen (15) Days, with a competent, trained employee.
- (E) The Operator shall provide employees performing operations with a radio or phone to handle calls and complaints from the RECEIVER/TRUSTEE, or to follow up on problems and inspect Operator's operations. Employees shall have available a means to communicate with each other.

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- (F) All employees shall wear as their outermost item of clothing, high visibility, reflective, safety jacket, coat, or vest when working outside. All employees shall wear hard-soled and steel-toed boots, hard hats and safety glasses. Each employee shall have his/her name and the Operator's name located on the outermost article of clothing so that each employee is easily identifiable.
- (G) Operator shall provide a list of current employees to the RECEIVER/TRUSTEE and provide an updated list to the RECEIVER/TRUSTEE within ten (10) Days of any employee changes.
- (H) Operator shall maintain policies and procedures that require and enforce a drug-free workplace.
- (I) Any of Operator's employees performing duties that require communication with RECEIVER/TRUSTEE personnel or the public shall be able to communicate in English.
- (J) It is understood and agreed that to operate the Facility in a cost-effective manner, Operator may choose to have employees perform multiple duties throughout the workday; however, Operator shall ensure that when multiple duties are assigned to an employee, the employee can properly perform the duties in accordance with this Agreement.
- (K) It is expressly understood and agreed that RECEIVER/TRUSTEE has entered into this Agreement in reliance upon Operator's continuous supervision of, and responsibility for, its employees, and at no time shall Operator rely upon supervision or performance by any other party.
- (L) Operator may be required to respond to emergencies at any time of day. A plan outlining steps to be taken in an emergency (Operator's Emergency Response Plan section in the Post-Closure Care Operations Plan the "Emergency Response Plan") shall be made available to all employees working at the ORDOT FACILITY. Employees are to receive training with regard to Emergency Response Plan prior to on-site employment. Operator shall participate in up to one (1) emergency response drill per year coordinated with the RECEIVER/TRUSTEE.
- (M) Smoking at the ORDOT FACILITY shall be prohibited.

SECTION 5.09. Buffer Zone. The Operator agrees to honor all terms of the Governmental Approvals with respect to current and future buffer zones as shown in the Governmental Approvals.

SECTION 5.10. Keeping of Premises. The Operator shall keep the ORDOT FACILITY in an orderly, safe and sanitary condition.

SECTION 5.11. Hours of Operation. The hours of operation for the ORDOT FACILITY shall be during all hours allowed by Governmental Approvals, unless otherwise directed by RECEIVER/TRUSTEE.

SECTION 5.12. Reporting Requirements. The Operator shall prepare and submit to the RECEIVER/TRUSTEE accurate monthly, quarterly, and annual reports, which detail certain activity related to the Services. These reports shall be in an electronic and hard-copy format as approved by the RECEIVER/TRUSTEE, and include information as set forth in the Post-Closure Care Operations Plan.

Operator shall have a professional engineer licensed to practice in Guam prepare the annual report, at Operator's expense, and submit the report to the RECEIVER/TRUSTEE for review, giving reasonable time for RECEIVER/TRUSTEE to review and revise the report, prior to the filing deadline with GEPA.

SECTION 5.13. Audited Financial Report.

- (A) Not later than one hundred twenty (120) Days following the end of the Operator's fiscal year, the Operator shall provide the RECEIVER/TRUSTEE with audited financial reports of the Operator's ORDOT FACILITY operations prepared by an independent certified public accountant or firm.
- (B) Not later than one hundred twenty (120) Days following the end of the Guarantor's fiscal year, the Operator shall provide the RECEIVER/TRUSTEE with audited financial statements of the Guarantor prepared by an independent certified public accountant or firm.

SECTION 5.14. Records. The Operator shall maintain records of all operations at the ORDOT FACILITY for the Term of this Agreement and for three (3) years thereafter. The Operator shall keep the Operational Record in accordance with in accordance with the Post-Closure Care Operations Plan, and Governmental Approvals, including the requirements of 40 CFR 258 subtitle D subpart C. The RECEIVER/TRUSTEE shall have access at reasonable hours, upon reasonable notice, to all of the Operator's records relating to the ORDOT FACILITY, and all papers and documents relating to the operation of the Operator within Guam. The RECEIVER/TRUSTEE, in its sole discretion, may utilize its employees or employ outside consultants to audit or verify all records and reports, including employment records, of the Operator relating to the ORDOT FACILITY The Operator shall cooperate with the RECEIVER/TRUSTEE, its officers, employees, agents or consultants, by making its employees and records relating to the ORDOT FACILITY available for the purposes of this Section. The RECEIVER/TRUSTEE, or 'RECEIVER/TRUSTEE's Auditor or their designee(s) shall have the right to access and inspect any other books and records of Operator or Operator's parent corporation or Guarantor or any other entity associated with or substantially involved in a business relationship with Operator that may affect or influence the Operator's duties under

this Agreement. Any document, material, or record relating to the ORDOT FACILITY may be subject to required public disclosure pursuant to Guam Law.

SECTION 5.15. Restoration. At the expiration or termination of this Agreement from any cause, all buildings and other permanent improvements at the ORDOT FACILITY shall be in good condition and working order, ordinary wear and tear excepted. Title to all permanent improvements or fixtures in the ORDOT FACILITY constructed by the Operator during the Term of this Agreement shall vest in the RECEIVER/TRUSTEE upon termination or expiration of this Agreement, without the necessity of any compensation by the RECEIVER/TRUSTEE.

SECTION 5.16. Removal of Personal Property. Within reasonable time after the expiration or termination from any cause of this Agreement, the Operator shall remove any and all personal property owned by Operator and placed thereon by the Operator. Any property not so removed shall, at the RECEIVER/TRUSTEE's option, become the property of GSWA or the RECEIVER/TRUSTEE may cause the property to be removed at the Operator's expense.

SECTION 5.17. RECEIVER/TRUSTEE Representative. The RECEIVER/TRUSTEE shall designate a representative of the RECEIVER/TRUSTEE to act as the RECEIVER/TRUSTEE's liaison with the Operator in connection with this Agreement.

SECTION 5.18. RECEIVER/TRUSTEE Employee Space. The Operator shall permit employees of the RECEIVER/TRUSTEE, and the RECEIVER/TRUSTEE's designated consultants and representatives to have access to the ORDOT FACILITY and surrounding area at all times during operational hours for purposes of inspection or for observation of the maintenance work at the ORDOT FACILITY and general Facility operations; provided, however that the RECEIVER/TRUSTEE's employees, consultants and representative(s) shall not interfere with the operation of the ORDOT FACILITY.

SECTION 5.19. Disaster Assistance. The Operator shall be actively involved in planning for and responding to any declared disaster or storm event in Guam. In the event a disaster is declared, normal operations may be suspended at the RECEIVER/TRUSTEE's, discretion and Operator shall respond in accordance with the RECEIVER/TRUSTEE's Emergency Response Plan or as otherwise directed by the RECEIVER/TRUSTEE.

SECTION 5.20. Compliance Reporting Requirements. The Operator will be responsible for undertaking and developing all compliance reports and related documentation associated with the ORDOT FACILITY as required by Governmental Approvals and other Applicable Laws. Such documentation shall be submitted to the RECEIVER/TRUSTEE for approval prior to the submission by the Operator of said reports and documentation to any Governmental Entity.

SECTION 5.21. Community Information. Throughout the Term, the Operator will provide knowledgeable speakers to make presentations to and attend community outreach programs for civic and neighborhood groups when requested.

SECTION 5.22. Use of Subcontractors and Consultants by Operator. The Operator shall not subcontract, or enter into any consulting or subcontracting agreements pertaining

to Operator's obligations under this Agreement, without obtaining prior written approval from the RECEIVER/TRUSTEE. The RECEIVER/TRUSTEE agrees not to unreasonably withhold consent to Operator's request to enter into any consulting or subcontracting agreement. In no event will any subcontracting by the Operator relieve the Operator from any of the obligations or conditions of this Agreement on its part to be performed. For purposes of determining the Operator's liability and responsibility to the RECEIVER/TRUSTEE under this Agreement, the acts or omissions of the Operator's subcontractors or consultants and any person directly or indirectly acting for them will be deemed to be the acts or omissions of the Operator, and the Operator will remain liable and responsible to the RECEIVER/TRUSTEE as if no subcontract or consulting contract had been made. The following information must be provided to the RECEIVER/TRUSTEE prior to the beginning of any work by a subcontractor or consultant: (i) Name; (ii) Address; (iii) Point of Contact; (iv) Phone Number; (v) Scope of Work; (vi) and, if required by Applicable Law or as required by RECEIVER/TRUSTEE, a Certificate of Insurance.

**SECTION 5.23. Other Performance Standards.** Operator shall perform all work where no specific performance standard otherwise provided for herein or by Applicable Laws or regulation, to a generally accepted industry standard or performance expected of a competent and experienced individual who performs work of such nature for his or her livelihood, including maintaining an agreeable professional relationship with other contractors who may be working at the site. In addition to any other of its rights, the RECEIVER/TRUSTEE may require that the Operator, at Operator's sole cost and expense, review and correct any errors or deficiency in any work that does not meet the above specified standard.

Operator shall perform engineering and planning services in accordance with generally accepted standards of professional engineering or planning practice. In addition to any other of its rights, the RECEIVER/TRUSTEE may require that the Operator, at Operator's sole cost and expense, review and correct any errors or deficiency of the Operator's studies, designs, reports, and/or other engineering or planning services. Further, Operator shall be responsible for the costs of correction of any faulty physical construction resulting from errors or omissions in its engineering or planning services.

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

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

Operator shall have primary responsibility to establish and implement the procedures governing access to the Facility and the use thereof by RECEIVER/TRUSTEE, and the operation thereof by the Operator. Notwithstanding the foregoing, no such procedure shall conflict with: (i) any Applicable Laws or regulations; (ii) any provision of this Agreement; or (iii) any established procedure of the RECEIVER/TRUSTEE. Further, the RECEIVER/TRUSTEE retains the right, but not the obligation, to review, amend and disapprove of any such procedure.

In performing its duties herein, Operator shall be required, pursuant to direction provided by the RECEIVER/TRUSTEE, to coordinate such performance with the performance of the duties required of the contractors and consultants under each of the other contracts the RECEIVER/TRUSTEE has for certain services and/or facilities at or associated with the Facility or its use and access.

SECTION 5.24. Protected Areas. Operator must receive permission from the RECEIVER/TRUSTEE prior to encroaching on any previously undisturbed land or protected areas of the ORDOT FACILITY as noted in the Post-Closure Care Operations Plan, Governmental Approvals, or otherwise identified by the RECEIVER/TRUSTEE. Operator's employees shall stay on established interior roads to prevent further disturbance of the local habitat and wildlife.

SECTION 5.25. Buildings at the ORDOT FACILITY. RECEIVER/TRUSTEE has made available to Operator a building at the ORDOT FACILITY suitable for office, parts storage, and other purposes. No other types of shelter, trailers, or storage containers shall be permitted unless authorized in writing by the RECEIVER/TRUSTEE. No person shall be allowed to spend the night at the ORDOT FACILITY unless required as part of his or her job responsibilities (e.g., security personnel). This Agreement does not authorize the construction, installation or use of any building or mobile home contrary to the provisions of Guam zoning requirements, building code, housing code, fire code or other Applicable Laws or regulations of the Government of Guam. Operator shall have the responsibility of obtaining any permits and approvals necessary for any building or building expansion that is approved by the RECEIVER/TRUSTEE for addition at the Facility prior to installing or maintaining same at Facility.

SECTION 5.26. Other Obligations. In addition to the requirements listed above, Operator shall be responsible for any and all other activities deemed necessary for proper operation and maintenance of the Facility, including the following:

- (A) Operator Inspections. Operator shall conduct regular inspections of the ORDOT FACILITY as required to comply with Applicable Permits, Regulations and Laws, and for purposes of assessing the condition of the facilities and fixed equipment, identifying necessary maintenance, assuring the integrity of security systems, and assessing the safety and effectiveness of operations. Operator shall submit to the RECEIVER/TRUSTEE a list of all inspections to be conducted along with an inspection schedule, prior to the Operation Commencement Date of this Agreement, and at the time of any changes to this list and/or schedule, if any. Operator shall submit a copy of all inspection reports and forms to the RECEIVER/TRUSTEE as part of the monthly report for the month when such inspection was conducted.
- (B) Regulatory Inspections. Operator shall provide access to the ORDOT FACILITY by authorized Governmental Entities and insurers or their agents for purpose of conducting required inspections. Operator shall submit copies of all inspection forms and other information provided by Governmental Entities or

insurers or their agents related to inspections of the ORDOT FACILITY to the RECEIVER/TRUSTEE within 48 hours of the inspection and as part of the monthly report. Operator shall take any and all actions necessary to rectify any noted deficiencies, areas of concern or Violations related to its operations under this Agreement. Operator shall submit to the RECEIVER/TRUSTEE within seven (7) Days of an inspection, documentation of actions taken to rectify any deficiencies, areas of concern or Violations or a specific plan and schedule to do so. Operator shall be responsible for payments of fines levied.

- (C) Fires. Should any fires occur at the Facility at any time, Operator shall respond immediately and use all available methods to control and extinguish such fires. Operator shall immediately report the fire to, and cooperate with, the appropriate fire department. Operator shall notify the RECEIVER/TRUSTEE of the event as soon as practical.
- (D) Final Cleanup. Upon expiration or termination of this Agreement, Operator shall remove, at Operator's expense, from the ORDOT FACILITY and adjoining property and dispose of all surplus and discarded materials, rubbish, sediment, stormwater catch basin and system residues, temporary structures, equipment and debris which may have accumulated during the Term of this Agreement. No separate payment shall be allowed for the above work.
- (E) Utilities. Electricity, potable water, sewer, and leachate treatment costs, which will be paid directly by the Government of Guam to the purveyor or as a direct Pass-Through Cost without mark-up by the Operator. Operator shall be responsible for providing and maintaining any other utilities at the ORDOT FACILITY and for all costs and service charges in connection therewith.
- (F) Communication. Operator shall provide telephone, Internet, and radio communication at its own expense at the ORDOT FACILITY. RECEIVER/TRUSTEE shall have the right to use on-site communication facilities without cost, as may be necessary for its official purposes. All communications systems must be FCC approved.
- (G) Facility Security. Operator shall be solely responsible for maintaining site and building security systems and providing adequate security at all times at the ORDOT FACILITY. Any damage to the ORDOT FACILITY, or theft of equipment or property from the ORDOT FACILITY, shall be the sole responsibility of Operator. The only exception shall be for the damage to, or theft of equipment or property from, support facilities not directly related to the Operator's requirements under this Agreement provided that any such damage or theft did not occur as a result of inadequate ORDOT FACILITY security. If such damage or theft is the result of inadequate ORDOT FACILITY security, then it shall be the sole responsibility of the Operator. Operator will have fifteen (15) Days to repair or replace any damage to the ORDOT FACILITY, or replace any stolen equipment or property from the time Operator or its representative is



given written notice by the RECEIVER/TRUSTEE to do so. After that time, RECEIVER/TRUSTEE may use private or RECEIVER/TRUSTEE personnel to repair or replace said damage to the ORDOT FACILITY, or provide for the replacement of any stolen equipment or property, which shall be done at the sole expense of the Operator RECEIVER/TRUSTEE may deduct said expenses from any payment RECEIVER/TRUSTEE is required to make to Operator under this Agreement.

- (H) Drinking Water. The Facility will be served by potable water from a public treated water source. If Operator desires to provide additional on-site drinking water for employees, all costs of such water shall be at Operator's sole expense and not included in the Operator's fee.
- (I) Non-Potable Water. Operator shall be responsible for providing a non-potable water supply as required for its operations at the ORDOT FACILITY. All costs pertaining to any water line extension or relocation thereof, shall be the sole responsibility of Operator, including the charges imposed by any utility company. No water leakage shall be allowed. Any repairs on these water delivery facilities shall be the responsibility of Operator.
- (J) Governmental Approvals. Operator shall be responsible for assisting the RECEIVER/TRUSTEE by providing all information/documentation required to obtain, secure, and keep in full force and effect, various Governmental Approvals applicable to the ORDOT FACILITY.

SECTION 5.27. Maintenance and Repair of Final Cover. Operator shall maintain and repair, as necessary, all final covers at the ORDOT FACILITY. Fissures, cracks, depressions, settlement, and erosion on the ORDOT FACILITY surface and side slopes shall be promptly repaired and graded to promote positive drainage by Operator throughout the Term of Agreement. Where appropriate, areas of the Facility with Final Cover shall be re-seeded.

SECTION 5.28. Erosion Control. Operator shall take measures to minimize the amount of soil erosion on the Facility as needed to comply with the requirements of the Guam Soil Erosion and Sediment Control Regulations and Governmental Approvals. Erosion in areas where vegetative cover is required shall be filled with soil to restore a uniform grade and be seeded, mulched and fertilized to re-establish vegetative cover. Areas with exposed soil surfaces shall be graded and filled to maintain a uniform grade and eliminate fill depressions caused by soil loss. Operator shall maintain all roadway slopes and grades that convey drainage to onsite stormwater conveyance structures on a daily basis. The Operator shall inspect the entire Facility property at the required frequency called for in the Post-Closure Care Operations Plan to identify areas where erosion repairs are needed and vegetation needs to be re-established.

SECTION 5.29. Drainage Structures. All drainage structures must be maintained, and repaired as necessary, or as required by the RECEIVER/TRUSTEE, to provide for free and unobstructed flow of stormwater discharge. Drainage/stormwater basins and storm drain

systems including inlets, channels, ditches, storm drains, culverts, catch basins, outlets, and debris/detention basins must be maintained in terms of their capacity to convey design storm volumes and kept free of cracking, siltation, and debris accumulation. Operator shall submit in its monthly report to the RECEIVER/TRUSTEE details of the maintenance of drainage control systems and a listing of any new installation of temporary drainage facilities. Operator shall construct any additional culverts or conveyance structures as needed to facilitate proper drainage on the site.

SECTION 5.30. Access for Monitoring. The Contractor shall maintain the areas in the immediate vicinity of groundwater Monitoring Wells, Facility gas monitoring probes and stormwater management sampling points and the access roads leading to these locations. This type of maintenance shall be done on a routine basis in conjunction with making repairs caused by erosion and maintaining site access in general.

SECTION 5.31. Post-Closure Care Operations Plan. Operator shall prepare and submit Post Closure Care Standard Operating Procedures (SOP) to the RECEIVER/TRUSTEE for approval. Operator's Post-Closure Care SOPs shall be site specific, and will be the RECEIVER/TRUSTEE's Operations Plan for the ORDOT FACILITY. Existing SOPs previously developed by the RECEIVER/TRUSTEE during startup interim post closure operations can be adopted by the Operator and shall be submitted to the RECEIVER/TRUSTEE within one month of the date of execution of this Agreement and updated as necessary thereafter. Operator may submit a request to amend the Post-Closure Care Operations Plan and associated SOPs at any time by submitting a written revision to the RECEIVER/TRUSTEE for approval. The RECEIVER/TRUSTEE shall issue a notice of approval or disapproval. If the RECEIVER/TRUSTEE disapproves the proposed amendment, it shall provide an explanation of disapproval. Operator shall then either revise its submittal within two weeks after receiving the RECEIVER/TRUSTEE's explanation of disapproval, or the proposed amendment will be considered withdrawn. If approval of the amendments to the Post-Closure Care Operations Plan require agency review and approval before implementation, Operator shall prepare submittal package, in the format suitable for acceptance by the GEPA, to RECEIVER/TRUSTEE who will submit to GEPA for approval.

SECTION 5.32. Entrance Gate and Locks. Operator shall maintain the gate provided at the entrance of the ORDOT FACILITY in a locked position. RECEIVER/TRUSTEE shall provide all required locks and shall provide copies of the keys to all locks to the Operator prior to the Operation Commencement Date of this Agreement. In the event that any locks are changed, the RECEIVER/TRUSTEE shall provide a copy of the new key to the Operator at that time. Neither RECEIVER/TRUSTEE nor Operator shall allow anyone other than authorized persons access to the Facility at any time, unless otherwise provided for herein.

SECTION 5.33. Soil Importing. Operator shall be responsible for securing, at its own expense, any required soil for the Facility that cannot be satisfied with available on-site soil for the Term of this Agreement.

**ARTICLE VI**

**USE AND OPERATION OF THE PREMISES**

SECTION 6.01. Operation of ORDOT FACILITY. At all times after the Operation Commencement Date, the Operator shall continuously operate the ORDOT FACILITY as a closed municipal solid waste management facility in post-closure care. The Operator shall operate the ORDOT FACILITY in compliance with Governmental Approvals, and any future modifications thereof, and all other Applicable Laws. The Operator agrees to operate the ORDOT FACILITY in a manner comparable to other first class publicly- and privately-operated solid waste management facilities in the United States.

SECTION 6.02. Certain Operator Obligations. In addition to any other obligations set forth herein, the Operator shall furnish all labor, supervision, insurance, equipment, materials, supplies and all other items necessary to perform the Services.

**ARTICLE VII**

**[Intentionally omitted]**

**ARTICLE VIII**

**POST-CLOSURE CARE**

SECTION 8.01. Funding of Post-Closure Care Costs. The RECEIVER/TRUSTEE is solely responsible for (i) the establishment and funding of any reserve funds required by Applicable Laws for the purpose of providing funds for the payment of costs of Post-Closure Care of the ORDOT FACILITY. In no event shall the Operator be responsible for paying any deficiencies in such required reserves for Post-Closure Care activities of RECEIVER/TRUSTEE. In addition, the Operator shall have no responsibility to make any payments in the event that actual Post-Closure Care costs relating to the ORDOT FACILITY exceed the amount reserved by the RECEIVER/TRUSTEE for Post-Closure Care activities of the RECEIVER/TRUSTEE.

**ARTICLE IX**

**INSURANCE AND INDEMNITY**

SECTION 9.01. Insurance. During the Term of this Agreement, the Operator shall maintain, at its own expense (except as specifically set forth below), the following policies of insurance:

Comprehensive General Liability

\$5,000,000 per occurrence; \$5,000,000 products/completed operations; \$10,000,000 general aggregate.

Automobile Liability

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

Workers' Compensation

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

Property Coverage

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

Business Interruption

Coverage is to be a minimum of \$2,000,000 for the total or partial suspension of, or interruption in, the operation of the ORDOT FACILITY, caused by loss or damage to or destruction of any part of the ORDOT FACILITY or its structures, equipment, or supplies, as a result of the perils insured against.

Pollution Liability/Environmental Impairment

Coverage is to be a minimum of \$10,000,000 per occurrence, \$20,000,000 aggregate. Coverage shall be on a "per project" basis unless specified otherwise. Policy to cover general environmental pollution liability, not limited to sudden accidental discharge and to include long-term environmental impact, applicable to bodily injury (including death) and property damage including loss of use of property that has not been physically injured or destroyed; clean-up costs; and defense and settlement of all claims in connection with any loss arising from the ORDOT FACILITY. Coverage shall apply to sudden and accidental and non-sudden pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury and property damage.

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

The policy shall contain an endorsement fully waiving any contractual liability exclusion contained in the policy without limitation or restriction. The policy may not contain a limitation of any kind that would limit any recovery thereunder to the amount of this Agreement or any component thereof. If the policy contains an exclusion for non-owned disposal sites, the

ORDOT FACILITY shall be removed from any such exclusion. The policy shall not limit or restrict in any manner coverage for the warranties, guarantees, and performance standards contained in this Agreement.

#### Deductibles/SIRs

Self-insured retentions and deductibles affecting required insurance must be acceptable to the RECEIVER/TRUSTEE. The Proposer must identify any self-insurance coverage and include:

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

Annual reports containing the elements specified above must be submitted to the RECEIVER/TRUSTEE.

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

#### Copies

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

#### Other Insurance Provisions

The RECEIVER/TRUSTEE and the Government of Guam, its officials, and employees shall be named insureds on the Commercial General Liability, and shall be additional insureds on the Environmental Impairment Liability and Automobile Liability Insurance policies required under this Agreement.

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

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

#### Workers' Compensation and Employers' Liability Coverage

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

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

Guam Solid Waste Authority  
542 North Marine Corps Drive  
Tamuning, Guam 96913

and

Gershman, Brickner & Bratton, Inc.  
RECEIVER for the Guam Solid Waste Authority  
2010 Corporate Ridge Drive  
Suite 510  
McClean, Virginia 22102

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

SECTION 9.02. Workers' Compensation Insurance Coverage. In addition to the requirements contained in SECTION 9.01, the following provisions relate to the Operator's Workers Compensation Coverage:

- (A) Certificate of coverage ("certificate") –A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the Person's or entity's employees providing Services, for the duration of the project.
- (B) For this Section, "Duration of the project" includes the time from the Contract Date to termination or expiration of this Agreement.
- (C) In this Section, "Persons providing Services on the project" includes all Persons or entities performing all or part of the Services, regardless of whether that Person contracted directly with the Operator and regardless of whether that Person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes Persons to provide Services. For the purposes of this ARTICLE IX INSURANCE AND INDEMNITY only, "Services" does not include activities unrelated to the performance of this Agreement, such as food/beverage vendors, office supply deliveries and delivery of portable toilets.
- (D) The Operator shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Guam Law for all employees of the Operator providing Services for the duration of the project.
- (E) The Operator must provide a certificate of coverage to the RECEIVER/TRUSTEE.

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

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

SECTION 9.03. Indemnity.

- (A) **OPERATOR ASSUMES ALL RISK OF LOSS OR INJURY TO PROPERTY OR PERSONS ARISING FROM ANY OF ITS OPERATIONS UNDER THIS AGREEMENT, AND AGREES TO INDEMNIFY AND HOLD HARMLESS RECEIVER/TRUSTEE AND THE GOVERNMENT OF GUAM FROM ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS OR EXPENSES ARISING FROM ANY SUCH LOSS OR INJURY, SAVE AND EXCEPT FOR LOSS OR INJURY DUE TO RECEIVER/TRUSTEE'S SOLE NEGLIGENCE OR TO THE JOINT OR CONCURRENT NEGLIGENCE OF OPERATOR AND RECEIVER/TRUSTEE, THEN, TO THE EXTENT PERMITTED BY APPLICABLE LAWS, OPERATOR'S RESPONSIBILITY SHALL BE LIMITED**



**TO THE PERCENTAGE EXTENT SUCH CLAIM, DEMAND, SUIT, JUDGMENT, COST OR EXPENSE WAS CAUSED BY AN ACT OR OMISSION OF OPERATOR, ITS EMPLOYEES, ITS AGENTS, OR CONTRACTORS. IN SUCH AN EVENT, OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS THE RECEIVER/TRUSTEE FOR OPERATOR'S APPORTIONED LIABILITY. The total and aggregate obligation of Operator to defend, indemnify or hold harmless RECEIVER/TRUSTEE and the Government of Guam for any loss or injury pursuant to this SECTION 9.03(A) shall be limited to the extent that such liability or obligation is covered by insurance provided in accordance with the requirements of this Agreement.**

- (B) **Indemnity from Environmental Assessments or Claims. THE OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS THE RECEIVER/TRUSTEE AND THE GOVERNMENT OF GUAM FROM AND AGAINST ANY AND ALL CLAIMS BROUGHT BY ANY PERSONS AND THAT ARE CONNECTED WITH:**
- (a.) **THE OPERATION AND MAINTENANCE OF THE ORDOT FACILITY OR OTHER SOLID WASTE FACILITY OWNED, LEASED OR UTILIZED BY THE OPERATOR DURING THE TERM OF THIS AGREEMENT; OR**
  - (b.) **ANY CLEANUP COSTS AT THE ORDOT FACILITY OR SUCH OTHER SOLID WASTE FACILITY; AND THAT RESULTED FROM THE TRANSPORTATION OR STORAGE OF WASTE WHICH IS OR HAS BEEN ACCEPTED BY THE OPERATOR IN THE ORDOT FACILITY; (2) ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION AT OR RESULTING DIRECTLY FROM THE ORDOT FACILITY, WHETHER SUCH CONTAMINATION OR ALLEGED CONTAMINATION IS AIR, SOIL, GROUND WATER OR SURFACE WATER CONTAMINATION; AND (3) FOR CLAIMS, LIABILITIES, SUITS, DAMAGES, EXPENSES AND FINES ARISING OUT OF OR RESULTING FROM ANY SUDDEN OR GRADUAL OR ANY OTHER RELEASE, DISCHARGE, SPILL, CONTAMINATION OR POLLUTION BY OR FROM HAZARDOUS WASTES OR SUBSTANCES CAUSED BY OPERATOR, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS, OFFICERS, INVITEES AND REPRESENTATIVES, EXISTING, CREATED OR OCCURRING ON OR UNDER THE PREMISES DURING THE TERM OF THIS AGREEMENT.**

**The total and aggregate obligation of Operator to defend, indemnify or hold harmless RECEIVER/TRUSTEE and the Government of Guam for any environmental liability or obligation pursuant to this Section 9.03(B) shall be limited to the extent that such environmental liability**

**or obligation is covered by insurance provided in accordance with the requirements of this Agreement.**

- (C) Application to Surrounding Property. **THE INDEMNITY OF SUBSECTION (B) EXTENDS TO CLAIMS AND ASSESSMENTS RELATING NOT ONLY TO THE ORDOT FACILITY BUT ALSO TO CLAIMS OR ASSESSMENTS ARISING OUT OF THE SURROUNDING AREA WHERE RUNOFF, LEACHATE, OTHER INFILTRATION OR GAS MIGRATION MAY OCCUR OR MAY HAVE OCCURRED. THE PURPOSE OF THIS PARAGRAPH IS TO MAKE THE OPERATOR RESPONSIBLE FOR ALL CLAIMS OR ASSESSMENTS RELATING TO THE SITE OF FACILITY, OR OTHER SOLID WASTE FACILITIES WHICH ARE USED BY THE OPERATOR IN ORDER TO PERFORM ITS OBLIGATIONS RELATING TO THE ORDOT FACILITY UNDER THIS AGREEMENT (BUT NOT OTHER LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES UNRELATED TO AND NOT USED IN CONNECTION WITH THE PERFORMANCE BY OPERATOR OF ITS OBLIGATIONS UNDER THIS AGREEMENT). THIS SECTION DOES NOT MAKE THE OPERATOR LIABLE FOR ANY SITE NEVER USED, CLOSED, MANAGED OR MONITORED BY THE OPERATOR UNDER THE TERMS OF THIS AGREEMENT.**
- (D) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RECEIVER/TRUSTEE AGREES TO INDEMNIFY, DEFEND AND HOLD OPERATOR HARMLESS FROM ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES OR LOSSES TO THE PERCENTAGE EXTENT THEY ARISE FROM ANY ACT, OMISSION OR FAILURE TO COMPLY WITH ENVIRONMENTAL LAWS OR REGULATIONS BY RECEIVER/TRUSTEE OR ANY PREEXISTING CONDITION OF THE ORDOT FACILITY, SAVE AND EXCEPT FOR LOSS OR INJURY DUE TO OPERATOR'S SOLE NEGLIGENCE OR TO THE JOINT OR CONCURRENT NEGLIGENCE OF OPERATOR AND RECEIVER/TRUSTEE, THEN, TO THE EXTENT PERMITTED BY APPLICABLE LAWS, RECEIVER/TRUSTEE'S RESPONSIBILITY SHALL BE LIMITED TO THE PERCENTAGE EXTENT SUCH CLAIM, DEMAND, SUIT, JUDGMENT, COST OR EXPENSE WAS CAUSED BY AN ACT OR OMISSION OF RECEIVER/TRUSTEE, ITS EMPLOYEES, ITS AGENTS, OR CONTRACTORS. IN SUCH AN EVENT, RECEIVER/TRUSTEE SHALL INDEMNIFY AND HOLD HARMLESS THE OPERATOR FOR RECEIVER/TRUSTEE'S APPORTIONED LIABILITY. .**
- (E) **THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

**ARTICLE X**

**SECURITY**

SECTION 10.01. Guarantor.

- (A) Guaranty Agreement. The Operator shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term hereof.
- (B) Annual Reports. In the event the Guarantor is not a publicly traded company and is not required to make filings with the Securities and Exchange Commission, the Operator shall furnish the RECEIVER/TRUSTEE, within one hundred twenty (120) Days after the end of each fiscal year of the Guarantor, audited year end consolidated financial statements for the Guarantor reported upon by the Guarantor's independent public accountant.

SECTION 10.02. Performance Bond. The Operator shall, within fifteen (15) Days following the Contract Date, provide to the RECEIVER/TRUSTEE and maintain in force for the Term of this Agreement an annually renewable operations performance bond in the amount of one million dollars (\$1,000,000) as additional financial security for its true and faithful performance of this Agreement. The Performance Bond shall be issued by a surety company: (1) having a rating of "A" or greater by A.M. Best Company; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies;" and (3) properly registered and licensed to conduct business in the Territory of Guam. The Performance Bond shall be issued in the name of the Receiver and the Government of GSWA.

SECTION 10.03. Cost of Providing Security for Performance. The cost and expense for obtaining and maintaining the security instruments required under this Article as security for the performance of the Operator's obligations hereunder shall be borne by the Operator.

**ARTICLE XI**

**COVENANTS AND WARRANTIES**

SECTION 11.01. Representations and Warranties of Each Party. Each Party represents and warrants to the other as of the Contract Date (and such representations and warranties as of the Contract Date shall survive the termination or expiration of this Agreement), as follows:

- (A) Each Party is duly organized and existing in good standing and each is duly qualified and authorized to enter into and perform the obligations set forth in this Agreement.

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

SECTION 11.02. Covenant of Operator. The Operator shall promptly notify the RECEIVER/TRUSTEE of any action which is proposed in writing of which it has knowledge or the occurrence of any event of which it becomes aware, or which could reasonably be expected, to lead to the revocation or suspension of any Governmental Approval.

SECTION 11.03. Liens. The Operator shall operate the ORDOT FACILITY according to prudent business practices in order to avoid the filing of vendor's, mechanic's, laborer's or materialman's statutory or similar lien against the ORDOT FACILITY or any interest of the RECEIVER/TRUSTEE or the Operator therein by reason of work, labor, services or materials supplied or claimed to have been supplied to the Operator or anyone holding the ORDOT FACILITY or any part thereof through or under the Operator. If any such lien shall at any time be filed, the Operator shall, within a forty-five (45) Days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law or file a lawsuit in a court of competent jurisdiction seeking a discharge of such a lien. Upon filing the lawsuit to discharge a lien, the Operator shall deposit into the registry of the court an amount equal to the

outstanding lien sought to be discharged. If the Operator shall fail to cause such lien to be discharged or deposited the appropriate amount in the registry of the court with competent jurisdiction within the period aforesaid, then, in addition to any other right or remedy of the RECEIVER/TRUSTEE, the RECEIVER/TRUSTEE may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event the RECEIVER/TRUSTEE shall be entitled, if the RECEIVER/TRUSTEE so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment for and in favor of the lienor with interest, cost and allowances. Nothing contained in this Agreement shall be deemed or construed in any way as constituting (i) the consent of the RECEIVER/TRUSTEE to the filing of any such lien on the RECEIVER/TRUSTEE's interest in the ORDOT FACILITY or this Agreement or (ii) the consent or request of the RECEIVER/TRUSTEE, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman or the performance of any labor or the furnishing of any materials that would give rise to the filing of such liens against the ORDOT FACILITY. Any amounts paid by the RECEIVER/TRUSTEE pursuant to SECTION 11.03 shall be reimbursed by Operator to the RECEIVER/TRUSTEE upon demand.

SECTION 11.04. No Warranties. The Operator agrees that, except as expressly contained in this Agreement, no representations, statement or warranties, express or implied, have been made by or on behalf of RECEIVER/TRUSTEE, in respect to the ORDOT FACILITY, or the laws applicable to this Agreement, or any imposition payable with respect to the ORDOT FACILITY, and that the Operator has relied on no such representations, statements or warranties and that the RECEIVER/TRUSTEE shall in no event whatsoever be liable by reason of any claimed misrepresentations, misstatements or breach of warranties.

## **ARTICLE XII**

### **DAMAGE, DESTRUCTION TO THE ORDOT FACILITY**

SECTION 12.01. Damage to or Destruction of all or any portion of the ORDOT FACILITY. In case of damage to or destruction of the ORDOT FACILITY by fire or any other cause, similar or dissimilar, insured or uninsured, that is caused by the Operator due to the Operator's negligence, the Operator shall promptly, at its sole cost and expense, restore, repair, replace or rebuild the ORDOT FACILITY as nearly as practicable to the value, condition and quality existing immediately prior to such damage or destruction. Such restoration, repairs, replacements or rebuilding shall be prosecuted with due diligence and in good faith, and in accordance with the requirements of this Agreement, including, without limitation, ARTICLE IX. If Insurance proceeds, if any, are less than the cost of any restoration, repairs, replacement or rebuilding by this Agreement, then the Operator shall pay any deficiency.

SECTION 12.02. No Abatement. Subject to the provisions of SECTION 16.10 of this Agreement, the Operator's responsibility to perform all other covenants and agreements under this Agreement, shall not be affected by any such damage to or destruction of the ORDOT FACILITY provided such damage or destruction does not totally impair Operator's operations at the ORDOT FACILITY for a period of more than thirty (30) consecutive Days.

However, if Operator's operations at the ORDOT FACILITY are totally impaired for a period of more than thirty (30) consecutive Days (a) by any such damage to or destruction of the ORDOT FACILITY other than due to Operator fault, or (b) by reason of force Majeure as described in SECTION 16.10 of this Agreement, then, beginning on the thirty-first Day of such impairment, Operator's obligation to perform all other covenants and agreements under this Agreement shall be abated, suspended and excused during the remaining time Operator's operations at the ORDOT FACILITY are totally impaired.

### **ARTICLE XIII**

#### **EVENTS OF DEFAULT REMEDIES**

SECTION 13.01. Remedies for Breach. The Parties agree that, except as otherwise provided in SECTION 13.02 and SECTION 13.03 with respect to termination rights, in the event that either Party breaches this Agreement, the other Party may exercise any legal rights it has under this Agreement, under the security instruments and under Applicable Laws to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither Party shall have the right to terminate this Agreement for cause except upon the occurrence of an Event of Default. In the event either Party shall have the right to terminate this Agreement as provided herein, this Agreement may be terminated (except by expiration of the Term of this Agreement) only by a written instrument of termination executed by the appropriate Party and delivered to the non-terminating Party.

#### SECTION 13.02. Events of Default by the Operator.

- (A) The following shall constitute Events of Default on the part of the Operator except to the extent caused by the occurrence of RECEIVER/TRUSTEE Fault:
- (i) the failure by the Operator to timely perform any material obligation under the terms of this Agreement, except the obligations which are described in subsection 13.02(A)(3) hereof, and the continuance of such failure for a period of thirty (30) Days after written notice thereof has been provided by the RECEIVER/TRUSTEE specifying such failure and requesting that such condition be remedied, or if such failure may not be reasonably cured within a thirty (30)-Day period, such longer time as is required to remedy such failure, if Operator promptly initiated and is diligently pursuing reasonable actions to cure such non-performance; or
  - (ii) the Operator is in Violation of Applicable Laws (other than an Alleged Violation Resolved) which results in the ORDOT FACILITY, either (i) being a public nuisance, or (ii) causing environmental harm which may adversely affect the health of residents either within or outside the vicinity of the ORDOT FACILITY, and such Violation is not cured within ten (10) Days after written notice of such Violation has been

provided to Operator, or if such Violation may not be reasonably cured within a ten (10)-Day period, such longer time as is required to remedy such Violation, if Operator promptly initiated and is diligently pursuing reasonable actions to cure such Violation; provided that, if Operator has a good faith dispute with an agency or regulatory body as to whether or not a Violation of any Applicable Laws has occurred, then Operator shall not be considered in breach or default of this Agreement, so long as it is diligently pursuing its good faith dispute with the appropriate Governmental Entity and such Governmental Entity allows the Operator to continue performance under this Agreement during the pendency of such dispute; or

- (iii) failure to pay amounts which are owed by the Operator to the RECEIVER/TRUSTEE under the terms of this Agreement within ten (10) Days following the receipt of written notice from RECEIVER/TRUSTEE that amounts are due and payable, giving due regard to the provisions of SECTION 13.04 hereof; or
- (iv) (i) the Operator's being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver trustee, or liquidator for a substantial part of its property; (ii) a bankruptcy winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by the Operator, under the laws of any jurisdiction or against the Operator, if the Operator does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) Days of the institution of such proceeding; (iii) any action or answer by the Operator approving of, consenting to, or acquiescing in, any such proceeding; or (iv) the event of any distress, execution, or attachment upon the property of the Operator which shall substantially interfere with its performance hereunder; or
- (v) failure of the Guarantor to perform any obligation under the Guaranty Agreement in a timely manner.

- (B) If an Event of Default by the Operator occurs and is not cured as provided herein, then the RECEIVER/TRUSTEE shall have the right without further notice to terminate this Agreement, and at the RECEIVER/TRUSTEE's option, the RECEIVER/TRUSTEE may proceed against the surety on the Performance Bond, the Guaranty Agreement, and any other guaranty provided by the Operator. If such termination by RECEIVER/TRUSTEE is disputed by Operator and the final, unappealable resolution of such dispute includes a determination that such termination for default was not justified, then the termination shall be deemed

to have been a convenience termination by RECEIVER/TRUSTEE pursuant to SECTION 13.04.

- (C) for the purposes of this SECTION 13.02, the following acts or omissions by the Operator shall constitute failure to perform material obligations under this Agreement:
- (i) failing to comply with its obligations under this Agreement relating to keeping the ORDOT FACILITY property permitted and operated materially in accordance with Applicable Laws, and Governmental Approval;
  - (ii) refusing to accept Solid Waste meeting the requirements of this Agreement;
  - (iii) failing to maintain the Performance Bond in the amount required herein;
  - (iv) failing to maintain, or provide the RECEIVER/TRUSTEE with timely evidence of insurance in the amounts or form required herein;
  - (v) failing to indemnify the RECEIVER/TRUSTEE as required herein; or
  - (vi) falsifying of (but not unintentional mistakes in) records or reports provided to the RECEIVER/TRUSTEE, GEPA, Territorial or federal governments.
- (D) Notice of Corrective Action. RECEIVER/TRUSTEE shall, as soon as practical, notify the Operator of any failure on the Operator's part to abide by the terms and conditions of this Agreement. After receipt of notice from the RECEIVER/TRUSTEE, the Operator shall acknowledge receipt of such notice within seven (7) Days and within seven (7) Days shall provide the RECEIVER/TRUSTEE with notice of what corrective action has been or shall be taken by the Operator, within a period of time that is reasonable, in light of the circumstances. Failure to promptly provide acknowledgement of receipt of notice, or notice of planned corrective action as required by this subsection (D) shall constitute an Event of Default.

SECTION 13.03. Remedies of RECEIVER/TRUSTEE.

- (A) The right of termination provided under SECTION 13.02(B) upon an Event of Default by the Operator is not exclusive. If this Agreement is terminated by the RECEIVER/TRUSTEE for an Event of Default by the Operator, the RECEIVER/TRUSTEE shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement, under the security instruments and under Applicable Laws. Without limiting the foregoing, upon any termination of the Operator for an Event of Default the damages payable by the Operator to the



RECEIVER/TRUSTEE shall include the reasonable costs of (i) making all repairs and replacements to the ORDOT FACILITY, (ii) remediating any public health and safety problems, and (iii) paying all unpaid fines and penalties payable to any Governmental Entity, in each case to the extent such actions are necessitated or costs incurred as a result of the breach of this Agreement by the Operator.

- (B) In the event that the RECEIVER/TRUSTEE successfully pursues an action to enforce any remedy provided in this ARTICLE XIII, the Operator shall be liable to the RECEIVER/TRUSTEE for payment of all costs and expenses which are incurred by the RECEIVER/TRUSTEE in connection with such action.
- (C) In the Event of Default, the RECEIVER/TRUSTEE shall have the right, in addition to all other rights and remedies under this Agreement, to require the Operator to cease all or any portion of the Operator's operations at the ORDOT FACILITY until such time as the default is remedied and the Operator provides assurances reasonably satisfactory to the RECEIVER/TRUSTEE that the practices that resulted in the default have been modified to prevent recurrences of the default.
- (D) Step-In Provision. In the event the RECEIVER/TRUSTEE determines that a breach of this Agreement has occurred and the nature of the breach in the RECEIVER/TRUSTEE's opinion is such that the public health and safety are materially endangered, and after Operator has been given written notice and a reasonable opportunity to correct the deficiency not to exceed a thirty (30)-Day time period except in the event of an emergency condition as determined by the RECEIVER/TRUSTEE, the Operator shall cooperate completely and immediately with the RECEIVER/TRUSTEE to effect an immediate "Step-In" or takeover by the RECEIVER/TRUSTEE of Operator's operations, including the use of any equipment located at the ORDOT FACILITY or employees that work at the ORDOT FACILITY.

Such "Step-In" or takeover shall be effected within not more than twenty four (24) hours after RECEIVER/TRUSTEE provides telephonic notice to Operator of its determination to invoke such Step-In rights, confirmed in writing within six (6) hours. The Operator shall not be prohibited from disputing any such finding of breach through litigation; provided, however, that such litigation shall not have the effect of delaying, in any way, the immediate takeover of operations by the RECEIVER/TRUSTEE.

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

performance guaranty funds as needed by the RECEIVER/TRUSTEE to finance said "Step-In" or takeover of operations.

Failure on the part of the Operator to cooperate fully with the RECEIVER/TRUSTEE to effect a safe and smooth takeover of operations shall itself constitute a breach of this Agreement. Nothing in this Article shall operate to limit the RECEIVER/TRUSTEE's remedies under law, including those rights and remedies contained elsewhere in this Agreement.

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

SECTION 13.04. RECEIVER/TRUSTEE Convenience Termination Election in Certain Circumstances.

- (A) Convenience. The RECEIVER/TRUSTEE shall have the right to terminate this Agreement, in its sole discretion, for convenience and without cause following the Contract Date upon one hundred eighty (180) Days prior written notice to the Operator. If the RECEIVER/TRUSTEE exercises its right to terminate this Agreement during the Initial Term pursuant to this subsection, the RECEIVER/TRUSTEE shall pay to the Operator on the termination date the amount set forth in Appendix 2, as applicable. A termination of this Agreement by Operator as provided in SECTION 16.03 or 9.01. shall also be deemed a termination for convenience by RECEIVER/TRUSTEE.
- (B) Adequacy of Termination Payment. The Operator agrees that the applicable termination payments provided in this Section will fully and adequately compensate the Operator and all subcontractors for all profits, costs, expenses, losses, liabilities, damage, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to such termination of the Operator's right to perform this Agreement. The obligation to pay such amounts shall not impair or limit the obligation of the RECEIVER/TRUSTEE to the Operator under any other provision of this Agreement which expressly survives termination hereunder.
- (C) Consideration for Convenience Termination Payment. The right of the RECEIVER/TRUSTEE to terminate this Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Agreement, and the Operator hereby waives any right it may have under Applicable Laws to assert that the RECEIVER/TRUSTEE owes the Operator a duty of good faith dealing in the exercise of such right.
- (D) Completion or Continuance by RECEIVER/TRUSTEE. After the date of any termination under Subsection 13.04(A), the RECEIVER/TRUSTEE may (but without any obligation to do so) take any and all actions necessary or desirable to continue the Services so terminated, including, without limitation, entering into contracts with other operators, with or without public letting.

SECTION 13.05. Payment Disputes. If a Party disputes any amount that is payable under this Agreement, the Party disputing such amount shall provide written notice to the other Party of such disputed amount, together with sufficient information to enable the other Party to understand the nature of the dispute. Such notice shall be delivered by the Party disputing such amount no later than the date that such amount is due and payable (or, if later, within ten (10) Days after the date on which the disputing Party has information necessary to determine that it has a dispute) and, as applicable, the Party disputing such amount shall make payment of any undisputed amount on the due date thereof. If the amount that is in dispute is ultimately determined to be due and payable, such disputed amount, together with interest thereon (at the Overdue Rate) shall be paid by the Party disputing such amount within three (3) Days of such determination.

SECTION 13.06. Cumulative Remedies. The rights and remedies granted in this Agreement to the RECEIVER/TRUSTEE and the Operator upon an Event of Default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Agreement. No waiver of any breach or default shall be deemed or construed by a court of law to constitute a waiver of any other breach or default or of any other breach or default of any of the other terms, provisions, and covenants contained herein.

SECTION 13.07. Obligations of the Operator upon Termination or Expiration. (A) Upon a termination of the Operator's right to perform this Agreement under ARTICLE XIII, any other termination provision of this Agreement, or upon the expiration of this Agreement under ARTICLE II, the Operator shall:

- (1) cease any activity on the date and to the extent specified by the RECEIVER/TRUSTEE;
- (2) promptly take all commercially reasonable action to protect and preserve all materials, equipment, tools, facilities and other property that belongs to the RECEIVER/TRUSTEE;
- (3) promptly remove from the ORDOT FACILITY all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Operator (including, but not limited to sheds, trailers, workshops and portable toilets), and repair any damage caused by such removal;
- (4) leave the ORDOT FACILITY in a neat and orderly condition;
- (5) subject to subsection (B) of this Section, promptly remove all employees of the Operator and any subcontractors and vacate the ORDOT FACILITY;
- (6) deliver to the RECEIVER/TRUSTEE all electronic data used at the ORDOT FACILITY in the performance under this Agreement in a format

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compatible with the RECEIVER/TRUSTEE's then existing information system, including all revisions and updates thereto;

- (7) deliver to the RECEIVER/TRUSTEE a copy of all books, records engineering and architectural plans in its possession relating to the performance of this Agreement;
- (8) deliver to the RECEIVER/TRUSTEE current maps engineering and architectural plans of the ORDOT FACILITY;
- (9) provide the RECEIVER/TRUSTEE with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;
- (10) advise the RECEIVER/TRUSTEE promptly of any special circumstances which might limit or prohibit cancellation of any subcontract;
- (11) promptly deliver to the RECEIVER/TRUSTEE copies of all subcontracts, together with a statement of:
  - (a) the items ordered and not yet delivered pursuant to each agreement;
  - (b) the expected delivery date of all such items;
  - (c) the total cost of each agreement and the terms of payment; and
  - (d) the estimated cost of canceling each agreement;
- (12) assign to the RECEIVER/TRUSTEE any subcontract that the RECEIVER/TRUSTEE elects in writing, at its sole election and without obligation, to have assigned to it. The RECEIVER/TRUSTEE shall assume, and the Operator shall be relieved of its obligations under, any subcontract so assigned;
- (13) terminate all subcontracts which the RECEIVER/TRUSTEE has not directed the Operator to assign, and make no additional agreements with subcontractors;
- (14) as directed by the RECEIVER/TRUSTEE, transfer improvements to the RECEIVER/TRUSTEE by appropriate instruments of title;
- (15) promptly transfer to the RECEIVER/TRUSTEE all warranties given by any manufacturer or subcontractor with respect to particular components of or the equipment in ORDOT FACILITY;
- (16) notify the RECEIVER/TRUSTEE promptly in writing of any legal proceedings against the Operator by any subcontractor or other third

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parties relating to the termination of this Agreement or Services provided in in connection with this Agreement (or any subcontracts);

- (17) provide for, at Operator's expense, a method for an immediate and uninterrupted transition of data to the RECEIVER/TRUSTEE without any degradation of the data;
  - (18) give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of insurance required under SECTION 9.01 (with a copy of each such notice to the RECEIVER/TRUSTEE), but permit the RECEIVER/TRUSTEE to elect to continue such policies in force thereafter at its own expense, if possible; and
  - (19) take such other actions, and execute such other documents as may be reasonable and necessary to effectuate and confirm the foregoing matters.
- (B) Hiring of Operator Personnel. Upon termination or expiration of this Agreement under any provisions hereof, the RECEIVER/TRUSTEE or any successor operator of the ORDOT FACILITY designated by the RECEIVER/TRUSTEE shall have the right to offer employment on any terms it may choose to the Site Manager, or any other Operator employee employed full-time at the ORDOT FACILITY. No Operator employment agreement, job offer, letter or similar document may contravene this right. The RECEIVER/TRUSTEE or its designated successor operator shall extend any such job offer within thirty (30) Days of the expiration or termination of this Agreement. The Operator shall assist and cooperate with any such employee transition.
- (C) Continuity of Services. Upon the termination of the Operator's right to perform this Agreement or upon the expiration of this Agreement under ARTICLE II, the Operator, at the request and direction of the RECEIVER/TRUSTEE, shall provide for an effective continuity of service and the smooth and orderly transition of management back to the RECEIVER/TRUSTEE or other operator, at the RECEIVER/TRUSTEE's direction. Such service shall be for a period of up to ninety (90) Days and shall include providing advice and support and delivering any plans, drawings, blueprints, operating manuals, spare parts or other information useful or necessary for the RECEIVER/TRUSTEE or other operator to perform the Services provided under this Agreement.
- (D) RECEIVER/TRUSTEE Right to Acquire Operator Equipment. Upon the termination of the Operator's right to perform this Agreement or upon the expiration of this Agreement under ARTICLE II, the RECEIVER/TRUSTEE shall have the right, but not an obligation, to acquire some or all equipment owned and used by the Operator in connection with its operation of the ORDOT FACILITY pursuant to this Agreement. The Operator shall be entitled to

compensation equal to the fair market value of the equipment the RECEIVER/TRUSTEE elects to acquire from the Operator. In the event of a dispute as to the fair market value of any or all of the equipment to be acquired by the RECEIVER/TRUSTEE from the Operator, the Parties shall agree on an independent appraiser qualified to establish said fair market value and agree to accept the appraiser's findings as binding.

SECTION 13.08. No Consequential or Punitive Damages. Notwithstanding anything in this Agreement to the contrary, neither Party shall be liable to the other for special, consequential, punitive, indirect incidental or similar damages for any reason in connection with this Agreement and the transactions contemplated hereby, whether based upon contract, tort, negligence, gross negligence, warranty, strict liability or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between the RECEIVER/TRUSTEE and the Operator, and specifically is not intended to limit the scope of the indemnity provisions in ARTICLE IX, which indemnification includes all claims by third-parties irrespective of the nature thereof or the relief sought thereby.

SECTION 13.09. No Waiver of Rights. No failure by the RECEIVER/TRUSTEE or by the Operator to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement or to exercise any right or remedy hereunder, and no acceptance by the RECEIVER/TRUSTEE of full or partial payment of any compensation under this Agreement during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by the RECEIVER/TRUSTEE or by the Operator, and no breach thereof, may be waived, altered or modified except by a written instrument executed and acknowledged by and delivered to the RECEIVER/TRUSTEE and the Operator. No waiver of breach shall affect or alter this Agreement, but each and every term, covenant, agreement, provision, condition and limitation of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

SECTION 13.10. Survival of Certain Provisions upon Termination. All representations and warranties of the Parties contained in this Agreement, the Operator's indemnity obligations in this Agreement with respect to events that occurred prior to the Termination Date, the rights and obligations of the Parties hereto pursuant to SECTION 3.03, SECTION 8.01, SECTION 9.01, SECTION 9.03, SECTION 11.03, SECTION 11.04, SECTION 13.02, SECTION 13.03, SECTION 13.04, SECTION 13.07, SECTION 13.12, SECTION 16.12, and SECTION 16.13, and all other provisions of this Agreement that so provide shall survive the termination of this Agreement. No termination of this Agreement shall (1) limit or otherwise affect the respective rights and obligation of the Parties hereto accrued prior to the date of such termination, or (2) preclude either Party from impleading the other Party in any legal proceeding originated by a third-party as to any matter occurring during the Term of this Agreement.

SECTION 13.11. RECEIVER/TRUSTEE's Right to Perform Operator's Covenants. If at any time Operator shall fail, within thirty (30) Days after notice from the RECEIVER/TRUSTEE

(except in case of emergency such number of Days' notice which are reasonable in the circumstances shall suffice), to pay any imposition required herein, or to take out, pay for, maintain or deliver any of the insurance policies provided in ARTICLE IX, or to cause any lien of the character referred to in SECTION 11.03 to be discharged as therein provided, or to perform any other act on its part to be performed as provided in this Agreement, then, without further notice or demand upon Operator and without waiving any other right or remedy of the RECEIVER/TRUSTEE, the RECEIVER/TRUSTEE may, but shall not be obligated to, perform any such obligation on behalf of Operator; provided, however, that except for matters arising under ARTICLE IX, the RECEIVER/TRUSTEE has determined that doing so is reasonably necessary to protect against a significant threat to the ORDOT FACILITY or the safety of the ORDOT FACILITY's users or the general public. All sums paid by the RECEIVER/TRUSTEE in connection with the RECEIVER/TRUSTEE's performance of any obligation of Operator and all reasonably necessary out-of-pocket incidental costs and expenses paid or incurred by the RECEIVER/TRUSTEE in connection with the performance of any such act by the RECEIVER/TRUSTEE, together with all reasonable attorney's fees and together with interest thereon at the Overdue Rate from the date of making such expenditures by the RECEIVER/TRUSTEE, shall be payable by Operator to the RECEIVER/TRUSTEE on demand. This Section is in addition to the RECEIVER/TRUSTEE's "Step-In" rights provided for in SECTION 13.03(D).

SECTION 13.12. Additional Remedy of the RECEIVER/TRUSTEE.

- (A) Upon any termination of this Agreement, Operator shall quit and peacefully surrender the ORDOT FACILITY to the RECEIVER/TRUSTEE, and the RECEIVER/TRUSTEE, upon or at any time after any such termination, shall have the right, without further notice, to enter upon and re-enter the ORDOT FACILITY and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Operator and remove Operator and all other persons and property from the ORDOT FACILITY and may have, hold and enjoy the ORDOT FACILITY and the right to receive all income of and from the same.
- (B) If this Agreement is terminated by reason of the occurrence of any Event of Default, such expenses as the RECEIVER/TRUSTEE may incur for legal expenses, attorney's fees and disbursements shall become immediately payable by the Operator.

SECTION 13.13. Continuity of Services. Operator expressly contracts that, in the event of breach of this Agreement by the Operator, Operator will work with the RECEIVER/TRUSTEE to ensure that Services are continuous and uninterrupted, regardless of the nature or causes underlying the breach. Operator agrees and contracts that there is an obligation to assist RECEIVER/TRUSTEE in every effort to ensure uninterrupted and continuous provision of Services in the event of breach, even if Operator disagrees with the determination of the breach by the RECEIVER/TRUSTEE.

SECTION 13.14. Events of Default by the RECEIVER/TRUSTEE. If the RECEIVER/TRUSTEE fails to make any payment to Operator pursuant to this Agreement within thirty (30) Days following the due date for such payment pursuant to this Agreement, and has not disputed such payment in accordance with SECTION 13.05, such failure shall be considered a material breach of this Agreement. In such event, as Operator's exclusive remedy (except as set forth in the following sentence), Operator shall have the right to terminate this Agreement and will be entitled to payment of all amounts owed by RECEIVER/TRUSTEE, with interest at the Overdue Rate from the date such payment was due, and to the Convenience Termination payment set forth in Appendix 3, as applicable. In addition, without limiting the generality of the foregoing, if, in the absence of a dispute regarding such payments, RECEIVER/TRUSTEE shall have failed to pay Operator more than Fifty Thousand (\$50,000.00) Dollars due hereunder within thirty (30) Days following the due date for such payment pursuant to this Agreement, then the Operator shall have the right to suspend performance under this Agreement until such amount is paid in full, without such suspension being deemed a breach by Operator hereunder.

#### **ARTICLE XIV**

#### **NOTICES**

SECTION 14.01. Notices. Except as otherwise expressly provided by Applicable Laws, any and all notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed duly served and given when (i) hand delivered, (ii) delivered by nationally recognized overnight courier, or (iii) on the third Day after it is deposited in the United States mail, first-class postage prepaid, return receipt requested:

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

Guam Solid Waste Authority  
542 North Marine Corps Drive  
Tamuning, Guam 96913

With a copy to:  
Gershman, Brickner & Bratton, Inc.  
RECEIVER for the Guam Solid Waste Authority  
Suite 510  
2010 Corporate Ridge Drive  
McClellan 22102

- (B) If to the Operator:

{insert name}  
{insert address}



With a copy to the Guarantor: {insert name}

Attn: {insert name}  
{insert address}

Either Party may by notice given, as set forth above, direct that notices or communications be sent to a different address. Notwithstanding any provision of this SECTION 14.01, any report to be given by Operator to the RECEIVER/TRUSTEE may be given by electronic mail in addition to the means of delivery set forth herein.

## **ARTICLE XV LIQUIDATED DAMAGES**

SECTION 15.01. Liquidated Damages Deemed Reasonable. The Government of Guam will sustain real and substantial damages as a result of the Operator's failure to perform its obligations under this Agreement in a timely manner. Since it would be impractical or extremely difficult to fix the actual damages so sustained. Operator understands and agrees that the failure to comply with any time, performance or other requirement or standard in this Agreement will result in damage to the RECEIVER/TRUSTEE and that it is and will be impracticable to determine the actual amount of such damage whether in the event of delay, nonperformance, failure to meet standards or any other deviation. Therefore, Operator and RECEIVER/TRUSTEE agree that the Liquidated Damages specified in this Agreement are reasonable. It is expressly understood and agreed that the Liquidated Damages amounts are not to be considered a penalty, but shall be deemed, taken and treated as reasonable Liquidated Damages. It is also expressly understood and agreed that the remedies of RECEIVER/TRUSTEE in the event of Operator's default or minor or major breach of any term of this Agreement are not limited to Liquidated Damages provisions.

SECTION 15.02. Liquidated Damages. The RECEIVER/TRUSTEE shall monitor the Operator's performance of its obligations during each Operating Year throughout the Term of Agreement. The Operator shall provide timely and complete responses to requests for documents, electronic files, explanations, and access to Operator's personnel associated with the RECEIVER/TRUSTEE's performance monitoring.

The RECEIVER/TRUSTEE will consider all relevant aspects of Operator's performance including without limitation: any existing areas of concern; proposed actions necessary to address areas of concern; the actions taken by Operator to address previously noted areas of concern, if any; any Liquidated Damages imposed on Operator during the current and prior Operating Year; a summary of any Violations and associated penalties imposed by any Governmental Entity relative to the ORDOT FACILITY and any awards or commendations received by, or favorable comments made about, Operator in the course of performing its duties under this Agreement.

A condition precedent to the assessment by RECEIVER/TRUSTEE of Liquidated Damages against the Operator shall be the compliance with the following meet-and-confer process, provided that in no event shall the meet-and-confer process take more than ten (10) Days:

- (A) Request for a Meet-and-Confer. Whenever RECEIVER/TRUSTEE has a concern regarding Operator's performance or non-performance which may give rise to the imposition of Liquidated Damages, then in such event, the RECEIVER/TRUSTEE shall make a written request to meet and confer which identifies the issue(s) and deliver the same to the Operator.
- (B) Meet and Confer. Within two (2) Days after Operator's receipt of a request for a meet-and-confer, the Parties shall meet and confer to discuss the RECEIVER/TRUSTEE's concerns about the Operator's acts and/or omissions which could potentially give rise to the assessment of Liquidated Damages, and the Operator shall respond. If the RECEIVER/TRUSTEE is satisfied with the Operator's response, then no further action shall occur. If the RECEIVER/TRUSTEE is not satisfied, then Operator shall have three (3) Days from such meeting to develop a plan for taking corrective and/ or remedial action which is mutually acceptable to RECEIVER/TRUSTEE and the Operator. Once the RECEIVER/TRUSTEE has approved the Operator's plan for corrective and/ or remedial action, then the Operator shall promptly commence and diligently pursue performance of such corrective and/ or remedial action.
- (C) Notice of Intent to Assess Liquidated Damages. RECEIVER/TRUSTEE may send Operator written notice of intent to assess Liquidated Damages if Operator has not corrected, remedied and/ or otherwise cured the Operator's deficient conduct within the cure periods which are hereinafter set forth.

SECTION 15.03. Amount of Liquidated Damages and Cure Periods.

The following amounts will be imposed as Liquidated Damages under this Agreement for the Operator's failure to timely perform Operator's obligations under this Agreement.

- (A) General Operational Matters. Liquidated damages in the following amounts will be imposed with respect to the ORDOT FACILITY where the following failure of performance occurs, for each Day of such failure of performance after the applicable cure period:
  - (i) Cover maintenance. One thousand dollars (\$1,000) shall be imposed for each failure to adhere to the Cover maintenance requirements of the Post-Closure Care Operations Plan as referenced in this Agreement (cure period – five (5) Days).
  - (ii) Drainage and Ponding. One thousand dollars (\$1,000) shall be imposed for each failure to provide positive drainage or pump water from retention basins, as specified in the Post-Closure Care Operation Plan as referenced in this Agreement (cure period – five (5) Days).

## Ordot Facility Operation Agreement

- (iii) Maintenance of Equipment in Operable Manner. Five hundred (500) shall be imposed for each failure to provide for substitute equipment, make necessary repairs to, or replace equipment that becomes inoperable, located at the ORDOT FACILITY as provided for in this Agreement (cure period – five (5) Days).
  - (iv) Litter Control. Five hundred dollars (\$500) shall be imposed for each failure to effectively implement litter control and clean-up as required in this Agreement (cure period – two (2) Days).
  - (v) Submission of Reports/Documents. Three hundred dollars (\$300) shall be imposed for failure to submit required reports and/or documentation, as specified in this Agreement, for each Day of said failure per report and/or document (cure period – five (5) Days); provided, however, that if the failure continues beyond five (5) Days, after the cure period, the Liquidated Damages shall increase to one thousand dollars (\$1,000) per Day of said failure per report and/or document for each Day after five (5) Days.
  - (vi) Other. It is deemed unreasonable to list each and every task the Operator is to perform under the terms of this Agreement, and to assign a corresponding Liquidated Damages amount to be assessed for failure to timely perform such tasks. Therefore, for failure to timely perform any task required of the Operator required by this Agreement, which is not specifically listed in this section (either herein above or below), the Operator shall pay three hundred dollars (\$300) as Liquidated Damages for each Day of said failure, unless such failure has been cured within five (5) Days after notice thereof from RECEIVER/TRUSTEE.
- (B) Failure to Turn Over Records on Termination of Agreement. In the event that Operator fails to turn over all records relating to the ORDOT FACILITY on termination of this Agreement, as required by this Agreement, Liquidated Damages in the amount of two-hundred fifty thousand dollars (\$250,000) shall be assessed and shall be due and payable to the GSWA.
- (C) Liquidated Damages for Regulatory Violations and Fines. Should Operator receive any Notice of Violation from the Guam Environmental Protection Agency, or be found in Violation of Applicable Laws by a Governmental Entity, resulting in fine or monetary penalty, Operator shall be assessed Liquidated Damages in the amount of one thousand dollars (\$1,000) for each Notice of Violation and two times the amount of such fine or monetary penalty.
- (D) Failure to Begin Operations by Operation Commencement Date. Five thousand dollars (\$5,000) shall be imposed for each Day Operator fails to meet the Operation Commencement Date.

SECTION 15.03. Collection of Liquidated Damages. If the RECEIVER/TRUSTEE concludes that Operator is liable for Liquidated Damages pursuant to this Agreement, the RECEIVER/TRUSTEE shall issue to the Operator by registered or certified mail a Notice of Intention to Assess Liquidated Damages. The Notice of Intention to Assess shall set forth the basis of the assessment and shall inform the Operator that Liquidated Damages will be assessed from the date of the Notice of Intention to Assess. The Operator shall include the assessed Liquidated Damages in the Operator's invoice of the Operating Fee to RECEIVER/TRUSTEE for the Invoicing Period as a credit against the Operating Fee and shall pay any balance due with the invoice if the Liquidated Damages exceed the amount due the Operator for the Invoicing Period. Each Day an event for which Liquidated Damages may be assessed is considered a separate action.

## **ARTICLE XVI**

### **MISCELLANEOUS**

SECTION 16.01. RECEIVER/TRUSTEE Rights as Governmental Entity; No Liability of GBB. The Operator acknowledges and agrees that the RECEIVER/TRUSTEE is a Governmental Entity and as such has certain rights, powers and duties that may affect the Operator's rights or obligations under this Agreement. The Operator agrees that no action or failure to act by the RECEIVER/TRUSTEE acting in its governmental capacity shall be construed as a breach or default by the RECEIVER/TRUSTEE under this Agreement, nor shall any such action excuse the Operator from performance of its obligations under this Agreement. The Operator acknowledges and agrees that GBB, and its employees, associates, and agents acting in GBB's behalf, are acting solely in GBB's capacity as the Receiver, and, that the Receivership Order provides: "The Receiver is responsible solely to this court. The Receiver shall not be personally liable for any act done in compliance with this Order. No suit shall be filed against the Receiver without the consent of the court." Notwithstanding the foregoing, the Government of Guam, and any successor organization designated to carry out the duties and responsibilities of the GSWA, shall remain responsible for the obligations contained within this Agreement.

SECTION 16.02. Condemnation. If during the Term, all of the ORDOT FACILITY is taken for a public purpose by condemnation, or sold to a condemning authority under threat of condemnation, this Agreement shall terminate. Operator shall not be entitled to any condemnation award.

SECTION 16.03. Assignment.

- (A) This Agreement, in whole or in part, may not be assigned, transferred, sold, or disposed of, in whole or in part, by voluntary sale, merger, consolidation, or otherwise or by forced or involuntary sale, without the prior written consent of the RECEIVER/TRUSTEE, and then only on such conditions as may therein be prescribed. The RECEIVER/TRUSTEE is hereby empowered to take legal or

equitable action to set aside, annul, revoke, or cancel this Agreement or the transfer or assignment of this Agreement, if such transfer or assignment is not made in accordance with the procedures contained herein, or is not in the best interest of the RECEIVER/TRUSTEE or the public. Upon termination of the Receivership, the RECEIVER/TRUSTEE may assign this Agreement to a Trustee approved by the US District Court of Guam, or its successor in interest, and the Operator shall not object to the assignment.

- (B) Any sale, transfer or assignment shall be made by a bill of sale or similar document, an executed copy of which shall be filed in the office of the RECEIVER/TRUSTEE, within thirty (30) Days after any such sale, transfer or assignment. The RECEIVER/TRUSTEE shall not withhold its consent unreasonably; provided, however, the proposed assignee agrees to comply with all provisions of this Agreement and such additional conditions as the RECEIVER/TRUSTEE may prescribe and provided that the assignee is able to provide proof of financial responsibility, in the form of an audited financial statement prepared by an independent certified public accountant or a certified public accounting firm for its most recently completed fiscal year, legal qualifications and technical capability satisfactory to the RECEIVER/TRUSTEE.
- (C) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or entity of twenty percent (20%) of the voting shares of Operator or Guarantor if such Person or group of persons does not already own twenty percent (20%) of the voting shares of Operator or Guarantor. Every change, transfer, or acquisition of control of the Operator or Guarantor shall make this Agreement subject to cancellation unless and until the RECEIVER/TRUSTEE shall have consented thereto.
- (D) The Operator shall promptly notify the RECEIVER/TRUSTEE of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Operator or Guarantor. Every change, transfer, or acquisition of control of the Operator or Guarantor shall make this Agreement subject to cancellation unless and until the RECEIVER/TRUSTEE shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the RECEIVER/TRUSTEE may inquire into the qualifications of the prospective controlling party, and the Operator or Guarantor shall assist the RECEIVER/TRUSTEE in any such inquiry. In the event that the RECEIVER/TRUSTEE denies its consent and such change, transfer or acquisition of control has been affected, the RECEIVER/TRUSTEE may cancel this Agreement unless control of the Operator or Guarantor is restored to its status prior to the change, or to a status acceptable to the RECEIVER/TRUSTEE.
- (E) The consent of the RECEIVER/TRUSTEE to any sale, transfer, lease, trust, mortgage, or other instrument of hypothecation shall not constitute a waiver or release of any of the rights of the RECEIVER/TRUSTEE under this Agreement.

- (F) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this Agreement.
- (G) Nothing herein shall require approval for Operator's or Guarantor's assigning this Agreement to or selling its stock to wholly-owned subsidiaries or to an Affiliate under the same ultimate control and ownership as existed prior to the assignment.
- (H) If consent for any action is required by the RECEIVER/TRUSTEE pursuant to this Section, the RECEIVER/TRUSTEE shall be reimbursed by Operator all reasonable costs and charges, including, but not limited to, reasonable attorneys fees and administrative costs, associated with any review or consideration of the Operator's or Guarantor's actions invoking this Section regardless of whether the consent is actually provided by the RECEIVER/TRUSTEE.

SECTION 16.04. Parties Bound. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and assignees when permitted by this Agreement.

SECTION 16.05. No Third Party Rights. This Agreement is exclusively for the benefit of the RECEIVER/TRUSTEE and the Operator and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 16.06. Governing Law and Applicable Venue. This Agreement is made and performable in Territory of Guam, United States of America, and shall be interpreted in accordance with the laws of Guam and the United States. Venue for any legal action arising out of this Agreement shall lie in any court of competent jurisdiction in Guam.

SECTION 16.07. Non-Discrimination. The Operator shall not unlawfully discriminate against any Person.

SECTION 16.08. Entire Agreement. This Agreement contains all of the covenants, statements, representations and promises agreed to by the Parties. To the extent of any conflict, this Agreement supersedes the terms, conditions, and representations set forth in the RECEIVER/TRUSTEE's Request for Proposals 001-17 and the Operator's proposal. No agent of either Party has authority to make, and the Parties shall not be bound by, nor liable for, any covenant, statement, representation or promise not set forth herein. The Parties may amend this Agreement only by a written amendment executed by both Parties.

SECTION 16.09. Partial Invalidity. In the event one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained in it.

SECTION 16.10. Force Majeure. In case by reason of "force Majeure" the RECEIVER/TRUSTEE or Operator shall be rendered unable wholly or in part to carry out its obligations under this Agreement, and if such Party shall give notice of such "force Majeure" in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it affected by such force Majeure shall be temporarily suspended during the continuance of the inability then claimed, but for no longer periods, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force Majeure" as employed herein, shall mean acts of God, acts of public enemy, terrorist attacks, orders of any kind of the Government of the United States or the Government of Guam or any civil or military authority provided such order is not as a results of a Violation of Applicable Law or breach of any kind under this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, or any other causes not reasonably within the control of the Party claiming such inability.

SECTION 16.11. Dispute Resolution.

(A) The RECEIVER/TRUSTEE and the Operator agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then, before either Party pursues other available remedies, they agree to submit the matter to non-binding dispute resolution as follows. Except as provided below, the dispute resolution shall be governed by the Guam International Arbitration law (7 GCA Chapter 42-A).

(1) Any arbitration shall take place in Guam.

(2) Notice of the demand for dispute resolution shall be filed in writing with the other Party to this Agreement. Notice must be given within that time period after accrual of the claim on which the notice is based during which the Applicable Laws would have allowed a court action to have been brought on such claim. Such notice shall specifically identify each issue submitted for arbitration. The other Party shall then have twenty (20) Days to submit notice of any additional issues to be submitted for arbitration, which issues shall be specifically identified in such notice. If any notice is not timely provided, such claims shall be deemed waived and shall be barred from either arbitration or litigation. The Parties shall use their best efforts to select one neutral and impartial person (the "Neutral") to resolve the dispute. If the Parties fail to reach agreement upon appointment of a Neutral within thirty (30) Days following receipt of such notice, the Neutral shall be selected according to the Commercial Arbitration Rules of the American Arbitration Association. Within twenty (20) Days after selection of the Neutral, each Party shall submit to the Neutral best and final offer with respect each issue submitted to the Neutral for resolution and a statement of its position with supporting facts and data.

(3) Upon such dispute being submitted to the Neutral for resolution, the

## Ordot Facility Operation Agreement

Neutral shall assume exclusive jurisdiction over the dispute and will be required to make a decision and award within fifteen (15) Days of the date of submission. The Neutral's decision shall be in writing and contain a basis for the decision and award. For each issue decided by the Neutral, he shall choose the best and final offer of one Party with respect to the issue decided, and the Neutral shall not have discretion to modify said best and final offer.

- (4) Each Party shall pay its own expenses and attorneys' fees for the proceeding; provided that the Parties shall share the Neutral's fee equally.
  - (5) In arriving at his or her decision, the Neutral shall consider the pertinent facts and circumstances as presented in evidence and be guided by the terms and provisions of this Agreement and Applicable Laws.
  - (6) The Neutral shall immediately furnish a copy of the decision to the Parties. The Neutral's written decision shall be admissible in any subsequent proceeding by either party to this Agreement. Within twenty (20) Days after receipt of the Neutral's decision, the RECEIVER/TRUSTEE shall issue a final written decision adopting or rejecting, in whole or in part, the Neutral's decision. If the RECEIVER/TRUSTEE does not issue a written decision within such twenty (20) Day period, or such longer period as may be agreed upon by the Parties, then the Operator may proceed as though the RECEIVER/TRUSTEE had issued a decision adverse to the Operator.
- (B) The RECEIVER/TRUSTEE shall immediately furnish a copy of the decision to the Operator, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
  - (C) The RECEIVER/TRUSTEE's decision shall be final and conclusive, unless fraudulent or unless the Operator appeals the decision.
  - (D) This subsection applies to appeals of the RECEIVER/TRUSTEE's decision on a dispute. For money owed by or to the RECEIVER/TRUSTEE under this Agreement, the Operator shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by the RECEIVER/TRUSTEE or from the date when a decision should have been rendered. For all other claims by or against the RECEIVER/TRUSTEE arising under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the RECEIVER/TRUSTEE. Appeals to the Office of the Public Auditor must be made within sixty (60) Days of the RECEIVER/TRUSTEE's decision or from the date the decision should have been made.
  - (E) The Operator shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with Applicable Laws.
  - (F) The Operator shall comply with the RECEIVER/TRUSTEE's decision and proceed



diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Operator claims a material breach of this Agreement by the RECEIVER/TRUSTEE. However, if the RECEIVER/TRUSTEE determines in writing that continuation of Services under this Agreement is essential to the public's health or safety, then the Operator shall proceed diligently with performance of this Agreement notwithstanding any claim of material breach by the RECEIVER/TRUSTEE.

SECTION 16.12. Claims against Government. The Operator 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 Operator against the Government if the claim arises out of or in connection with this Agreement. The Operator also expressly recognizes that all other claims by the Operator against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

SECTION 16.13. Consent to Jurisdiction. The Operator hereby expressly consents to the jurisdiction of and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by the Guam Procurement Law. The Operator waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

Section 16.14. Mandatory Representations by Operator.

- (A) General Ethical Standards (2 GAR Div. 4 § 11103(b)). With respect to this Agreement and any other contract that the Operator may have, or wish to enter into, with any Government of Guam agency, the Operator represents that it has not knowingly influenced, and promises that it will not knowingly influence, any Government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.
- (B) Prohibition against Gratuities and Kickbacks (2 GAR Div. 4 § 11107(e)). With respect to this Agreement and any other contract that the Operator may have or wish to enter into with any Government of Guam agency, the Operator represents that he has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.
- (C) Prohibition against Contingent Fees (2 GAR Div. 4 § 11108(h)). The Operator represents that it has not retained a person or anyone upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (D) Restriction on Employment of Sex Offenders (5 GCA § 5253)). The Operator warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the

conviction was obtained, shall provide services on behalf of the Operator relative to this Agreement. If any person employed by the Operator and providing services under this Agreement is convicted subsequent to the date of this Agreement, then the Operator warrants that it will notify the RECEIVER/TRUSTEE of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If the Operator is found to be not in compliance with any of the provisions of this paragraph, then the RECEIVER/TRUSTEE shall give notice to the Operator to take corrective action. The Operator shall take corrective action within twenty-four hours of notice from the RECEIVER/TRUSTEE, and the Operator shall notify the RECEIVER/TRUSTEE when action has been taken. If the Operator fails to take corrective steps within twenty-four hours of notice from the RECEIVER/TRUSTEE, then the RECEIVER/TRUSTEE in its sole discretion may suspend this Agreement temporarily.

Section 16.15. Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

Section 16.16. No Personal Liability or Recourse. Except as set forth in the Guaranty Agreement, no owner, director, manager, member, officer, agent or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution. Notwithstanding anything in this Agreement to the contrary, neither Party shall be liable to the other for special, consequential, punitive, indirect incidental or similar damages for any reason in connection with this Agreement and the transactions contemplated hereby, whether based in contract, tort, warranty, strict liability or other legal theory. The Parties' obligations hereunder shall be limited to those expressly set out and assumed by the respective Parties under this Agreement.

Ordot Facility Operation Agreement

Executed as of this \_\_\_\_ day of \_\_\_\_\_, 2017.

**NAME OF OPERATOR.**

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name, Title

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

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name, Title

**APPENDIX 1**

**FORM OF GUARANTY AGREEMENT**

**FORM OF  
GUARANTY AGREEMENT**

**From**

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**To**

**GERSHMAN, BRICKNER & BRATTON, INC., IN ITS CAPACITY AS RECEIVER**

**for the**

**GUAM SOLID WASTE AUTHORITY,**

**GOVERNMENT OF GUAM**

**Dated**

**\_\_\_\_\_ , 2017**

## **GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT is made and dated as of January \_\_, 2017, between Name of Operator., a corporation organized and existing under the laws of the State/Territory of STATE/Guam (together with any permitted successors and assigns hereunder, the "Guarantor"), and GERSHMAN, BRICKNER & BRATTON, INC. ("GBB"), in its capacity as Receiver ("Receiver") for the Guam Solid Waste Authority ("GSWA"), Government of Guam.

### **RECITALS**

The RECEIVER/TRUSTEE and NAME OF OPERATOR., organized and existing under the laws of STATE or Guam and duly authorized to do business in the Territory of Guam (the "Operator"), have entered into an Agreement to Operate the ORDOT FACILITY, dated as of \_\_\_\_\_, 2017, as amended from time to time (the "Agreement") whereby the Operator has agreed to provide operation of the ORDOT FACILITY, all as more particularly described therein.

The RECEIVER/TRUSTEE will enter into the Agreement only if the Guarantor guarantees the performance by the Operator of all of the Operator's responsibilities and obligations under the Agreement as set forth in this Guaranty Agreement (the "Guaranty").

In order to induce the execution and delivery of the Agreement by the RECEIVER/TRUSTEE and in consideration thereof, the Guarantor agrees as follows:

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATION**

SECTION 1.01. Definitions. For the purposes of this Guaranty, the term "Obligations" means the amounts payable by, and the covenants and agreements of, the Operator pursuant to the terms of the Agreement. Any other capitalized word or term used but not defined herein is used as defined in the Agreement.

SECTION 1.02. Interpretation. In this Guaranty, unless the context otherwise requires:

- (A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means, after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.
- (B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.
- (C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

- (D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.
- (E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto, with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the RECEIVER/TRUSTEE and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.
- (F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.
- (G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the Applicable Laws of the Territory of Guam.
- (H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.
- (I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.
- (J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

SECTION 2.01. Representations and Warranties of the Guarantor. The Guarantor hereby represents and warrants that:

- (A) Existence and Powers. The Guarantor is a company duly organized and validly existing under the laws of the State of STATE or Guam, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.
- (B) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected

by bankruptcy, insolvency, moratorium or by general equity principles of reorganization and other similar laws affecting creditors' rights generally and general principles of equity.

- (C) No Conflict. Neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (1) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (2) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) to the Guarantor's knowledge will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.
- (D) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority or court is required of the Guarantor for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.
- (E) No Litigation. There is no action suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty.
- (F) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Laws in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.
- (G) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Agreement.
- (H) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.



## **ARTICLE III**

### **GUARANTY COVENANTS**

SECTION 3.01. Guaranty to the RECEIVER/TRUSTEE. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the RECEIVER/TRUSTEE for the benefit of the RECEIVER/TRUSTEE: (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Operator under the Agreement (including all amendments and supplements thereto) to, or for the account of, the RECEIVER/TRUSTEE, when the same shall become due and payable pursuant to this Guaranty; and (2) the full and prompt performance and observance of each and all of the Obligations, when the same shall become due pursuant to this Guaranty. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth here, the Guarantor shall have the right to assert the defenses provided in SECTION 3.05 hereof against claims made under this Guaranty.

SECTION 3.02. Right of the RECEIVER/TRUSTEE to Proceed Against Guarantor. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Operator to pay or perform any Obligation guaranteed hereunder, the RECEIVER/TRUSTEE shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Operator or exhausting any other remedies against the Operator which the RECEIVER/TRUSTEE may have, except that RECEIVER/TRUSTEE agrees that it will not proceed against Guarantor until RECEIVER/TRUSTEE shall have notified Operator of such failure and any applicable default cure period has expired, and, if the Performance Bond surety company agrees to remedy, then Receiver will allow an additional thirty (30) Days for the Performance Bond surety company to cure before proceeding against Guarantor. Except as specifically provided in the preceding sentence, and without limiting the generality of the preceding sentence, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the RECEIVER/TRUSTEE: (1) file suit or proceed to obtain a personal judgment against the Operator or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Operator other than providing the Operator with any notice of such payment or performance as may be required by the terms of the Agreement or required to be given to the Operator under Applicable Laws; (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the RECEIVER/TRUSTEE/ is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Operator or to the enforcement of remedies under the Agreement. Upon any unexcused failure by the Operator in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Operator and Guarantor as may be required in connection with such Obligation, this Guaranty and Applicable Laws, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the RECEIVER/TRUSTEE's right to proceed directly against the Guarantor, the RECEIVER/TRUSTEE (or any successor) shall

not be entitled to more than a single full performance of the obligations in regard to any breach or nonperformance thereof.

SECTION 3.03. Notice to Guarantor. Upon any unexcused failure by the Operator in the payment or performance of any Obligation, and at least ten (10) Days prior to the RECEIVER/TRUSTEE proceeding against the Guarantor under this Guaranty, the RECEIVER/TRUSTEE shall provide the Guarantor with written notice of the Obligation not paid or performed by Operator.

SECTION 3.04. Guaranty Absolute and Unconditional. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Operator shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in SECTION 3.05 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of such Obligations) based on any claim that the Guarantor may have against the Operator, the RECEIVER/TRUSTEE or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Agreement up to the specified Terms of each agreement;
- (2) any exercise or failure, omission or delay by the RECEIVER/TRUSTEE in the exercise of any right, power or remedy conferred on the RECEIVER/TRUSTEE with respect to this Guaranty or the Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Agreement by any party thereto (other than a permitted assignment to a replacement operator in the event of a termination of the Operator pursuant to ARTICLE XIII of the Agreement), or any permitted assignment, conveyance or other transfer of any of their respective interests in the ORDOT FACILITY;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the RECEIVER/TRUSTEE or any other person in the ORDOT FACILITY;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of the Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the ORDOT FACILITY;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Operator or the Guarantor, or any of the property of either of them, or any allegation or contest

of the validity of this Guaranty or the Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

- (8) except as permitted by SECTION 4.01 or 4.02 hereof, any sale or other transfer by the Guarantor or any affiliate of any of the capital stock or other interest of the Guarantor or any affiliate in the Operator now or hereafter owned, directly or indirectly, by the Guarantor or any affiliate, or any change in composition of the interests in the Operator;
- (9) any failure on the part of the Operator for any reason to perform or comply with any agreement with the Guarantor;
- (10) the failure on the part of the RECEIVER/TRUSTEE to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Operator as a condition to the enforcement of Obligations pursuant to the Agreement;
- (11) the merger or consolidation of any party to the Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;
- (12) any legal disability or incapacity of any party to the Agreement; or
- (13) the fact that entering into the Agreement by the Operator or the Guarantor was invalid or in excess of the powers of such party. Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (13) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Operator pursuant to the terms of the Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Operator's rights, benefits, duties or obligations under the Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (13) would provide defense to, release, discharge or otherwise affect the Operator's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.05. Defenses, Set-Offs and Counterclaims. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Operator may have under the Agreement

or under Applicable Laws (other than bankruptcy or insolvency of the Operator and other than any defense which the Operator has expressly waived in the Agreement or the Guarantor has expressly waived in SECTION 3.06 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or defenses which the Operator is permitted to assert pursuant to the Agreement or under Applicable Laws (other than bankruptcy or insolvency of the Operator and other than any defense which the Operator has expressly waived in the Agreement or the Guarantor has expressly waived in SECTION 3.06 hereof or elsewhere hereunder), if any.

SECTION 3.06. Waivers by the Guarantor. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the RECEIVER/TRUSTEE of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in SECTION 3.04 hereof, except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Operator required pursuant to the Agreement or Applicable Laws as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitation defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Operator;
- (6) any right to require a proceeding first against any person or the security provided by or under the Agreement except to the extent the Agreement specifically requires a proceeding first against any person (except the Operator) or security;
- (7) any requirement that the Operator be joined as a party to any proceeding for the enforcement of any term of the Agreement or this Guaranty;
- (8) the requirement of, or the notice of, the filing of claims by the RECEIVER/TRUSTEE in the event of the receivership or bankruptcy of the Operator; and
- (9) all demands upon the Operator or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this SECTION 3.06, by rule or law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.07. Payment of Costs and Expenses. The Guarantor agrees to pay the RECEIVER/TRUSTEE on demand all reasonable costs and expenses, legal or otherwise

(including counsel fees), incurred by or on behalf of the RECEIVER/TRUSTEE in successfully enforcing by legal proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that the RECEIVER/TRUSTEE incurs in performing any of its obligations under the Agreement, where such obligations are a condition to performance by the Operator of its Obligations.

SECTION 3.08. Subordination of Rights. The Guarantor agrees that any right of subrogation or contribution which it may have against the Operator as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the RECEIVER/TRUSTEE hereunder and under the Agreement and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Operator until the Operator and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.09. Separate Obligations; Reinstatement. The obligations to the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by Applicable Laws, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the RECEIVER/TRUSTEE. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Operator is rescinded or must be otherwise restored by the RECEIVER/TRUSTEE, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Agreement, or the Operator's enforcement of such terms under Applicable Laws.

SECTION 3.10. Term. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Operator have been fully paid and performed. This Guaranty shall be effective irrespective as to when the Operation Commencement Date occurs.

## **ARTICLE IV**

### **GENERAL COVENANTS**

SECTION 4.01. Maintenance of Corporate Existence.

- (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, unless the successor or the surviving entity is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however that the Guarantor may consolidate with

or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if:

- (1) the successor or the surviving entity (if other than the Guarantor)
    - (a) if not transferred by operation of law, assumes in writing all the obligations of the Guarantor hereunder, and if required by law, is duly qualified to do business in the Territory of Guam.
    - (b) at the request of the RECEIVER/TRUSTEE, delivers to the RECEIVER/TRUSTEE an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and within six (6) months following such transaction
  - (2) any such transaction does not result in the credit rating of the long-term unsecured debt of the successor Guarantor (or the surviving entity, if the Guarantor) by a nationally recognized rating service within six (6) months following such transaction being lower than that of the Guarantor immediately preceding such transaction.
- (B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this SECTION 4.01, the provisions of this SECTION 4.01 shall continue in full force and effect and no further consolidation, merger or sale, or other transfer shall be made except in compliance with the provisions of this SECTION 4.01. No such consolidation, merger or sale, or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for the Guaranty as provided in this SECTION 4.01, and if such transaction results in a material decline in Guarantor's credit standing, the successor Guarantor shall provide credit enhancement.

SECTION 4.02. Assignment. Without the prior written consent of the RECEIVER/TRUSTEE, this Guaranty may not be assigned by the Guarantor, except pursuant to SECTION 4.01 hereof.

SECTION 4.03. Qualification in Guam. The Guarantor agrees that so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the Territory of Guam.

SECTION 4.04. Consent to Jurisdiction. The Guarantor irrevocably: (1) agrees that any legal proceeding arising out of this Guaranty shall be brought in the Territory of Guam or federal courts in the Territory of Guam having appropriate jurisdiction; (2) consents to the jurisdiction of such court in any such Legal Proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any of such courts; and (4) waives its right to a trial by jury in any Legal Proceeding in any of such courts.

SECTION 4.05. Binding Effect. This Guaranty shall inure to the benefit of the GSWA and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.06. Amendments, Changes and Modifications. This Guaranty may not be amended, changed or modified, or terminated and none of its provisions may be waived, except with the prior written consent of the RECEIVER/TRUSTEE and of the Guarantor.

SECTION 4.07. Liability. It is understood and agreed to by the RECEIVER/TRUSTEE that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any Affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.08. Notices. All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by first class mail and facsimile, to such addresses:

(a) If to the Guarantor:

{insert company name and address}

With a copy to

{insert name and address if any}

(b) If to the RECEIVER/TRUSTEE:

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

With a copy to

Guam Solid Waste Authority  
542 North Marine Corps Drive  
Tamuning, Guam 96913

Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee. Notices and communications given by mail hereunder shall be deemed to have been given five (5) Days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

RECEIVER/TRUSTEE

GUARANTOR

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

**{Insert company name}**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_



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## APPENDIX 2

### CONVENIENCE TERMINATION PAYMENTS

In accordance with SECTION 13.04 of this Agreement, the payments in the following table will apply. Payments are based on termination at the end of the month. If termination occurs prior to the end of the month, the payment will be prorated.

**Table 4-1 Termination for Convenience**

<b>Month of Termination</b>	<b>Total Termination Payment to the Operator</b>
<b>Month 1</b>	
<b>2</b>	
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<b>60</b>	

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Date

**APPENDIX 3**  
**CALCULATION OF ADJUSTMENT FACTOR**

### APPENDIX 3

#### CALCULATION OF ADJUSTMENT FACTOR

##### Example

Index values for the most recent month, or quarter in the case of the Employment Cost Index (ECI), preceding anniversaries of the Operation Commencement Date shall be used to calculate the Adjustment Factor to be applied in each Operating Year. In the example below, assuming that the Operation Commencement Date is April 15, 2017, the methodology for calculation of the Adjustment Factor to be applied in the second Operating Year would be the percentage change over the one (1) year period from the Operation Commencement Date (April 15, 2017) to the anniversary date (April 15, 2018), using January 2017 Index values and January 2018 Index values and calculating the changes from the previous year to the current year.

However, since the employment data for the Employment Cost Index (ECI) are published as quarterly data, the ECI's most recent Index value preceding the assumed Operation Commencement Date and its anniversary shall be used, which for the example below, would be the Index value for the quarter ending in December instead of a month of January value. The following example illustrates the proper method of calculating the Adjustment Factor and applying it to adjust certain fees, as applicable, pursuant to this Agreement. All values used in the example are hypothetical.

Adjustment Factor	Fixed Component	Index data for Construction Machinery & Equipment	Index data for Employment Cost Index*	Index data for Diesel Fuel
for Operating Year 2 =	(.18) +	(.30 x ((January '18 - January '17) ÷ January '17) +	(.37 x ((December '18 - December '17) ÷ December '17) +	(.10 x ((January '18 - January '17) ÷ January '17)

\*Index data are for quarter ending in December

Calculation of Adjustment Factor – Example						
Index	% of Total	Year 2 Index Value	Year 1 Index Value	Difference	% Change	% Adjustment
Fixed Component (no adjustment applied)	18.0%	n/a	n/a	0.0	0.000%	0.000%
Construction Machinery & Equipment	30.0%	110.0	107.1	2.9	2.708%	0.812%
Employment Cost Index	37.0%	162.0	156.8	5.2	3.316%	1.227%
Gasoline Fuel	15.0%	138.4	134.0	4.4	3.284%	0.493%
<b>Adjustment Factor</b>	<b>100.0%</b>					<b>2.532%</b>

**Notes:** The Index values used above are only example Index values and do not reflect actual Index values for those months. Employment Cost Index data for the quarter ending in December would be used for these calculations, while the January index values for the Construction Machinery & Equipment and Gasoline Fuel series of the Producer Price Index would be used.

Using the example values shown in the table above, the Adjustment Factor would be 2.532%. This Adjustment Factor would be multiplied by the fee to be adjusted pursuant to this

Agreement to determine the adjusted value of such fee in the new Operating Year. As an example, if the Base Operating Fee in Operating Year 1 to be adjusted is \$200,000 per Operating Year, then the adjusted Base Operating Fee for Operating Year 2 would be determined by applying the Adjustment Factor calculated above as follows:

$$\$1,500,000 \times (1 + \text{Adjustment Factor}) = \text{Base Operating Fee in Operating Year 2}$$

$$\$200,000 \times (1 + (.30 \times ((110.0-107.1) \div 107.1)) + (.37 \times ((162.0-156.8) \div 156.8)) + (.15 \times ((138.4-134.0) \div 134.0))) = \text{Base Operating Fee in Operating Year 2}$$

or

$$\$200,000 \times 1.02532 = \$205,064 \text{ per Operating Year}$$

The adjusted Base Operating Fee for Operating Year 2, as shown in this example, would be \$205,064 or \$17,088.67 per Invoicing Period.