MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 433-32(COR)

T.R. MUNA BARNES

Introduced by:

"AN ACT TO RATIFY THE SETTLEMENT AGREEMENT AMONG THE GOVERNMENT OF GUAM, GUAM ECONOMIC DVELOPMENT AUTHORITY, AND GUAM RESOURCE RECOVERY PARTNERS, L.P. AND APPROVE THE WASTE TO ENERGY PROJECT"

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings.

(a) In 1982, the Guam Economic and Development Authority ("GEDA") and the Government of Guam ("Government") entered into a license (the "License") with International Energy Enterprises, Inc. ("IEEI"). (Ex. 1 hereto). The License required IEEI to arrange for "the financing, construction and operation" of a waste-to-energy ("WTE") facility.

(b) In 1989, Guam Power, Inc. purchased the License. On November 15, 1990, the License was amended (the "Amended License") (Ex. 2 hereto). Like the License, the Amended License granted to GRRP "an exclusive right to develop, finance, design, construct and operate" a WTE facility. The Amended License was executed by the parties and approved by counsel.

(c) In 1996, in furtherance of the Licenses, the Government of Guam, GEDA, and GRRP executed a Solid Waste Construction and Services Agreement (the "Contract").

(d) In 2000, two plaintiffs filed suit, challenging the validity of the 1996 Contract. The parties filed cross-motions for summary judgment and the Superior Court granted GRRP's motion. *Pangelinan v. Gutierrez*, Guam Super. Ct. SP 0212-00 (Nov. 6, 2001 Dec. & Order) (Ex. 3 hereto). In that Order, the court concluded that the 1982 License "represented a valid and binding agreement between the parties involved."

(e) The Order was appealed to the Guam Supreme Court. The Guam Supreme Court held that the 1996 Contract was null and void because its liquidated damages clause violated 48 U.S.C. § 1423j and 5 G.C.A. § 22401. The court further held the liquidated damages clause was not severable and voided the 1996 Contract.

(f) In March 2008, after the Guam Supreme Court decision was issued, GRRP requested that GEDA and the Government resume negotiations to replace the 1996 Contract. It received no response. On November 6, 2009, GRRP filed a government claim seeking $20,000,000.00 in damages for the Government's and GEDA's breach of the Licenses. The Government denied that claim on April 16, 2010. GRRP filed an action in the Superior Court of Guam based on its government claim, *Guam Power, Inc., a Guam corporation, as general partner on behalf of Guam Resource Recovery Partners, a Delaware limited partnership v. Government of Guam and Guam Economic Development Authority*, Superior Court of Guam Civil Case No. CV1680-11 (the "Government Claim Action").

(g) The parties to the Government Claim Action entered into court-ordered mediation. GEDA's Administrator and a designated Board Director with their legal counsel participated in the mediation process and in negotiating the settlement. As a

result of the mediation, the parties entered into a Memorandum of Understanding (MOU) settling the Government Claim Action subject to the satisfaction of certain terms and conditions. (See Attached Exhibit 4 hereto).

(h) Pursuant to the MOU the parties successfully negotiated a contract for the financing, construction and operation of a waste-to-energy facility (the "WTE Contract"). A copy of the WTE Draft Contract is attached hereto as Exhibit 5.

(i) The Government, GEDA and GRRP agreed that the effectiveness of the WTE project is subject to legislative approval.

(j) The parties, have requested that I *Mina' Trentai Dos Na Liheslaturan Guahan*, review and approve the WTE Contract and project.

(k) GEDA's Administrator sent a letter to the speaker, Judith T. Won Pat (See Exhibit 6 hereto) informing the legislature that GEDA has fulfilled their efforts to satisfy the terms and conditions of the MOU.

(l) The MOU was discussed in two board meeting on June 19, 2014 and July 17, 2014 and was approved without the need for a formal resolution. See approved GEDA Board Meeting Minutes attached hereto as Exhibit 7 pg. 14 and Exhibit 8 pgs. 3-4.

(m) *I Liheslaturan Guahan* understands that the WTE project will involve new investments totaling over $200 million; the generation of a new and reliable source of renewable energy; the creation of new and sustainable jobs in the solid waste management industry and in other industries such as the construction and maintenance industries; increased indirect economic activity; expansion of the tax base; and protection of the environment by reducing the volume of solid waste landfilled on Guam by 90%, thus extending the life of the landfill depository by disposing of ash residue rather than solid waste.

(n) *I Liheslaturan Guahan* has already recognized in the Alternate Energy Plan for Guam Act (codified at 10 G.C.A. § 8301 *et seq*) the importance of developing alternate energy sources that do not burden taxpayers, power consumers, and residents of Guam. *I Liheslaturan Guahan* finds that the WTE project provides an alternate energy source for Guam without burdening the people of Guam.

(o) I *Liheslaturan Guåhan* finds that it is in the best interest of the government of Guam and the People of Guam for the Government to approve the WTE Contract.

Section 2. Ratification of the Settlement Agreement (MOU).

Notwithstanding any other provision of law, including, without limitation, 10 G.C.A. § 73113, *I Liheslaturan Guahan*, hereby ratifies the settlement agreement among the Government, GEDA, and GRRP and approves the WTE Contract and project.

Section 3. Effective Date. The effective date shall be upon enactment of this Act.

Section 4. Severability. If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

Exhibit 1

LICENSE AGREEMENT

AGREEMENT made this [illegible] day of [illegible], 1982, by and among INTERNATIONAL ENERGY ENTERPRISES, INCORPORATED, a New York corporation having its principal office at 500 Fifth Avenue, New York, New York (hereinafter called "Energy") and the GUAM ECONOMIC DEVELOPMENT AUTHORITY, an autonomous agency, Government of the Territory of Guam (hereinafter called "GEDA") and THE TERRITORY OF GUAM (hereinafter called the "Territory").

W I T N E S S E T H:

WHEREAS, the Territory and GEDA desire to grant a license to Energy to finance, construct, own and operate a plant (hereinafter called the "Waste Combustion Plant") for the combustion of solid wastes collected on Guam and the generation of electricity for sale to the Guam Power Authority (hereinafter called "GPA").

NOW , THEREFORE, in consideration of the premises and of the mutual agreements herein contained, it is agreed as follows:

Section 1. License.

The Territory and GEDA hereby grant a license to Energy for the following purposes:

A. to arrange for the financing, construction and operation of the Waste Combustion Plant; and

B. to determine the manner in which the ownership of the Waste Combustion Plant, if constructed, shall be held, the parties hereto hereby agreeing that the Waste Combustion Plant

shall be owned and operated by such corporations, partnerships, or other entities established by Energy or its designees.

Section 2. Term.

Unless sooner terminated by Energy in accordance with Section 9 hereof, this Agreement shall remain in full force and effect and Energy shall have the license granted herein from and after the date first above written for a period of one year. If, at the expiration of such term, substantial progress shall have been made toward achieving the purposes of this agreement, this Agreement shall remain in full force andeffect and Energy shall have the license granted herein for an additional period of one year. If, at the expiration of such term, substantial progress shall have been made toward achieving the purposes of this agreement, this Agreement shall remain in full force and effect and Energy shall have the license granted herein for an additional period of one year. If, at the expiration of such term, substantial progress shall have been made toward achieving the purposes of this agreement, this Agreement shall remain in full force and effect and Energy shall have the license granted herein for an additional period of twenty (20) years. As used herein, the "Term of this Agreement" shall mean the original one year term unless this Agreement has been extended as specified above, in which event it shall mean the entire period of any such extension.

The parties hereto hereby agree that Energy shall, within sixty (60) days of the date hereof, submit a schedule of progress toward achieving the purpose of this Agreement that will be deemed "substantial" for the purpose of this Section 2 and

upon such submission the parties hereto shall execute an amendment incorporating such schedule as Exhibit A hereto.

Section 3. Warranties, Covenants, Undertakings and Representations of Energy.

Energy hereby warrants, covenants, undertakes and represents as follows:

1. Energy has devoted or will devote its best efforts to obtaining by subcontract or otherwise the expertise necessary to carry out its undertakings hereunder; and

2. Energy has all requisite legal power and authority to enter into this Agreement; this Agreement has been duly executed and delivered by Energy and constitutes a valid and binding obligation of Energy; and the consummation of the transactions contemplated by and compliance by Energy with the terms and provisions of this Agreement will not violate any law, rule or regulation applicable to Energy or result in a breach of the terms and provisions of, or constitute a default under, any other agreement or undertaking binding upon Energy.

Section 4. Warranties, Representations, Covenants and Undertakings of the Territory and GEDA.

The Territory and GEDA hereby warrant, represent, covenant and undertake as follows:

A. The Territory and GEDA have all requisite legal power and authority to enter into this Agreement and to grant the license granted hereunder; this Agreement has been duly executed and delivered by the Territory and GEDA and constitutes a valid and binding obligation of the Territory and GEDA; and the

consummation of the transactions contemplated by and compliance by the Territory and GEDA with the terms and provisions of this Agreement will not violate any law, rule or regulation applicable to the Territory and GEDA or result in a breach of the terms and provisions of, or constitute a default under, any other agreement or undertaking binding upon the Territory and GEDA;

B. The Territory and GEDA will cooperate fully with Energy in Energy's performance of its obligations hereunder and will provide whatever advice and assistance is reasonably requested by Energy in connection therewith; provided, however, that such cooperation shall not result in the Territory's or GEDA's incurring any expenses;

C. If Energy shall determine that it is financially desirable, GEDA will, pursuant to its authority, or pursuant to the authority of any other appropriate agency or instrumentality of Guam, devote its best efforts to offer bonds to the public for the purpose of financing the construction of any portion of the Waste Combustion Plant, and, if so determined by Energy, any activity preliminary thereto, in an amount determined by Energy as necessary and appropriate therefor; provided, however, that such bonds shall not constitute general obligations of the Territory or GEDA but shall constitute special obligations of GEDA secured by the Waste Conbustion Plant and the revenues generated thereby;

D. The Territory or GEDA will make available to the

Waste Combustion Plant Owner for the construction of the Waste Combustion Plant, pursuant to a long term lease at a nominal annual rental, land adjacent to the Piti Power Plant suitable both for the collection of solid waste and the construction of the Waste Combustion Plant;

E. The Territory and GEDA will arrange GPA to enter into an agreement, in form and substance satisfactory to Energy and GPA, pursuant to which GPA shall agree to purchase from the Waste Combustion Plant Owner all electricity generated by the Waste Combustion Plant and to pay for such electricity, whether or not GPA shall actually require such electricity, at a rate to be determined by GPA and the Waste Combustion Plant Owner annually, such rate, however, to be not less than the greater of (i) 90% of the cost to GPA of an equivalent amount of electricity or electricity generating capacity or both which, but for the purchase from the Waste Combustion Plant Owner, GPA would generate, purchase from another souce or, if necessary, construct additional generating capacity to generate (such cost to be determined in accordance with the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder and hereinafter called the "Avoided Cost") and (ii) the Avoided Cost of electricity of Guam averaged over the twelve (12) months period beginning March 1, 1981 through March 1, 1982 and adjusted annually during the term of this Agreement in accordance with an appropriate inflation indicator to be agreed upon by GPA and the Waste Combustion Plant Owner.

F. The Territory will deliver to the Waste Combustion Plant a minimum and maximum amount of solid waste to be determined from time to time by the Owner of the Waste Combustion Plant subject to the concurrence of the Territory, such minimum to be at least 100 tons per day. During any day under the terms of this Agreement the Owner of the Waste Combustion Plant may declare to the Territory that further solid waste is not required for that day and no additional solid waste shall be delivered for the remainder of that day. ~~The Territory will pay a fee per ton~~ of waste to the Waste Combustion Plant Owner for the disposal of such waste, such minimum monthly tonnage and such fee to be determined by the Territory and the Waste Combustion Plant Owner annually, such fee, however, not to be less than the average expense per ton incurred during the previous year for the disposal of solid waste; provided, however, that in the event that such authority fails to deliver such minimum monthly tonnage for any month, such authority shall be obligated to pay a fee to the Waste Combustion Plant Owner for that month calculated as if such authority had delivered such minimum tonnage or, to the extent such minimum tonnage has been acquired elsewhere, the Waste Combustion Plant Owner's cost of acquiring such tonnage plus, in either event, any loss of revenue by the Waste Combustion Plant Owner for failure to deliver the electricity that the Waste Combustion Plant Owner would have been capable of ~~delivering had such authority delivered such minimum tonnage~~; and

G. The Territory and GEDA will use its best efforts to

obtain all necessary local approvals, permits, and agreements in connection with the financing, construction, ownership and operation of the Waste Combustion Plant including without limitation the agreement of the United States Navy, if necessary in connection with the Piti Power Plant, and will cooperate fully with Energy in the application for and obtaining of any other approvals or permits necessary in connection with the financing, construction, ownership and operation of the Waste Combustion Plant.

Section 5. Assignment of Interest.

Energy shall be free to assign, convey or otherwise transfer all or any part of its interest in this Agreement without the consent of the Territory or GEDA; provided, however, that such assignment, conveyance or transfer shall not operate as a novation or discharge the obligations of Energy hereunder.

Section 6. Limits of Agreement.

The relationship between the parties hereto shall be limited to the performance of their respective obligations necessary to carry out the purposes hereof. Nothing herein contained shall be construed to create a general partnership or joint venture between the parties hereto, or to authorize either party hereto to act as general agent for the other party, or to permit either party hereto to bid for, make commitments on behalf of, or undertake any contracts for the other party.

Section 7. Termination.

Anything herein to the contrary notwithstanding, this Agreement shall terminate at the election of Energy if, at any time, Energy shall have determined that the Waste Combustion Plant shall not be sufficiently commercially attractive to make the obtaining of reasonable financing practicable.

Section 10. Modifications.

No change, modification, waiver or termination of this Agreement or of any provision hereof shall be valid or binding upon the parties hereto, unless such change, modification, waiver or termination shall be in writing signed by the party against which enforcement of the change, modification, waiver or termination is sought.

Section 11. Binding Effect.

This Agreement shall inure to the benefit or and be binding upon the parties hereto and their successors and assigns.

Section 12. Applicable Law.

This Agreement shall be subject to and shall be enforced and construed pursuant to the laws of the State of New York, except with respect to any conflicts of laws provisions that may result in the enforcement of the laws of other jurisdictions; provided, however, that if construction of the OTEC Plant shall commence pursuant to this Agreement, upon such commencement this Agreement shall be subject to and shall be enforced and construed pursuant to the laws of the Territory of Guam.

IN WITNESS WHEREOF, the parties have affixed their signatures on the date first above written.

APPROVED AS TO FORM:

BY: _____
JACK AVERY, Attorney General

ATTEST:

_____

INTERNATIONAL ENERGY ENTERPRISES, INCORPORATED

BY: _____
JAMES R. RONEY
President

GUAM ECONOMIC DEVELOPMENT AUTHORITY

BY: _____
JESUS L. PEREZ,
Administrator

ATTEST:

_____

TERRITORY OF GUAM

BY: _____
PAUL M. CALVO,
Governor of Guam

D.J

Exhibit 2

[254.17]license2 26 September 1990

AMENDED LICENSE AGREEMENT

This Amended License Agreement is made this 15th day of November, 1990, by and between GUAM POWER, INC., hereinafter called "GPI", whose mailing address is 841 Bishop Street, Honolulu, Hawaii 96813, GUAM RESOURCE RECOVERY PARTNERS, hereinafter called "GRRP", whose mailing address is 335 Madison Avenue, New York, New York 10017, the GUAM ECONOMIC DEVELOPMENT AUTHORITY, an autonomous agency of the Government of the Territory of Guam, hereinafter called "GEDA", whose mailing address is GITC Building, Suite 911, 590 South Marine Drive, Tamuning, Guam 96911, and the GOVERNMENT OF GUAM, by and through its Governor, the Honorable Joseph F. Ada, Governor, Territory of Guam.

On March 2, 1992, International Energy Enterprises, Inc., a New York corporation with a principal office at 300 Fifth Avenue, New York, New York (hereinafter referred to as "IEEI") entered into a License Agreement (the "1992 License Agreement") with GEDA and the Government of Guam for the financing, construction, ownership and operation of a facility (the "Facility") to incinerate municipal solid waste collected on Guam and to generate electricity for sale to the Guam Power Authority ("GPA").

IEEI has granted GPI an option to purchase the 1992 License Agreement from IEEI. GPI has exercised its option and has approximately one year to pay the purchase price to IEEI. If the License reverts to IEEI as a result of nonpayment of the purchase price, then this Amendment shall be void and of no force and effect.

In order to exercise its rights and to fulfill its obligations under the License Agreement, GPI and Enprotech Guam, Inc. ("Enprotech Guam"), a wholly owned subsidiary of Enprotech Corp., have formed Guam Resource Recovery Partners, a New York general partnership. The address of Enprotech Guam, Inc., and Guam Resource Recovery Partners is 335 Madison Avenue, New York, New York 10017. GPI and Enprotech Guam are the sole partners of GRRP.

GRRP and the Government of Guam intend to enter into a Municipal Solid Waste Agreement (the "MSW Agreement") setting forth, among other items, the terms and conditions on which GRRP shall finance, construct and operate the facility.

EXHIBIT "C"

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the parties agree to modify and amend the License Agreement to read as follows:

1. License: The Government of Guam and GEDA grant to GRRP an exclusive right to develop, finance, design, construct and operate a waste reduction facility for the recycling and incineration of the solid waste collected within the Territory of Guam as provided herein.

2. Limited Right of Assignment: GRRP shall have the right, without the approval of GEDA or the Government of Guam, to establish such subsidiaries and affiliates to be owned exclusively by it, Enprotech Guam and/or GPI in order to fulfill its rights and responsibilities under this License. GRRP shall have the discretion to create such joint ventures, partnerships, corporations or combinations thereof, involving only the foregoing entities and their wholly owned subsidiaries and affiliates, in order to hold the rights and to fulfill the responsibilities of this License. GRRP may assign its rights and obligations hereunder to any of the above-mentioned companies, partnerships or joint ventures.

3. Prohibited Assignment: (a) Other than as set forth in Section 2, the License Agreement shall not be assigned without the express written consent of GEDA and the Government of Guam. The consent of GEDA and the Government of Guam may be withheld unless GRRP can establish to the satisfaction of GEDA and the Government of Guam that the proposed assignee has the ability, expertise or experience to fulfill the purposes of this License.

(b) There shall be no change in the identity of the stockholders of Enprotech Guam without GEDA's written consent. The MSW Agreement shall provide that Enprotech Guam shall at all times maintain a mutually agreeable minimum percentage interest or a minimum investment in GRRP.

4. Term: This Agreement shall terminate on the earlier of the date of execution and delivery of the MSW Agreement by all parties thereto or the 23rd anniversary of the date hereof.

5. Financial Obligations: GRRP, its partners or assignees, shall be solely responsible for financing the design, construction and operation of the Facility. Neither the Government of Guam nor GEDA shall have any financial obligation to pay for any part of the design, construction or operation of the Facility except as contemplated by the MSW Agreement or as otherwise agreed in writing.

c. Schedule of Development: GRRP, its partners or assignees, shall design, construct and operate the Facility in accordance with the following schedule:

a. Within 120 days of the date of this Agreement, or such longer period as the parties shall agree, GRDA and GRRP shall, in good faith, negotiate and enter into the MSW Agreement which shall provide mutually acceptable terms for the following, among others:

i. The terms and conditions on which GRRP shall finance the design, construction and operation of the Facility.

ii. The development of a program manual which outlines the preliminary specifications, projected plant performance, site layouts and general project descriptions.

iii. The guarantee of GRRP that the Facility shall be capable of processing specific and agreed upon quantities of solid waste, generating a specific amount of electricity compatible with GPA interconnection and generation requirements or other agreed upon energy forms for sale to others.

iv. The recovery of agreed upon recyclable material, as economically feasible.

v. The guarantee of a maximum quantity of residue with a specific content of combustible material.

vi. The commitment of the Government of Guam to deliver to the Facility not less than 75,000 tons of acceptable solid waste per year from the commencement of commercial operations of the Facility through the term of the MSW Agreement.

vii. The commitment of the Government of Guam to pay to GRRP a processing fee on a per ton basis for all solid waste delivered to the Facility and establishing a procedure for adjusting such fee, from time to time, to reflect certain changed costs.

viii. A detailed "Schedule of Progress" which shall establish a schedule for the completion of the various increments of the design, construction and operation of the Facility in a workmanlike and expeditious manner.

ix. Consistent with the understanding that GRRP is the owner of the Facility for tax purposes, the transfer of the Facility at the conclusion of the term of the MSW Agreement to the Government of Guam or its designee, in good order and repair, under terms to be mutually negotiated.

x. A deadline by which GRRP shall complete and file with all relevant regulatory agencies of the Territory of Guam and of the United States, any and all permit applications required for the design, construction and operation of the Facility.

xi. A term of 20 years following the commencement of the operation of the Facility but in no event more than 23 years from the date hereof.

xii. Termination of the MSW Agreement upon mutually agreed circumstances, including a schedule of payments or other mutually agreed method of determining amounts due on termination.

xiii. Any other provision necessary, in the reasonable judgment of the parties, to permit the construction and permanent financing of the Facility by independent financial institutions without recourse to any affiliate of GRRP, its partners, GEDA or the Government of Guam.

b. On or before the execution of the MSW Agreement, GEDA and GRRP shall enter into an agreement to provide GRRP with a mutually acceptable site of sufficient size for the design, construction and operation of the Facility for a mutually acceptable period. The parties understand that the Guam legislature may have to approve the use of any such site.

7. a. This Agreement may be terminated (i) with the written consent of GRRP and GEDA; (ii) by GRRP upon 60 days written notice to GEDA; (iii) by GEDA if GRRP shall, after 60 days written notice, fail to proceed diligently and in good faith to complete the negotiation and execution of the MSW Agreement or otherwise fail to cure a breach of this Agreement; or (iv) by GRRP if GEDA or the Government of Guam shall, after 60 days written notice, fail to proceed diligently and in good faith to complete the negotiation and execution of the MSW Agreement.

b. If this Agreement is terminated pursuant to Section 7(a)(iv), GEDA and the Government of Guam shall be liable, in accordance with the Government Claims Act (P.L. 17-29, as amended), for all damages, costs and expenses incurred in reliance upon this license, whether before or after its amendment. However, the recovery of damages shall not include those alledgedly incurred by IEEI. If this Agreement is terminated for any other reason, no party shall be liable to any other party.

8. GRRP Warranties: GRRP hereby warrants, covenants and guarantees that it now has or shall obtain by subcontract or otherwise, the expertise necessary to carry out its obligations set forth herein. GRRP has the requisite legal power and authority to enter into this Agreement; has complied with all

internal corporate requirements for its execution and the same constitutes a valid and binding obligation upon it. The consummation of the transactions contemplated by this Agreement will violate no law, rule or regulation applicable to GRRP nor result in any default of any agreement or undertaking binding upon GRRP.

9. GEDA and the Government of Guam Warranties: The Government of Guam and GEDA hereby warrant, covenant and guarantee as follows:

a. GEDA and the Government of Guam shall provide such assistance as they are reasonably capable of providing to expedite and facilitate the performance of GRRP under this License. They shall use their best efforts to assist in the issuance of permits, easements, approvals and agreements from various agencies of the Territory of Guam and the United States.

b. The Government of Guam and GEDA have all the requisite legal power and authority to enter into this Agreement to grant the license extended hereunder; this Agreement has been fully executed and delivered by the Government of Guam and GEDA and constitutes a valid and binding obligation on each; the consummation of the transaction set forth herein and the compliance by the Government of Guam and GEDA with its terms and agreements shall not violate any law, rule or regulation applicable to either.

10. Avoidance of Partnership: Nothing set forth herein shall be construed to create a partnership or joint venture between the parties hereto. Neither party shall be deemed to be the general agent for the other or to permit the other to bid for or make commitments on behalf of or undertake any contracts binding upon the other.

11. Merger: No modification, change or waiver of this Agreement or any provision hereof shall be valid or binding on the parties unless it is agreed to in writing signed by the parties sought to be bond. This Agreement is a full and complete embodiment of the parties' oral agreements and understandings arrived at to date. All other agreements, understandings and contracts are waived and of no force and effect.

12. Guam Contract: This Agreement shall be governed by and construed in accordance with the laws of the Territory of Guam.

13. Repayment of GEDA Loan: In May of 1989, GPI and GEDA entered into an agreement providing for the stay of Superior Court of Guam Civil Case No. CV1001-88 and for the payment of money by GPI to GEDA which shall satisfy the previous and

existing indebtedness of IEEI to GEDA. That agreement is modified as follows:

a. GPI shall pay to GEDA upon the execution of this Agreement the sum of $10,000.

b. Upon the issuance of a building permit by the Department of Public Works to GPI for the Facility or upon a termination of this Agreement pursuant to Section 7(a)(ii) or 7(a)(iii), GPI shall pay to GEDA the sum of $255,000.

14. Release of IEEI: Nothing in this Amended License Agreement shall be deemed to be a release of GEDA's claims against IEEI for moneys loaned. Upon the receipt of the sum of $255,000 from GPI, GEDA shall execute such full and complete releases of IEEI as GPI shall request, provided that IEEI releases GEDA from any and all claims and liability arising in any way from or related to the original License Agreement. GPI represents that IEEI is aware of and agrees to the stay of the prosecution of GEDA's claims against it in Superior Court of Guam Civil Case No. 1001-88.

15. Condition of this Amendment: This Amendment is expressly made conditional upon the full and complete assignment of the 1982 License Agreement from IEEI to GPI, such that IEEI will have no interest in the License, either as originally drafted or as amended. In the event of the failure of IEEI to assign the License to GPI or that the License should revert to IEEI, then this Amendment shall be void and of no force and effect and IEEI shall only have those rights created by the original unamended License, subject to all of GEDA's defenses and claims, including the claim that the License is terminated and void. The License is being conditionally amended solely for the benefit of GRRP, its partners and assignees. Nothing set forth in this Amendment shall in any way be considered a waiver or forgiveness by GEDA or the Government of Guam of any previous

breach or non-performance by IEEI. GEDA reserves all of its rights against IEEI, unaffected by anything agreed to herein.

GUAM ECONOMIC DEVELOPMENT AUTHORITY,

By _____
CHARLES CRISOSTOMO,
Its Administrator

By _____
ANTHONY LEON GUERRERO,
Its Chairman

GUAM POWER, INC.,

By _____
WAGDY GUIRGUIS,
Its President

GUAM RESOURCE RECOVERY PARTNERS,

By GUAM POWER, INC.,
a General Partner

By _____
WAGDY GUIRGUIS,
President

By ENPROTECH GUAM, INC.,
a General Partner

By _____
Vice President

GOVERNMENT OF GUAM

By

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ERROR: undefined
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STACK:
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Exhibit 3

Attorneys Arthur Cla[illegible] Janalynn Cruz
CALVO & CLARK

IN THE SUPERIOR COURT OF GUAM

VICENTE C. PANGELINAN and JOSEPH C. WESLEY,

Plaintiffs,

vs.

CARL T. C. GUTIERREZ et al.,

Defendants.

GUAM RESOURCE RECOVERY PARTNERS,

Intervening Defendants.

SPECIAL PROCEEDINGS
CASE NO. SP0212-00

DECISION AND ORDER

INTRODUCTION

The matter before the Court came on the parties' cross motions for summary judgment. The Plaintiffs, Vicente C. Pangelinan and Joseph C. Wesley filed their motion on July 31, 2001 and the Intervening Defendants, Guam Resource Recovery Partners ("GRRP") also filed their motion on July 31, 2001. The Defendants, comprised of various Government of Guam officials, joined in GRRP's motion for summary judgment and opposed the motion filed by the Plaintiffs.[1] On September 11, 2001 a hearing on this matter was held before The Honorable Judge STEVEN S. UNPINGCO who took the matter under advisement. Attorneys Michael F. Phillips and Stephanie G. Flores appeared on behalf of the Plaintiffs while Attorneys Arthur B. Clark and Janalynn M. Cruz represented the Intervening Defendants. Also present on behalf of the Defendants was Assistant Attorney General Eric A. Heisel. Having reviewed the parties' briefs, oral arguments, and the applicable law, the Court now issues its Decision and Order.

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BACKGROUND

This case involves a 1996 contract entered into between GRRP and the Government of Guam for the construction of a waste to energy facility on Guam. Under the terms of the agreement, the Government agreed to purchase the electricity produced by the facility. The 1996 agreement was entered into pursuant to a 1982 license between the Guam Economic Development Authority ("GEDA"), the Government of Guam, and International Energy Enterprises, Inc. ("IEEI"). The license called for IEEI to arrange for the financing, construction, and operation of a waste combustion plant for the combustion of solid wastes collected on Guam and the generation of electricity for sale to the Guam Power Authority ("GPA"). In 1988, G-Power, Inc. ("GPI") entered into an option agreement with IEEI to acquire the license. This option allowed GPI to enter into an agreement with GEDA in 1989 to assume and satisfy IEEI's debt to GEDA. The 1982 license was then amended in 1990 and further memorialized the assignment of the license from IEEI to GRRP. GRRP is a partner of GPI, the signatories of the option agreement. At issue before this Court is the validity of the 1996 agreement. The parties have stipulated that there are no factual issues to be determined and that summary judgment is warranted as a matter of law.

DISCUSSION

Summary Judgment Standard

A motion for summary judgment is governed by Guam Rules of Civil Procedure ("GRCP") Rule 56, which provides that "The judgment sought shall be rendered forthwith if...there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[2] GRCP Rule 56 (c). The party who is seeking summary judgment has the burden to show that there are no genuine issues of material fact. *See* Celotex Corp. v. Katrett, 477 U.S. 317, 106 S.Ct. 2548 (1986). Moreover, once the moving party has met this burden, the nonmoving party must come forward and make some affirmative showing with specific acts that evidence exists to support its claims and that there is a genuine issue of material

[1]The Defendants opposed GRRP's motion with respect to section VI only.
[2] Summary Judgement must be granted "forthwith," unless the court determines that further time for discovery should be allowed. *See* GRCP 56(f).

fact for trial. Id. *See also* Matsushita Elec. Indus. Co. V. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356 (1986).

"A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit..." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n.,809 F.2d 626, 630 (9th Cir.1987). If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot rely merely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 25050, 2510 (1986).

Where credibility is at issue, summary judgment may not be granted. Only after an evidentiary hearing or full trial can credibility issues be appropriately resolved. S.E.C. v. Koracorp Industries, Inc., 575 F.2d 692, 698 (9th Cir.1978), cert denied, 439 U.S. 953 (1978). Discretion plays no real role in the grant of summary judgment. Id. In addition, the court must view the evidence and draw inferences in the light most favorable to the non-movant. E.E.O.C. v. Local 350, Plumbers and Pipefitters, 982 F.2d 1305, 1307 (9th Cir.1992). The "court's ultimate inquiry is to determine whether the 'specific fact' set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence." T.W. Elec. Serv., 809 F.2d at 631.

Plaintiffs' Motion for Summary Judgment

Plaintiffs argue that based on the language of 5 G.C.A. § 5215, 1 G.C.A. § 1800, and § 1423 (j) of the Organic Act, the 1996 contract is void for failure to procure in accordance with the mandates of these statutes. First, no emergency situation existed authorizing the Government to make emergency procurements. Second, 1 G.C.A. § 1800 expressly requires legislative approval before any government function may be privatized. Plaintiffs contend that the contract amounts to a privatization of a Government function. Third, the contract attempts to appropriate government funds, a governmental function exclusively within the purview of the Legislature pursuant to § 1423 (j) of the Organic Act. In addition to these arguments, the Plaintiffs discuss at

length the basis upon which a taxpayer may bring an action against a Government official.

In opposition, GRRP argues that the Guam Procurement Law does not apply to the agreement since the terms of the agreement were solicited in 1982, one year prior to the effective date of the Guam Procurement Law. In support of this position, GRRP cites the specific language of the Guam Procurement Law which provides that the act only applies to contracts solicited or entered into after the effective date.

GRRP further argues that 1 G.C.A. § 1800 does not render the agreement invalid since the agreement calls for the operation and maintenance of a waste-to-energy facility by a private entity. GRRP asserts that the waste-to-energy facility does not amount to a privatization of a government function since the Alternate Energy Plan, codified under 12 G.C.A. Article 12 authorized the Government to purchase electricity from private power producers. Furthermore, 10 G.C.A. Chapter 51 specifically acknowledges the existence of private firms operating solid waste collection, disposal and processing facilities.

GRRP further asserts that the agreement does not violate the Organic Act, specifically § 1423j, because the Government is not obligated to expend any public funds in the construction, operation, and maintenance of the waste-to-energy facility.[3] Although GEDA is required to devote its best efforts to offer private activity bonds, these bonds are not general obligations of the Government. The agreement does not require government funding or attempt to appropriate government funds, thus, § 1423j, relative to government appropriations, is not implicated.

The Court shall now address the merits of the parties' respective positions. First, regarding Plaintiffs' contention that the agreement is subject to the Guam Procurement Law, the Court makes the following ruling. 5 G.C.A. § 5004 (a) of the Procurement Law states that "this Chapter applies only to contracts solicited or entered into after the effective date of this Chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date." 5 G.C.A. § 5004 (a). The effective date of the Guam Procurement Law is October 1, 1983. *See* 5 G.C.A. § 5009. It is undisputed that the basis of the 1996 agreement is

---

[3] GRRP also incorporated the arguments raised in support of its motion for summary judgment into its Opposition to Plaintiffs' Motion for Summary Judgment.

the 1982 license entered into between GEDA and IEEI. Since the license was entered into prior to the effective date of the Procurement Law, it appears that the strictures of the Procurement Law do not apply to the subject agreement. Notwithstanding the origination of the agreement prior to the enactment of the Procurement Law, Plaintiffs maintain that because IEEI defaulted, the 1990 amended license and the 1996 agreement should have been executed in accordance with the Procurement Law.

Upon review of the documents on record, the Court finds that the Plaintiffs have presented no evidence indicating that IEEI defaulted on the 1982 license. Plaintiffs also failed to indicate what conditions were required in order for the license to be renewed had IEEI in fact been in default. Essentially, the Court finds no evidence supporting Plaintiffs' position that IEEI defaulted thus rendering the 1982 license void and further requiring the amended license to be in full compliance with the Procurement Law effectuated on October 1, 1983.

What the evidence indicates is that a dispute had arisen between IEEI and GEDA regarding the 1982 license. It appears that GEDA felt that IEEI failed to perform pursuant to the license and IEEI felt that GEDA had breached the license resulting in damages to IEEI. Although a dispute had arisen, nothing in the record indicates that IEEI had been adjudicated to be in default of the license. Instead, GPI entered into an option agreement with IEEI to purchase the license. Subsequently, in 1989 GPI and GEDA entered into an agreement whereby GPI agreed to pay a total of $275,000.00 to GEDA in exchange for the license as well as GEDA and IEEI's release of their respective claims against each other. Since GPI ultimately exercised its option with IEEI, GEDA's civil case against IEEI, namely CV1001-88, was dismissed. IEEI therefore never defaulted on the 1982 license. Consequently, the amended license as well as the 1996 agreement, having both evolved directly from the 1982 license, did not have to conform to the requirements of the Guam Procurement Law.

Although the parties do not dispute the validity of the 1982 license, the Court must emphasize that this license was duly executed prior to the effective date of the Guam Procurement Law and represented a valid and binding agreement between the parties involved. The license contains specific terms which bound the parties to perform certain obligations in

furtherance of the "financing, construction, and operation of the Waste Combustion Plant." 1982 License Section 1A. Both GEDA and IEEI were contractually bound to use their best efforts to effectuate the purpose of the license agreement. The license essentially required IEEI to provide the expertise necessary to help construct and operate the Waste Combustion Plant, and GEDA was obligated to help finance the project and otherwise cooperate with IEEI. The license, therefore, was the preliminary basis upon which the final 1996 agreement as well as the prior amendments were made. The 1982 license contemplated that future details will follow to fulfill the purpose of the agreement. Accordingly, the 1996 agreement represents the final product resulting from the parties' efforts through the years. The import of the license is further bolstered by the fact that significant consideration was paid by GPI to GEDA as part of the option agreement.

Second, regarding Plaintiffs' argument that the 1996 agreement amounts to a privatization of a Government function, the Court makes the following ruling. 1 G.C.A. § 1800 provides as follows:

> § 1800. Requirement of Approval by Legislature for Privatization.
>
> No office, department, agency, institution, board, bureau, commission, council, authority, committee of territorial government, branch, or the Guam Visitors Bureau, of the government of Guam may privatize any function or transfer any real property of the government of Guam without the approval of the Legislature. Any plan or action taken by an office, department, instrumentality, agency, institution, board, bureau, commission, council, authority, committee of territorial government, branch, or the Guam Visitors Bureau purporting to privatize any function or transfer any real property of the government of Guam shall be transmitted to the Legislature which, by statute, may amend, approve, or disapprove the plan or the action taken. Any plan or action taken shall have no effect until legislative approval is obtained.

1 G.C.A. § 1800. The language of the statute clearly requires Legislative approval before a government agency may privatize any function or transfer any property of the Government of Guam. The Plaintiffs however have misapplied § 1800 and failed to provide any support to their argument that the 1996 agreement does in fact privatize or attempts to privatize a government function absent Legislative approval. To the contrary, GRRP points to Guam statutes which demonstrate that the Legislature has made clear that the Government may purchase power from alternate energy sources and that private entities may operate solid waste facilities. *See* former

10 G.C.A. § 51103[4] and 12 G.C.A. § 8301 et seq. Based on these statutes, coupled with the Plaintiffs' failure to bolster their position with any evidentiary support as required by Rule 56, the Court finds that summary judgment is not warranted in this regard. The Court finds that based on the aforementioned statutes, the operation of a wasted-to-energy facility was not a reserved government function.

Third, regarding Plaintiffs' contention that the 1996 agreement attempts to appropriate government funds in violation of § 1423j of the Organic Act, the Court makes the following ruling. 1423j (a) states that "appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the Legislature." Organic Act § 1423j (a). Upon review of the 1996 agreement, the Court finds that the agreement does not require an appropriation of Government funds without Legislative approval.

Although the contract calls for the issuance of bonds to cover the Facility Price and the Financing Price of the waste-to-energy facility, the contract also requires Legislative approval before such bonds may be issued. *See* 1996 agreement § 3.02 (g). Clearly, GRRP and GEDA realized that the issuance of bonds by a Government of Guam agency would require the approval of the Legislature. The terms of the agreement reflect this fact. The agreement, therefore, does require Government issued bonds to cover the financing of the facility, provided Legislative approval for such appropriation is obtained. The Court finds nothing in the agreement resulting in an appropriation of government funds without Legislative approval. The Court is devoid of any term in the agreement which could even allow for an appropriation without Legislative approval. Instead, the Court finds that Legislative approval was an important aspect of the agreement. Should the parties to the agreement violate its terms and issue bonds or otherwise appropriate government funds absent Legislative approval, then perhaps at that time the Plaintiffs would have a cause of action for a violation of 1423j. However, no such violations can be found at this time and the agreement certainly does not call for it.

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[4] GRRP cites to former 10 G.C.A. § 51103 (b) (1) which was in effect at the time the agreement was executed.

In regards to Plaintiffs' argument that the agreement calls for the Government to provide GRRP with a mutually acceptable Facility Site, the Court finds that the agreement does not violate 1423j because the agreement acknowledges that Legislative approval may be required. Section 4.03 (f) of the agreement states that:

> (f) As of the Financing Date the Government shall have arranged to provide the Company with a mutually acceptable Facility Site, in accordance with Section 6 (b) of the Amended License; provided that the Company shall not be required to accept any Facility Site which would not be suitable for the construction and operation of the Facility thereon under Zoning Law.

1996 agreement Section 4.03 (f) (emphasis original). Section 6 (b) of the Amended License also concerns the Facility Site and states that "GEDA and GRRP shall enter into an agreement to provide GRRP with a mutually acceptable site of sufficient size for the design, construction and operation of the Facility." 1990 Amended License Section 6 (b). "This section further provides that "the parties understand that the Guam Legislature may have to approve the use of any such site." Id. Clearly, the agreement as well as the amended license demonstrates that GEDA and GRRP realized that the procurement of a facility site would be subject to Legislative approval. Hence, there is no violation of § 1423j. Additionally, the fact that no government funds or property has been appropriated pursuant to the agreement further establishes that there can be no violation of § 1423j. The evidence on record simply fails to support the contention that the agreement violates § 1423j.

Based upon the foregoing, Plaintiffs' Motion for Summary Judgment is hereby DENIED.

GRRP's Motion for Summary Judgment

GRRP first argues that based on the contents of the agreement and amended license as well as the language of current statutes regarding alternative energy sources, no genuine issue of material fact exists concerning the validity of the agreement. Since these arguments have already been addressed in the Court's analysis of Plaintiffs' Motion for Summary Judgment, the Court shall limit its analysis here to GRRP's additional argument that legislation enacted subsequent to the agreement violate the Contracts Clause of the United States Constitution and the Organic Act.

GRRP argues that subsequent legislation including PL 24-57:6 and PL 24-272 impair

GEDA and GRRP's obligations under the agreement. GRRP contends that these laws specifically target the waste to energy agreement and adversely affect GEDA and GRRP's ability to perform thereunder. GRRP further asserts that these laws serve no legitimate public purpose. For these reasons, GRRP seeks an order declaring these laws inorganic and unconstitutional.

In response, the Plaintiffs argue that PL 24-57 affects only the Government's performance under the contract and not the Government's liability under the contract should the contract be deemed valid. Plaintiffs further argue that specific performance of the agreement is not the appropriate remedy and that GRRP should sue for breach of contract instead. It is Plaintiffs' contention that PL 24-57 does not violate the Organic Act of Guam. Upon review of applicable case law, the Court finds no legal support for Plaintiffs' proposition that the Contracts Clause is not violated when subsequent legislation affects only the performance of a contract and not the Government's liability under the contract. Moreover, the Plaintiff failed to cite any authority in support of their position.

§ 1421b (j) of the Organic Act states that "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted." Organic Act § 1421b (j). The underlying purpose of the Contracts Clause is to protect the expectation of persons who enter into contracts from the danger of subsequent legislation. *See* Aves By and Through Aves v. Shah, 914 F.Supp. 443 (D. Kan. 1996). Contracts clauses are designed to assure that the law will not deprive a party of the benefit of its contract. *See* McClead v. Pima County, 849 P.2d 1378 (Ariz. App. Div. 1 1992). "The primary intent behind the drafting of the clause was to prohibit states from adopting laws that would interfere with the contractual arrangements between private citizens." Ronald D. Rotunda et al., 2 Treatise on Constitutional Law: Substance and Procedure § 15.8 (b) (1986). However, the prohibitions of the Contracts Clause are not absolute. *See* Morseburg v. Balyon, 621 F.2d 972 (C.A.Cal 1980). The Clause guarantees against government conduct that impairs contracts, not that which is intended to preserve them. *See* Telegraph Savings and Loan Ass'n v. Federal Savings and Loan Ins. Corp., 564 F.Supp. 880 (D.C. Ill. 1982).

As the Clause states, no law...impairing the obligation of contracts shall be enacted. What is meant by the obligation of contract is a valid subsisting obligation, not a contingent or

speculative one. *See* Ochiltree v. Iowa R. Contracting Co., 88 U.S. 249 (1874). Moreover, the obligation of contact concerns the means provided by law for the enforcement of the contract and any law which materially changes the binding force of the contract impairs it. *See* McNee v. Wall, 13 F.Supp. 326 (D.C. Fla. 1935).

The prohibitions of the Contracts Clause apply to both the impairment of contracts between individuals and contracts entered into by a state. *See* Woodruff v. Trapnall, 51 U.S. 190 (1850). If a state enters into a contract with a private citizen, the Legislature cannot impair the obligation of such contract by subsequent enactment. *See* State ex rel. Munsch v. Board of Com'rs of Port of New Orleans, 3 So. 2d 622 (1941). However, a state's refusal to perform under the contract does not raise a Constitutional issue under the Contracts Clause but the use of legislative authority to impair the contract creates a Constitutional claim. *See* Peppers v. Beier, 599 N.E.2d 793 (Ohio App. 3 Dist. 1991).

> The analysis of a Contract Clause claim proceeds in two steps. First, the court must determine whether the state law substantially impairs the contractual relationship. This inquiry involves three components: whether there is a contractual relationship; whether a change in law impairs that contractual relationship; and whether the impairment is substantial. If the impairment is minimal, the inquiry ends and the state law is allowed to stand. Second, if the impairment is substantial, then the court must decide whether the degree of that impairment is both reasonable and necessary to achieve a valid state interest.

NCAA v. Miller, 795 F.Supp. 1476, 1486 (D.Nev. 1992) citing General Motors Corp. v. Romein, 112 S.Ct. 1105, 1109 (1992); In Re LaFortune, 652 F.2d 842, 846 (9th Cir. 1981); United States Trust Co. of New York v. New Jersey, 431 U.S. 1, 25 (1977); Continental Ill. Nat'l Bank and Trust Co. of Chicago v. State of Wash., 696 F.2d 692, 701 (9th Cir. 1983). When a state itself is a party to the contract, less deference is accorded to the legislative assessment of reasonableness and necessity. Id. citing United States Trust Co. of New York, 431 U.S. at 26.

At issue before the Court is whether PL 24-57 Section 6 and PL 24-272 violate the Contracts Clause of the U.S. Constitution and the Organic Act of Guam. PL 24-57 Section 6 provides in part as follows:

> The Governor of Guam and any line or autonomous agency of the Government of Guam shall not, for the purposes of financing, funding, paying for or disbursing money pursuant to the proposed contract called the "Solid Waste Construction and Service agreement" between the Government of Guam and Guam Resource Recovery Partners dated July 23, 1996, or any projects described in said contract, commit any funds, resources, assets, debts, obligations or property of the

Government of Guam by any means...

PL 24-57 Section 6. PL 24-272 Section 3 repealed and reenacted a portion of PL 24-139 and removed waste-to-energy facilities from the definition of Resource Recovery Facility. *See* PL 24-272 Section 3 (~~36~~ 38). PL 24-272 also repealed PL 24-139 Section 11 which gave GEDA the Legislative authorization to issue private activity bonds. Based on the language of these laws, GRRP argues that its obligations as well the Government's obligations under the agreement are being impaired.

Applying the two-prong test to this case, the Court finds that there is a contractual relationship between the Government of Guam and GRRP and that PL 24-57 Section 6 and PL 24-272 impair that contractual relationship. PL 24-57 specifically addresses the 1996 agreement between the Government of Guam and GRRP and precludes the Government from performing its obligations under the agreement. Essentially, Section 6 of PL 24-57 prohibits the Government from committing any property or assets towards the financing of the waste-to-energy facility. Because the license and agreement required the Government to use its best efforts to finance the project through private activity bonds and to provide a facility site, the mandates of PL 24-57 substantially impair the Government's ability to perform.

Likewise, the change in law provided in PL 24-272 also impairs the Government's contractual relationship with GRRP. PL 24-272 removed facilities which recover energy from solid waste from the definition of resource recovery facility contained in PL 24-139. Since waste-to-energy facilities recover energy from solid waste, such facilities have been removed from the definition of resource recovery facility. As a result, waste-to-energy facilities are now excluded from the permitting process for solid waste management facilities contained in PL 24-139. 10 G.C.A. § 51104 (a) allows the Administrator of GEDA to issue permits for solid waste management facilities. Prior to 24-272, solid waste management facilities included resource recovery facilities. *See* PL 24-139. Also prior to 24-272, resource recovery facilities included facilities which recover energy from solid waste, which would include waste-to-energy facilities. *See* id. As a result of PL 24-272, the GEDA Administrator may no longer issue permits for waste-to-energy facilities. Since the agreement between the Government of Guam and GRRP

contemplated the construction and operation of a waste-to-energy facility, the preclusion of a waste-to-energy permit resulting from PL 24-272 impairs the Government's and GRRP's ability to perform its obligations under the agreement. Since the law precludes the parties from performing very material portions of the contract, the impairment resulting from PL 24-272 is substantial.

Having found that PL 24-57 Section 6 and PL 24-272 substantially impair the contractual obligations of both GRRP and the Government of Guam under the 1996 agreement, the Court now addresses the issue of whether the impairment is both reasonable and necessary to achieve a valid government interest. In reading both laws, the Court finds no stated reason or government interest for the specific changes created by the laws which directly impair the parties' abilities to perform under the agreement. The Plaintiffs do not point to any proffered government interest either. Moreover, the legislative intent of PL 24-57 as well as the purpose of Chapter 51 contained in PL 24-272 provide no insight to the reasons behind the provisions at issue and in fact appear unrelated to them. Without a valid governmental interest to justify these provisions, this Court is unable to determine the reasonableness and necessity of the impairment sufficient to pass Constitutional or Organic muster. Devoid of an identifiable governmental interest, this Court cannot analyze the importance, reasonableness, and necessity of these statutes. Additionally, the Court is unable to determine whether these laws would further protect or advocate an important governmental interest. The Court therefore finds that the provisions contained in PL 24-57 Section 6 and PL 24-272 which affect the 1996 agreement pose a substantial impairment of the parties' respective obligations under the agreement without providing a valid government interest to justify the impairment.

Although the Court finds these laws to be invalid and unenforceable insofar as they affect the Government's and GRRP's obligations under the agreement, the Court must note that the practical effect of its ruling may be less than expected. First, pursuant to the agreement, the Legislature may approve or disapprove the issuance of bonds by GEDA and may approve or disapprove the procurement of a facility site by the Government. Consequently, the financing and construction of the facility would still be subject to Legislative approval unless proper

alternatives are established. Second, the validity of PL 24-139, which included waste-to-energy facilities in the definition of resource recovery facilities is currently before the Ninth Circuit Court of Appeals. Should PL 24-139 be ultimately deemed invalid, then the adverse effects of PL 24-272 would no longer be realized since the authorization for waste-to-energy facility permits implicitly contained in PL 24-139 and repealed by PL 24-272 would no longer have the force and effect of law.

In addressing GRRP's final argument that the Government should be estopped from denying the validity of the agreement for the Government has represented for over twenty years that the license, amended license, and agreement were validly executed and contained binding obligations of the Government, the Court finds that it would be premature for the Court to address this issue at this time. Because the Government takes no position to contest the validity of the agreement, there is no dispute regarding this issue. The Court is inclined to revisit the issue should a dispute arise in the future and the claims of the parties become justiciable.

CONCLUSION

The Court finds that the 1996 agreement entered into by the Government of Guam and GEDA does not violate the Procurement Law, 1 G.C.A. § 1800, or the Organic Act of Guam. The Court also finds that PL 24-57 Section 6 and PL 24-272 substantially impairs the parties' obligations under the 1996 agreement without an important, necessary, and reasonable government interest. These laws violate the Contracts Clause of the Organic Act of Guam and are therefore inorganic and unconstitutional. Based upon the foregoing analysis, the Plaintiffs' Motion for Summary Judgment is hereby DENIED and GRRP's Motion for Summary Judgment is hereby GRANTED.

SO ORDERED this 6 day of November, 2001.

HONORABLE STEVEN S. UNPINGCO
Judge, Superior Court of Guam

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Superior Court of Guam
Dated at Hagatna, Guam
NOV 06 2001
Esther L. S. Pinaula
Deputy Clerk, Superior Court of Guam

Exhibit 4

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is executed this 12th day of November, 2013 by and between GRRP, Government of Guam and GEDA with reference to the following facts. There is a case pending in the Superior Court of Guam, GRRP v. Government of Guam and GEDA, Civil Case No. CV1680-11 concerning a license agreement between the parties giving GRRP a license to construct and operate a Waste to Energy facility in Guam ("the Action").

A mediation in the Action was held on November 12, 2013 and presided over by Todd Thompson of PAMS. At the mediation appeared the plaintiff and defendants represented by counsel, as well as party representatives of each party.

I. Following the mediation, the parties agreed to settle the action on the following terms:

1. The parties agree to negotiate the terms and conditions of the redlined Solid Waste Construction Services Agreement (SWCSA) provided by GRRP to GEDA and the Government of Guam in good faith, and in compliance with the Guam Supreme Court's decisions.

2. The parties will draft and execute a stipulation to dismiss the Action with prejudice, each party to bear its own costs and fees, including attorneys fees which they further agree shall be filed on the earlier of120 days after introduction of a bill to be agreed upon by the parties to approve the new SWCSA negotiated by the parties under paragraph I.1, or a legislative vote in third reading of said bill.

3. The parties agree that the mediator shall retain jurisdiction to resolve any disputes that may arise out of the settlement herein, including the drafting of the SWCSA.

4. The parties agree that the promises and conditions set forth herein shall be more fully described and finalized in a subsequent settlement agreement and release of claims (Settlement Agreement) to be signed by the parties, subject to GEDA Board and Office of the Governor approval. In the event that no Settlement Agreement is ever signed by the parties, this MOU is intended to be and shall serve as a valid and enforceable agreement to the extent that the parties have agreed.

5. The parties agree that the terms and conditions of this MOU and any Settlement Agreement shall be confidential.

II. The parties have not agreed upon the following issues but will agree to negotiate and discuss further the following:

1. Who will introduce and in what manner it will be introduced, the bill referenced in paragraph I.2, above.

2. A provision regarding GRRP's non-waiver of rights or remedies regarding obtaining licenses, permits or approvals from any Government of Guam agencies and circumstances under which GRRP may or may not sue any agency or branch of the Government of Guam.

III. The mediation is adjourned until further order of the Mediator or agreement of the parties.

Dated this 12th day of November, 2013

Sandra Miller
Office of the Governor

Counsel for GEDA

Counsel for GRRP

Exhibit 5

SOLID WASTE CONSTRUCTION

AND SERVICE AGREEMENT

BETWEEN

GUAM RESOURCE RECOVERY PARTNERS

AND

GOVERNMENT OF GUAM

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SOLID WASTE CONSTRUCTION AND SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of ___, 2013, by and between the GUAM RESOURCE RECOVERY PARTNERS, L.P. (the "Company") and the GOVERNMENT OF GUAM (the "Government"). Capitalized terms used herein and not otherwise defined shall have their respective meanings set forth in Section 2.01.

RECITALS

I. The Parties have entered into an Amended License Agreement dated November 15, 1990, which amended that certain license dated March 2, 1982 (the "Amended License"), and which gives to the Company the right and obligation to develop and operate a waste reduction and resource recovery facility within the Territory of Guam on terms and conditions set forth in the Amended License.

II. The Company, itself or through subcontractors employed or to be employed by the Company, has the skill, expertise and experience to design, finance, construct, start-up, test, own, operate and maintain a waste reduction and resource recovery facility.

III. The Company shall own, operate and maintain the Facility so as to provide certain Acceptable Waste processing services to the Government and the Government will deliver or cause to be delivered to the Facility certain quantities of Acceptable Waste, in each case, in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the terms and conditions hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Government do hereby agree as follows:

ARTICLE I
COOPERATION; DOCUMENTS

Section 1.01 **Cooperation**. The Parties shall cooperate and use their respective best efforts, pursuant to the terms of this Agreement, to facilitate the design, financing, acquisition, construction, start-up, Acceptance Testing and operation of the Facility, and the Processing and disposal of Acceptable Waste by the Company. Accordingly, the Parties agree in good faith to undertake the resolution of disputes, if any, in an equitable and timely manner so as to limit the need for resolution of such disputes in accordance with ARTICLE XVIII. In addition, the Parties agree to cooperate in making such reasonable changes to this Agreement as the Credit Enhancer may request; provided, however, that neither the Government nor the Company shall be obligated to agree to any changes which have any material adverse effect on their respective rights and obligations hereunder.

Section 1.02 **Agreement Documents**. This Agreement, together with the Schedules and Exhibit attached hereto and made as part hereof, constitute the entire agreement between the Company and the Government with respect to the ownership, design, financing, construction, start-up, Acceptance Testing and operation of the Facility, and processing and disposal of Acceptable Waste.

ARTICLE II
DEFINITIONS; INTERPRETATION

Section 2.01 **Definitions**. Unless otherwise indicated in this Agreement or any Related Document, each of the following terms when used in this Agreement or any Related Document shall be given the respective meanings set forth in this Section 2.01.

"Acceptable Waste" means all Solid Waste which is collected and disposed of as part of the normal collection or disposal of Solid Waste in the Territory of Guam, including that from residential, commercial, institutional, industrial and military (to the extent such Solid Waste is of

a character and composition similar to the Solid Waste collected from residential, commercial, institutional and industrial producers) producers, such as, but not limited to, garbage, trash, rubbish, refuse, leaves, twigs, grass, plant cuttings, branches or tree trunks not more than five (5) feet in length or six (6) inches in diameter, paper, plastics, ferrous and nonferrous metals, glass, discarded personal property, such as bicycles and baby carriages, and small quantities of leather or automobile tires, but in each case excluding Unacceptable Waste. If the Governmental Authorities having appropriate jurisdiction shall determine that any type of Solid Waste, which is included within the definition of Unacceptable Waste, is no longer considered harmful, toxic or dangerous to public health and welfare, then, if the Parties agree, such type of Solid Waste shall be Acceptable Waste for purposes of this Agreement.

"Acceptable Waste Range" means the range of specifications for Acceptable Waste set forth in Schedule 17.

"Acceptance" or "Accepted" means that the Facility has met the Full Acceptance Standard after Acceptance Testing or, if the Full Acceptance Standard cannot be met, that the Facility has been accepted at less than the Full Acceptance Standard pursuant to Section 7.14, Section 7.15, Section 7.16 or Section 7.17.

"Acceptance Date" means the date on which Acceptance of the Facility occurs.

"Acceptance Test" and "Acceptance Testing" means the tests and process of testing, respectively, described in the test plan developed in accordance with Section 7.12, together with the test procedures specified in Schedule 8.

"Additional Bonds" means Bonds, other than the initial series of Bonds.

"Additional Fee" means that component of the Service Fee which, for any Billing Year, is the sum of (a) the Pass Through Costs incurred in Processing Excess Tonnage, and (b) the

product of (i) Fifteen dollars ($15.00) per Ton, and (ii) the Excess Tonnage, and (c) fifty percent (50%) of the Energy Revenues attributable to the Processing of Excess Tonnage.

"Administration Fee" means, for any Billing Year, the sum of Two hundred thousand dollars ($200,000.00), escalated from December 31, 1995 in accordance with the Guam Escalation Adjustment, payable in equal monthly installments in accordance with Article X.

"Affiliate" means, with respect to any Person, any corporation, partnership, joint venture or other entity, directly or indirectly, owned or controlled by, or under common control or ownership with such Person. If the term Affiliate is used without reference to any Person, such term shall be deemed to refer to an Affiliate of the Company or any of its Partners.

"Agreement" means this Solid Waste Construction and Service Agreement and its Schedules and Exhibit, as the same may be amended from time to time in accordance Section 19.16.

"Amended License" has the meaning assigned thereto in the first recital to this Agreement.

"Ancillary Generating Capacity" has the meaning assigned thereto in Section 7.11(c)(i).

"Ancillary Generation Specifications" has the meaning assigned thereto in Section 7.11(c)(i).

"Applicable Law" means, as of any date and with respect to any Person or facility, any constitution, law, rule, regulation, ordinance, order, code interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority then in effect and applicable to such Person or facility; provided, however, that if any such constitutional provision or provision of law, rule, regulation, ordinance, order, code interpretation, judgment, decree, directive, guidelines, policy or similar form of decision is subject to good faith contest or

legal challenge, it shall not constitute a "Applicable Law" until such challenge or contest is finally resolved.

"Authorized Representative" means the Government's and the Company's representatives designated pursuant to Section 19.11.

"Base Date" means December 31, 1995.

"BTU" means British Thermal Unit.

"Banking Day" means any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in New York, New York, in the New York time zone.

"Billing Month" means each calendar month in each Year, except that (a) the first Billing Month shall begin on the first to occur of (i) the Acceptance Date, (ii) the commencement of the Extension Period and (iii) the date on which the Service Fee shall become payable by the Government pursuant to Section 7.12(f)(ii) or Section 7.18, and (b) the last Billing Month shall end concurrently with the end of the term of this Agreement.

"Billing Year" means for each Billing Year other than the first and the last, the twelve (12) calendar month period commencing on the first Day of October following the Acceptance Date and ending on the last Day of September in the following calendar year, and each twelve (12) calendar month period thereafter. The first Billing Year shall commence on the Acceptance Date and shall end on the last Day of the first September thereafter. The last Billing Year shall end concurrently with the end of the term of this Agreement and shall commence on the immediately preceding October first.

"Bond Loan Agreement" means the loan, lease or installment sale agreement to be entered into between the Company and the issuer of any series of Bonds pursuant to which the issuer of any series of Bonds will loan the proceeds of the Bonds to the Company for the purpose

of constructing the Facility, or Changes, as the case may be, and paying certain financing and development costs in connection with any of the foregoing.

"Bond Proceeds Requisition" means a certificate of the Company directing the Trustee to disburse Bond proceeds from the Construction Fund or the Construction Contingency Fund.

"Bonds" means (a) bonds, or other evidences of indebtedness, whether tax-exempt or taxable, issued by the GEDA or a third party selected by the Company to finance or refinance the Facility Price or Changes and (b) debt financing, if any, provided by the Company at the request of the Government pursuant to Section 7.10 or Section 12.03.

"Business Day" means a calendar day other than Christmas Day, New Year's Day or Liberation Day.

"Bypassed Waste Amount" means, for any Billing Year, the number of Tons equal to the difference between (i) the number of Tons of Acceptable Waste which would be Processed at Guaranteed Capacity during such Billing Year, and (ii) the sum of (A) the number of Tons of Acceptable Waste Processed by the Facility during such Billing Year, (B) the number of Tons of Acceptable Waste which could not be processed during such Billing Year due to Uncontrollable Circumstance or Government Fault (other than the failure of the Government to deliver the Delivered Tonnage) and (C) without duplication of amounts included in clause (B), the amount (expressed in Tons), if any, by which the Delivered Tonnage for such Billing Year exceeds the actual number of Tons of Acceptable Waste delivered or deemed delivered to the Facility by the Government during such Billing Year (including any credit for Acceptable Waste described in Section 8.10(b)(ii) but excluding amounts rejected by the Company pursuant to Section 8.10(b)(i).

"Capital Charge" means that component of the Service Fee which, for any Billing Month, is the sum of (i) Debt Service payable pursuant to the Financing Documents during such Billing Month on all Bonds, less any investment earnings earned and available pursuant to the Financing Documents to be applied to Debt Service; (ii) in respect of any letter of credit fees, fees for other credit enhancement or liquidity devices relating to the Bonds and fees for remarketing agents, trustees, fiscal agents, custodians, paying agents or other persons providing services with respect to Bonds, an amount equal to the product of (A) the difference between the amount held by the Trustee for the next required payment of such fee and the amount payable on such next payment date and (B) a fraction, the numerator of which is one and the denominator of which is the number of calendar months remaining until such fee payment date; (iii) the return on, and amortization of, any Equity; and (iv) any amounts due in respect of any interest rate swaps, collars, ceiling, hedges or other similar agreements entered into by the Company at the direction or with the consent of the Government, less any amounts paid by the counterpart to the Company thereunder.

"Capital Index" has the meaning assigned thereto in Section 6.02.

"Change" means (i) a change in the Facility specifications from those set forth in the Facility Project Manual, or (ii) a repair, reconstruction or alteration of the Facility or the operation thereof pursuant to Section 5.07, ARTICLE VII or ARTICLE XII.

"Chemicals Index" means the Producer Price Index for Chemicals and Allied Products, Industrial Chemicals, commodity code/series WPU061, not seasonably adjusted, as it appears in the Periodical Producer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics.

"Chevron" means Chevron Energy Solutions Company or any Affiliate thereof.

"Claimant" has the meaning assigned thereto in Section 18.02(a).

"Company" means Guam Resource Recovery Partners and any permitted successors or assigns.

"Company Fault" means any material breach, failure, nonperformance or noncompliance by the Company or any Company Affiliate with the terms and provisions of this Agreement, or the negligent or wrongful act or omission of any agent, employee, contractor or subcontractor, at any tier, or independent contractor of the Company or any Company Affiliate, other than any breach, failure, nonperformance or noncompliance caused by an Uncontrollable Circumstance or Government Fault.

"Company Indemnified Parties" has the meaning assigned thereto in Section 13.02.

"Conditions Precedent" means the conditions described in ARTICLE IV.

"Confidential Information" means all proprietary data and information, including patented and unpatented inventions, trade secrets, know-how, techniques, data, specifications, as-built drawings, blueprints, flow sheets, designs, engineering information, cost and productivity information, construction information, operation criteria and Operation and Maintenance Manuals, disclosed pursuant to this Agreement by or on behalf of the Company, the Contractor, the Operator or any of their respective Affiliates, which are so marked and designated by the Company, the Operator or the Contractor, as the case may be; provided, however, that this term shall not include any information which is or becomes part of the public domain other than through disclosure by the Government or at the direction of the Government or any Government Affiliate. This Agreement does not constitute Confidential Information.

"Construction Contingency Fund" has the meaning assigned thereto in Section 7.10.

"Construction Contract" means the contract between the Company and the Contractor providing for the construction of the Facility as contemplated in this Agreement.

"Construction Cost" means the total cost of all labor, materials, equipment, supervision, water, power, building permits as listed in the Construction Contract (but not any of the Permits listed in Section 2 of Schedule 2), overhead and profit for the construction, Acceptance Testing and completion of the Facility in accordance with this Agreement, excluding sales, use, gross receipt or other taxes of a similar kind or nature, which total cost is equal to (i) Fifty-one million six hundred nineteen thousand ninety-one dollars ($51,619,091.00) (as of the Base Date), calculated as set forth in Schedule 9 and 10, subject to adjustment as set forth in Section 5.05(b), Section 6.02, Section 7.06, Section 7.07 and Section 7.08; or (ii) cost plus plus fifteen percent (15%) The term Construction Cost does not include the Development Fee, the Phase I Development Costs, the Phase II Development Costs, Financing Costs or any costs or expenses related to Permits other than building permits listed in the Construction Contract, including all Permits listed in Section 1 of Schedule 2.

"Construction Cost Drawdown Schedule" means the drawdown schedule set forth in Schedule 15.

"Construction Fund" means an account established under the Indenture for the deposit and disbursement of Bond proceeds for the construction and financing of the Facility, including Changes thereto.

"Consulting Engineer" means an engineer, or engineering firm employing engineers, selected by and representing the Government in connection with the performance of this Agreement, who shall devote full-time to the construction of the Facility, or in the case of an engineering firm, which shall assign the equivalent of a full-time engineer to the project.

"Contract Date" means the later of (a) the date on which this Agreement is executed by the Company and the Governor of Guam and satisfaction of Section 19.20, and (b) the Reorganization Effective Date.

"Contractor" means Wheelabrator, or any Permitted Successor Contractor for the Facility.

"Cost Substantiation" means the process of certifying and verifying a Direct Cost or a Pass Through Cost by one Party to the other Party. The Party substantiating any Direct Cost shall present the other a certificate signed by that Party's Authorized Representative which includes the following:

(a) The nature of the Direct Cost or Pass Through Cost;

(b) The amount of the Direct Cost or Pass Through Cost and, if presented as an aggregate amount, the amounts of each component or category resulting in the aggregate Direct Cost or Pass Through Cost;

(c) The event and section of this Agreement giving rise to such Party's right to be repaid its Direct Cost or Pass Through Cost;

(d) In the case of Pass Through Costs, a statement that the expenditure was incurred in accordance with the procurement standards set forth in this Agreement;

(e) A statement that the price paid for a Direct Cost or a Pass Through Cost was its Fair Market Value, which statement shall be supported by an explanation of the basis of that conclusion; and

(f) Copies of all invoices, receipts, bid documents, correspondence and other documentation required by GAAP to verify the amount and basis for the Direct Cost or Pass Through Cost.

"CPM Schedule" has the meaning assigned thereto in Section 5.01(b), which schedule shall be subject to adjustment as provided herein.

"Credit Enhancer" means any financial institution(s) providing credit or liquidity enhancement for the Bonds or any reserve created for the benefit thereof under the Financing Documents, including the issuer of any guaranteed investment contract issued for such purpose."Day" means any calendar day in the time zone for Guam.

"Debt Service" means, for any period, principal (including any sinking fund payment) and interest payments due on the Bonds and any Additional Bonds (prorated for such period if applicable), including any accruals in respect thereof required to be made under the Indenture.

"Default Rate" means a rate per annum equal to such rate and applied for such period as would be permitted to be paid by the Government under the Prompt Payment Act, whether or not such Default Rate is applied to or payable by the Government or the Company.

"Defeasance Cost" means, as of any calculation date, an amount sufficient to defease and discharge all outstanding Bonds in accordance with their terms, together with all related costs of defeasance and repayment, after giving effect to the release of any reserve funds or insurance proceeds which are made available for such purpose under the Indenture in connection with such defeasance, plus an amount equal to all outstanding Equity and all return thereon provided for under this Agreement accrued but unpaid as of such calculation date.

"Demand" has the meaning assigned thereto in **Error! Reference source not found.**.

"Development Fee" means the sum of One million dollars ($1,000,000.00), escalated from December 31, 1995 in accordance with the Guam Escalation Adjustment, which shall be paid to the Company for developing the Facility.

"Direct Costs" means, with regard to the performance of an obligation required by this Agreement, the sum of:

(a) the aggregate costs of each employee of the Company, the Contractor or the Operator, as the case may be, which for each such employee shall be equal to the product of (i) the number of hours of work by such employee directly related to the performance of any obligation pursuant to the terms of this Agreement (or the Construction Contract or the Operation and Maintenance Agreement, if applicable), and (ii) the hourly billing rate for such employee (consisting of the cost of such employee's compensation); plus

(b) the aggregate cost of general and administrative overhead, including provision for vacation, sick leave, holidays, retirement, unemployment tax and all medical and health insurance benefits, calculated by multiplying clause (a) of this definition by one (1.0); plus

(c) the agreed to payment of costs to subcontractors necessary to and in connection with the performance of such obligation; plus

(d) the cost of materials (including materials manufactured or supplied by the Company, the Operator, or the Contractor), direct rental cost and supplies purchased by the Company, the Operator or the Contractor in connection with the performance of such obligation charged at actual invoiced cost; provided, however, that with respect to materials manufactured or supplied by the Company, the Operator, the Contractor or their Affiliates, the actual invoiced cost of such materials shall not include a profit element other than as set forth in clause (h) of this definition; plus

(e) the reasonable travel, subsistence and similar costs of the Company, the Operator or the Contractor incurred in connection with the performance of such obligation; plus

(f) the cost of any insurance required in connection with the performance of such obligation which is in addition to that required by ARTICLE XVI of this Agreement and the cost of any required payment or performance bonds in excess of those provided for in the Construction Contract; plus

(g) to the extent not otherwise included as a Pass Through Cost, sales, use or similar taxes on gross receipts; plus

(h) profit, unless such profit is specifically excluded in this Agreement, in an amount equal to the sum of (i) the product of (A) either (1) five percent (5%) in the case of Uncontrollable Circumstances (including Uncontrollable Circumstances Changes), (2) ten percent (10%) in the case of the design or construction of the MRF as provided in Section 5.08, or (3) ten percent (10%) in the case of Government Changes and in all other cases, times (B) the amount set forth in clause (a) of this definition, and (ii) the product of (A) either (1) zero percent (0%) in the case of Uncontrollable Circumstances Changes, (B) five percent (5%) in the case of the design of the MRF as provided in Section 5.08, or (3) five percent (5%) in the case of Government Changes and in all other cases, times (B) the sum of (1) the amounts set forth in clauses (b) and (c) of this definition, and (2) in the case of the Contractor or the Operator, the amounts set forth in clause (d) of this definition, to the extent incurred by, and subject to payment by the Company to, the Contractor or the Operator.

The use of the term "Direct Costs" shall in each case be deemed to mean the Direct Costs as adjusted, if at all, after Cost Substantiation. Direct Costs shall not exceed the Fair Market Value of the goods or services for which they are incurred. The rates set forth in clauses (b) and (h) of this definition shall not be subject to change through Dispute Resolution.

"Dispute Resolution" means the procedure for resolving disputes set forth in ARTICLE XVIII.

"Energy Efficiency Guarantee" means, with respect to any Billing Year, the aggregate kilowatt hours of net salable electric energy guaranteed to be generated by the Facility pursuant to Section 9.02(a) during such Billing Year.

"Energy Products" means any energy products produced by the Facility, including electrical energy and capacity.

"Energy Revenues" means any revenues derived by the Government or any Government Affiliate from the sale of Energy Products.

"Environmental Guarantee" means the Company's obligation to operate and maintain the Facility in compliance with all applicable Governmental Rules and Permits relating to environmental matters pursuant to Section 9.03.

"Environmental Reports" has the meaning assigned thereto in Section 5.07(a)(ii).

"Equity" has the meaning assigned thereto in Section 6.04(f).

"Estimated Variable Component of the Service Fee" means, as of any calculation date, the estimated Pass Through Costs per Ton of Acceptable Waste to be Processed during any Billing Month.

"Event of Default" means any event described in ARTICLE XIV which gives rise to the remedies set forth in Section 15.02 or Section 15.03.

"Excess Tonnage" means the number of Tons of Acceptable Waste Processed by the Facility in a Billing Year which are in excess of the number of Tons which would be Processed during the Billing Year at Guaranteed Capacity.

"Expansion Facilities" has the meaning assigned thereto in Section 7.11(b)(i).

"Expansion Facilities Specifications" has the meaning assigned thereto in Section 7.11(b)(i).

"Extension Period" means the thirty (30) month period commenced by election of the Company pursuant to Section 7.15 or Section 7.16 (as such period may be extended pursuant to Section 7.06, Section 7.07, Section 7.08, Section 7.12 or Section 11.01(b)(vi)), or any lesser period during which Acceptance does not occur as described in Section 7.15 and Section 7.16.

"Extension Period Year" means (a) the period commencing on the date of commencement of the Extension Period and ending on the earlier of (i) the Acceptance Date and (ii) the last Day of September in the following calendar year, and (b) each twelve (12) calendar month period thereafter, subject to the earlier occurrence of the Acceptance Date or the expiration of the Extension Period.

"Facility" means the waste reduction, resource recovery and electrical generation facility described in the Facility Project Manual, together with appurtenant structures, equipment, and machinery located at the Facility Site, and the Transmission Line to be constructed pursuant to this Agreement, subject to any Changes made in accordance with this Agreement.

"Facility Price" has the meaning assigned thereto in Section 6.01.

"Facility Project Manual" means the description of the Facility set forth in Schedule 1.

"Facility Site" means the real property, easements and rights of way described on Schedule 18.

"Facility Termination Value" means, as of any determination date, the value that would be obtained for the Facility, including all rights of the Company to the Facility Site, in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under: no compulsion to sell, based upon the highest and best use of the Facility utilizing generally recognized professional criteria for appraisal of industrial property and real estate; provided, however, that in determining such value the appraiser shall not assume that the Government is under any obligation to deliver Acceptable Waste to the Facility except to the extent any such obligation exists under then Applicable Law. If the Company and the Government cannot agree on such Facility Termination Value within thirty (30) Days after delivery of the Government's notice giving rise to the obligation to pay such amount, as herein provided, such value shall be mutually determined in an appraisal prepared and delivered by two disinterested licensed industrial property appraisers each of whom shall be a MAI, one of whom shall be appointed by the Government and the other by the Company, each of which appointments shall be made within forty-five (45) Days of delivery of such notice. Within thirty (30) Days of the appointment of the second appraiser, such appraisers shall either (i) submit their mutually determined appraisal to the Government and the Company, which shall be final and binding, or (ii) if such appraisers are unable mutually to agree upon such an appraisal, appoint a third disinterested licensed industrial property appraiser, who shall submit a final written appraisal of the Facility, including the Company's interest in the Facility Site, according to the criteria set forth above, within thirty (30) Days following the appointment thereof. If either Party fails to appoint an appraiser, as provided above, the appraisal of the sole remaining appraiser shall be final and binding. If the two appraisers appointed by the Parties fail to agree upon the appointment of a third appraiser within the period provided above, and the Government and the

Company are unable to agree upon a third appraiser within fifteen (15) Days following the deadline for appointment of such appraiser, such third appraiser shall be appointed upon application to the AAA by either Party.

"Fair Market Value" means value for a good or service on the island of Guam determined on the basis of the value which would obtain in an arm's-length transaction between an informed and willing buyer of the good or service and an informed and willing seller of the good or service under no compulsion to sell; provided, however, that for purposes of this definition the Fair Market Value of a good or service which is not readily available on the island of Guam as and when required, and is obtained or provided at a place other than the island of Guam, should be the Fair Market Value at such place plus the cost of transport to the island of Guam, together with any related insurance costs, taxes and duties.

"FERC" means the Federal Energy Regulatory Commission.

"Financing Costs" means the total of (i) bond interest (including net payments under interest rate swap, cap or collar agreements) through the date six (6) months after the Scheduled Acceptance Date, and return on Equity (if any), (ii) all expenses of issuing the Bonds, including costs of underwriting, printing, accounting, consulting engineering, attorneys services and other costs of issuance, (iii) all fees and costs charged by Credit Enhancers or rating agencies, and (iv) any bond reserve fund deposit.

"Financing Date" means the date on which settlement and delivery is made after the sale or placement of the initial series of Bonds.

"Financing Documents" means any agreement or obligation entered into by the Parties or their Affiliates specifically relating to the financing of the Facility with respect to the issuance of the Bonds or security features thereof, including the Indenture, bond purchase agreement, Bond

Loan Agreement, any interest rate swap, collar, ceiling, hedge or similar agreement, any security agreements, leasehold mortgage, any credit enhancement reimbursement agreements, or guaranteed investment contracts, but not including this Agreement or any Related Document.

"Full Acceptance Standard" means the standard of operation of the Facility which is in compliance with the Guaranteed Capacity, as set forth in Section 9.01 and Schedule 3, and the Environmental Guarantee, as set forth in Section 9.03, and all other Performance Guarantees, as set forth in Section 9.02, Section 9.04, Section 9.05 and Section 9.06 and Schedule 3, as demonstrated by Acceptance Testing in accordance with Section 7.12 and Schedule 8.

"GAAP" means generally accepted accounting principles and practices as in effect in the United States of America from time to time consistently applied.

"GEDA" means the Guam Economic Development Authority or any legal successor thereto.

"General Manager of GSWA" means the General Manager of the Guam Solid Waste Authority.

"Good Engineering and Operating Practice" or "Good Engineering Practice" means the practices, methods and standards generally accepted by the municipal solid waste and electric utility industry for similarly situated U.S. facilities that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Law, reliability, safety, environmental protection, economy and expedition. Good Engineering and Operating Practice includes, taking reasonable actions to ensure that:

(a) adequate materials, resources and supplies including fuel (other than Acceptable Waste, water, sewage service and power which are the responsibility of the Government) are available to meet the Facility's needs under normal conditions;

(b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;

(c) preventive, routine and non-routine maintenance and repairs are performed on a basis designed to achieve reliable long-term, safe operation performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;

(d) appropriate monitoring and testing is done to determine whether equipment is functioning as designed and that equipment will function properly under both normal and emergency conditions; and

(e) "equipment is operated safely with respect to workers, the general public and the environment and within specified design limitations, including design limitations as to steam pressure, steam temperature, steam moisture content, steam and boiler water chemical content, quality of make-up water, operating voltage, current, frequency, rotational speed, polarity, synchronization and control system.

It is recognized that Good Engineering and Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost, consistent with reliability, safety and expedition.

"Government" means the Government of Guam as described at 48 USC §1421(a), or, in the event that the Territory of Guam ceases to be a territory of the United States of America, the Governmental Authority succeeding the Government of Guam having comparable legislative and revenue raising powers.

"Government Change" means a Change requested by the Government which is not required as a result of any Uncontrollable Circumstance.

"Government Claims Act" means the Guam Government Claims Act, 7 GCA § 6500, et seq., as in effect as of the Contract Date.

"Government Fault" means any material breach, failure, nonperformance or noncompliance by the Government with the terms and provisions of this Agreement or the negligent or wrongful act or omission of the Government or any Government Affiliate of any agent, official, commissioner, employee, contractor, subcontractor at any tier or independent contractor of the Government or any Government Affiliate other than any breach, failure, nonperformance or noncompliance caused by an Uncontrollable Circumstance or Company Fault. The term "Government Fault" shall also include the enactment or promulgation by the Government (including the Legislature or any agency of the executive branch of the Government but excluding the judicial branch thereof) of any Applicable Law, or any modification of or change in interpretation of any existing Governmental Rule, which prevents, delays or renders more costly the performance of this Agreement by the Government or which adversely affects the Facility, the Company, the Contractor or the Operator and in each case which is not of general application to and effect upon other Persons in Guam.

"Government Indemnified Parties" has the meaning assigned thereto in Section 13.01.

"Governmental Authority" means any domestic national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Governmental Rule" means any constitution, law, rule, regulation, ordinance, order, code interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority in effect at the Contract Date and not subject to good faith contest or legal challenge.

"GPA" means the Guam Power Authority or any legal successor thereto.

"Guam Escalation Adjustment" means with respect to any cost, adjustment of such cost from the applicable base date to the applicable adjustment date in accordance with the following formula:

$$AC = BDC \times \frac{(100 + (ADGI - BDGI))}{100}$$

where

AC = the cost of such cost component, adjusted as of the applicable adjustment date, in accordance with the Guam Escalation Adjustment.

BDC = the base date cost of the applicable cost component, prior to adjustment.

ADGI = the Extrapolated Guam CPI (as defined below) as of the applicable adjustment date.

BDGI = the Guam CPI, as published for the most recent date prior to the base date.

Guam CPI = Consumer Price Index for Guam, as published by the Government.

Extrapolated Guam CPI = the most recent Guam CPI, adjusted for the period from the most recent year for which the Guam CPI is published to the applicable adjustment date at an annual rate equal to the annual rate of increase or decrease of the Guam CPI during the most recent three (3) years for which such data are available.

"Guaranteed Availability" means the availability of the Facility to Process Acceptable Waste for at least seven thousand four hundred forty-six (7,446) hours per Billing Year beginning with the second full (i.e. twelve (12) month) Billing Year or such lesser number of hours as may result from a reduction in availability of the Facility due to an Uncontrollable Circumstance or Government Fault; provided, however, that for a Billing Year of less than fifty-two (52) weeks beginning after the second full Billing Year, the number of hours shall be proportionately reduced to reflect the number of weeks in such Billing Year. For purposes of this definition, the Facility shall be deemed available to Process Acceptable Waste whenever it is capable of generating steam from the Processing of Acceptable Waste at or above fifty percent (50%) of its normal operating range (without regard to the actual availability of such Acceptable Waste).

"Guaranteed Capacity" means the capacity of the Facility to Process Acceptable Waste at a rate of ninety-three thousand seventy-five (93,075) Tons in any Billing Year (subject to adjustment (x) as set forth in Section 7.12(b) and Section 9.08(a) and Schedule 8 to account for deviations of the Acceptable Waste from the Acceptable Waste Range or (y) in connection with an adjustment to the Performance Guarantees as herein provided) or such lesser amount as may result from (i) a reduction in Processing capacity due to an Uncontrollable Circumstance or Government Fault, or (ii) an Uncontrollable Circumstance or Government Fault which prevents delivery of Acceptable Waste to the Facility, or (iii) Acceptance of the Facility at a capacity of less than ninety-three thousand seventy-five (93,075) Tons of Acceptable Waste (adjusted as set forth in Section 7.12(b) and Section 9.08(a) and Schedule 8 to account for deviations of the Acceptable Waste from the Acceptable Waste Range) per Year as provided for in Section 7.14 or Section 7.15; provided, however, that for a Billing Year of less than fifty-two (52) weeks, the

number of such Tons of Acceptable Waste shall be proportionately reduced to reflect the number of weeks in said Year.

"Delivered Tonnage" means the number of Tons of Acceptable Waste (adjusted as set forth in Section 7.07, Section 7.08, Section 7.12(b), Section 7.14(d), Section 9.08(a), Section 12.01 and Schedule 8 to account for deviations of the Acceptable Waste from the Acceptable Waste Range) that the Government shall make best efforts to deliver by or on behalf of the Government to the Facility in any Billing Month, which shall be the Acceptable Waste up to the Guaranteed Capacity (except if there is (i) reduction of the Guaranteed Capacity due to Uncontrollable Circumstances or Company Fault, (ii) an Uncontrollable Circumstance or Company Fault which prevents delivery of Acceptable Waste, (iii) Acceptance of the Facility at less than the Guaranteed Capacity pursuant to Section 7.14 or Section 7.15, or (iv) scheduled or unscheduled maintenance at the Facility).

"Guarantor" means Wheelabrator Technologies Inc. or any Permitted Successor Guarantor of the Company's obligations under this Agreement.

"Guaranty" means a Guaranty, in the form of Exhibit A executed by Guarantor in favor of the Government and delivered no later than the Financing Date.

"Guatali Landfill" means Lot 439-1-R1, Parcel B, Municipality of Santa Rita, Latitude 13.28N, Longitude 144.47E. The 29th Guam Legislature via P.L. 29-116, §5(b) authorizes and permits said lot be utilized as a municple solid waste landfill.

"Hazardous Waste" means any material or substance which, by reason of its composition or characteristics, (i) 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, (ii) is a Hazardous Substance as defined by the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, 42 USC S 9601, et seq., (iii) is material the disposal of which is regulated by the Toxic Substances Control Act, 15 USC S 2601, et seq., as amended, replaced or superseded, and the regulations implementing same, (iv) is special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, (v) is pathological, infectious or biological waste, (vi) is treated as hazardous waste or as a hazardous substance under Applicable Law, or (vii) requires a hazardous waste or similar Permit for its storage, treatment, incineration or disposal. If any Governmental Authority having appropriate jurisdiction shall determine that substances or materials are hazardous or harmful to health when processed at the Facility, then any such substances or materials shall be Hazardous Waste for purposes of this Agreement. If any Governmental Authority having jurisdiction shall determine that any substance or material which is not, as of the date of this Agreement, within the foregoing definition shall thereafter come within the scope of such definition, such substance or material shall thereafter be deemed Hazardous Waste.

"Higher Heating Value" or "HHV" means the BTU content or specific Higher Heating Value of Acceptable Waste as determined by using the combustion system of the Facility as a calorimeter in accordance with Schedule 5.

"Indemnified Party" means a Government Indemnified Party or a Company Indemnified Party, as the case may be.

"Indenture" means, collectively, the documents pursuant to which the Bonds are issued.

"Independent Engineer" means the Person selected as the Independent Engineer pursuant to Section 8.03 for purposes of Dispute Resolution.

"Initial Operation and Maintenance Charge" means the amount of Three million four hundred one thousand two hundred eighty dollars ($3,401,280.00) as of the Base Date,

calculated as set forth in Schedule 13, subject to escalation from the Base Date in accordance with Section 10.02.

"KWH" means kilowatt hours of electricity.

"Labor Index" has the meaning assigned thereto in Section 6.02.

"Landfill" means such landfill as may be reasonably designated by the Government from time to time for the disposal of Residue, Acceptable Waste not Processed, and Unacceptable Waste other than Hazardous Waste, in each case in accordance with Applicable Law and Permits.

"Landfill Charge" means, for any Year, for each Ton of the Bypassed Waste Amount delivered to a Landfill, the sum of (i) Seven and 50/100 Dollars ($7.50) per Ton, and (ii) the actual cost of the Government or any Government Affiliate charged with operating such Landfill in disposing thereof (such costs to be computed, on a per Ton basis, based upon the actual expenses incurred by the Government or such Affiliate in constructing such Landfill, with reference to the estimated capacity of such Landfill, plus the actual operating expenses of such Landfill, with reference to the total tonnage disposed of at such Landfill during the applicable Year), as determined by a nationally recognized firm of independent certified public accountants selected by the Government and not unacceptable to the Contractor.

"Layon Landfill" means the landfill owned and operated by the Government located at DanDan, Guam.

"Layon Landfill Construction Cost" means final construction and related costs for the construction of the Layon Landfill as reported by the Receiver to the District Court."Layon Landfill Land Acquisition Cost" means the cost to the Government for the acqusition of the land for the Layon Landfill as determined by the Superior Court of Guam in the Judgment entered in

that civil case entitled Government of Guam vs. 1,348,474 Sq. Meters, More or Less, Situated in the Municipality of Inarajan, Guam, et al, Superior Court of Guam Civil Case No. CV 0084-08.

"Legislature" means the Legislature of Guam.

"Legislative Approval" means approval by the Legislature in accordance with Applicable Law.

"License Defeasance Cost" means, as of any calculation date (a) if such calculation date is prior to the Acceptance Date, the product of Three hundred thousand dollars ($300,000) times the number of years (including any partial year) prior to the year 2013, or (b) if such calculation date is on or after the Acceptance Date, the Fair Facility Value less the Defeasance Cost. For purposes of the foregoing definition, "Fair Facility Value" means the value that would be obtained for the Facility, including all rights of the Company to the Facility Site on a debt-free basis, in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell, based upon the highest and best use of the Facility utilizing generally recognized professional criteria for the appraisal of industrial property or real estate. Such appraisal shall take account of the remaining useful life of the Facility, its demonstrated performance, historical cash flows (including amounts required to be paid by the Government hereunder, and any other operating revenues, and the operating expenses of the Facility), and assume the continued accessability of an annual quantity of Acceptable Waste equal to the quantity of Acceptable Waste delivered to the Facility during the immediately preceding two Billing Years, but in no event less than the Delivered Tonnage. If the Company and the Government cannot agree on such Fair Facility Value within thirty (30) Days following delivery of the notice giving rise to a determination of License Defeasance Cost, then such value shall be mutually determined in an appraisal prepared and delivered by two

disinterested licensed industrial property MAI appraisers, one of whom shall be appointed by the Government and the other by the Company, each of which appointments shall be made within forty-five (45) Days of delivery of such notice, within thirty (30) Days of the appointment of the second appraiser, such appraisers shall either (i) submit their mutually determined appraisal to the Government and the Company, which appraisal shall be final and binding, or (ii) if such appraisers are unable to mutually agree upon such an appraisal, appoint a third disinterested licensed industrial property MAI appraiser, who shall submit a final written appraisal of the Facility, including the Company's interest in the Facility Site, according to the criteria set forth above, within thirty (30) Days following the appointment thereof. If either Party fails to appoint an appraiser, as provided above, the appraisal of the sole remaining appraiser shall be final and binding. If the two appraisers appointed by the Parties fail to agree upon the appointment of a third appraiser within the period provided above, and the Government and the Company are unable to agree upon a third appraiser within fifteen (15) Days following the deadline for appointment of such appraiser, such third appraiser shall be appointed upon application to the AAA by either Party.

"Lime Consumption Guarantee" means the Company's obligation with respect to the use of chemical reagent in accordance with Section 9.04 and Schedule 3.

"MAI" means a Member of the Appraisal Institute.

"Maximum utility Utilization Guarantee" means the maximum amounts of electricity, municipal water and fuel oil which the Facility may utilize pursuant to Section 9.06 and Schedule 3.

"MRF" means a materials recovery facility.

"Notice to Proceed Date" means the Day next succeeding the Day on which the last of the following events shall have occurred (i) the Financing Date, (ii) each Permit listed in Section 1 of Schedule 2 has been obtained and is in effect, (iii) each of the Conditions Precedent to the obligations of the Company has been satisfied or waived in accordance with Article IV, and (iv) each of the Conditions Precedent to the Government's obligations has been satisfied or waived in accordance with Article IV.

"Operating Parameters" means the measured characteristics of daily Facility operation that the Company is obligated to monitor and record pursuant to Section 8.18.

"Operation and Maintenance Agreement" means the contract between the Company and the Operator providing for the operation of the Facility as contemplated by this Agreement.

"Operation and Maintenance Charge" means the component of the Service Fee calculated in accordance with Section 10.02 and subject to adjustment as provided herein.

"Operation and Maintenance Manuals" means drawings, diagrams, schematics, instructions, part lists, schedules, procedures and other literature provided by the Contractor, the Operator, equipment suppliers or subcontractors or developed by the Company for the purpose of providing guidance in operating, maintaining and repairing all mechanical, electrical and control instrumentation systems installed in the Facility.

"Option Exercise Date" means the date of the Government's exercise of the option set forth in Section 5.09(a); provided, however, that the Option Exercise Date may only occur on any date on or after the Acceptance Date.

"Operator" means Wheelabrator, and any Permitted Successor Operator of the Facility.

"Parties" means the Government and the Company.

"Partner" means Guam Power, Inc., a Guam corporation whose address is 479 West O'Brien Drive, Suite 200, Agana, Guam 96910, and, as of the Contract Date, Wheelabrator Guam Inc., a Delaware corporation whose mailing address as of the Contract Date is Liberty Lane, Hampton, NH 03842; and any other present or future permitted general partner of the Company, and their permitted successors and assigns.

"Pass Through Costs" means the component of the Service Fee which, for any period, is the sum of all costs and expenses incurred by the Company during such period which are reimbursable by the Government as set forth in Schedule 14, subject to adjustment as provided herein. The use of the term "Pass Through Costs" shall in each case be deemed to mean the Pass Through Cost, as so adjusted after Cost Substantiation.

"Performance Guarantees" means all of the guarantees by the Company of the Facility's performance as set forth in ARTICLE IX or in Schedule 3, in each case subject to adjustment was provided in Section 5.08(d), Section 7.07, Section 7.08, Section 7.12(b), Section 7.14, Section 7.17, Section 8.15, Section 9.07, Section 9.08(a), and Section 12.01.

"Performance Test" has the meaning assigned thereto in Section 9.08.

"Permits" means all the actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, certificates, authorizations, rights, licenses or other similar matters of or from a Governmental Authority which are required to perform either Party's obligations under this Agreement, including those permits set forth in Schedule 2.

"Permitted Successor Contractor" means any successor to the Company's obligations as Contractor under this Agreement approved by the Government, which approval shall not be unreasonably withheld; provided, however that the Government shall not withhold its approval of any such successor proposed by the Company which (i) executes an agreement in favor of the

Government, unconditionally assuming all the obligations of the Company as Contractor hereunder, (ii) provides such evidence as may be reasonably requested by the Government or the Credit Enhancer to establish the enforceability and binding effect of this Agreement against such Permitted Successor Contractor, and (iii) has designed and constructed facilities of similar complexity and value to the Facility within the three (3) years preceding the Notice to Proceed Date (or if the Notice to Proceed Date has not yet occurred, the date of such assumption of obligations) and such facilities have been in successful operation for a period of no less than eighteen (18) months.

"Permitted Successor Guarantor" means any successor guarantor of the Company's obligations as Contractor under this Agreement approved by the Government, which approval shall not be unreasonably withheld; provided, however, that the Government shall not withhold its approval of any such successor proposed by the Company which (i) executes a Guaranty in favor of the Government in the form of Exhibit A, (ii) provides such evidence as may be reasonably requested by the Government or the Credit Enhancer to establish the enforceability and binding effect of the Guaranty as against such Permitted Successor Guarantor, (iii) possesses a credit standing (determined by reference to the long term credit ratings or such other means as may be mutually agreed upon by the Contractor and the Government) at least as high as that of the then existing Guarantor, and (iv) is acceptable to the Credit Enhancer without the incurrence of any additional charge or fee payable by the Government or any Affiliate thereof.

"Permitted Successor Operator" means any successor to the Company's obligations as Operator under this Agreement approved by the Government, which approval shall not be unreasonably withheld; provided, however that the Government shall not withhold its approval of any such successor proposed by the Company which (i) executes an agreement in favor of the

Government, unconditionally assuming all the obligations of the Company as Operator hereunder, (ii) provides such evidence as may be reasonably requested by the Government or the Credit Enhancer to establish the enforceability and binding effect of this Agreement against such Permitted Successor Operator, and (iii) is operating facilities of similar complexity to the Facility and has successfully operated such waste processing facilities for a minimum of three (3) years prior to the later of the Notice to Proceed Date and the assumption of such obligations.

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization, commission or government or any agency or political subdivision thereof.

"Phase I Development Costs" means One million five hundred thousand dollars ($1,500,000), in respect of development services by the Company before January 1, 1993, escalated from December 31, 1995 in accordance with the Guam Escalation Adjustment. Phase I Development Costs shall not be subject to Cost Substantiation.

"Phase II Development Costs" means One million three hundred thousand dollars ($1,300,000), which shall be paid to the Company in respect of costs and expenses of the Company for the period from and after January 1, 1993, escalated from December 31, 1995 in accordance with the Guam Escalation Adjustment, in connection with the development of the Facility; provided, however, that the Phase II Development Costs shall be subject to adjustment (i) if, within ninety (90) days following the Contract Date, the Government has not delivered to the Company either evidence of Legislative Approval or an unqualified opinion of nationally recognized bond counsel for the Government to the effect that no Legislative Approval is required for the execution, delivery and performance by the Government of its obligations hereunder, or (ii) as provided in Section 7.06, Section 7.07, and Section 7.08. Phase II

Development Costs shall not be subject to Cost Substantiation and, unless otherwise agreed by the parties, shall not be subject to increase or reduction based upon actual costs incurred by the Company.

"Power Purchase Agreement" means a contract to be entered into between the Government and the GPA no later than one hundred twenty (120) Days following the Contract Date, in a form reasonably satisfactory to the Company, providing for the sale by the Government of electricity produced by the Facility to the GPA, as the same may, from time to time, be amended, modified or supplemented in accordance with its terms; provided, however, that no such amendment, modification or supplement which could adversely affect the obligations of the Company or its costs of performance hereunder shall be given effect unless the Company shall have given its prior written approval thereto.

"Prime Rate" means a rate per annum equal to the rate of interest most recently publicly announced by the Bank of Guam as its "prime rate" for domestic commercial loans (as the same may be changed from time to time) .

"Process," "Processed" or "Processing" means the combustion and reduction of Acceptable Waste to Energy Products, Residue and other combustion by-products.

"Production Affiliate" has the meaning assigned thereto in Section 7.11(c)(ii).

"Prompt Payment Act" means the Guam Prompt Payment Act, 5 GCA § 22502, et seq. as in effect as of the Contract Date.

"Pro Rata Percentage" means a percentage obtained by dividing the number of Tons of Acceptable Waste per year which the Facility is able to Process as demonstrated by the last Performance Test, or if no Performance Test has been conducted, the latest Acceptance Test; by

the number of Tons of Acceptable Waste per year which would be Processed at the Facility at Guaranteed Capacity.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"Receiving Time" means the hours during which the Facility is required to receive Acceptable Waste as specified in Section 8.05(a).

"Recycling" or "Recycle" means the reuse or sale of any component of Acceptable Waste, and the process of separating the same into its component parts for the purpose of reuse, sale or composting.

"Reference Waste" means Acceptable Waste having a Higher Heating Value of four thousand nine hundred (4,900) BTUs per pound as well as other characteristics described in Schedule 17 of this Agreement.

"Related Documents" means the document providing for the acquisition of the Facility Site, the Power Purchase Agreement, and the Guaranty.

"Related Proceeding" has the meaning assigned thereto in **Error! Reference source not found.**.

"Reorganization" has the meaning assigned thereto in Section 3.02(g).

"Reorganization Effective Date" means the date upon which the Company notifies the Government that the Reorganization has been completed.

"Residue" means that material remaining after the Processing of Acceptable Waste.

"Residue Guarantee" means the Company's obligations with respect to Residue composition set forth in Section 9.05 and Schedule 3.

"Respondent" has the meaning assigned thereto in Section 18.02(a).

"Scheduled Acceptance Date" means 12:01 a.m. on the Day nine hundred (900) Days from the Notice to Proceed Date, unless extended as set forth in Section 5.05(b), Section 7.06, Section 7.07, Section 7.08, Section 7.12, Section 7.18, or Section 11.01(b)(vi).

"Service Fee" means the amount payable by the Government to the Company pursuant to Section 10.01.

"Site Control" means acquisition of the Facility Site in accordance with the Timetable.

"Soils Report" has the meaning assigned thereto in Section 5.07(a).

"Solid Waste" means Acceptable and Unacceptable Waste.

"Substantial Completion" means Facility is capable of being acceptance tested or Processing at least fifty percent (50%) of the Guaranteed Capacity.

"Supplemental Power Purchase Agreement" has the meaning assigned thereto in Section 7.11(c)(ii).

"Termination Date" means the twentieth (20th) anniversary of the Acceptance Date or such later date as the Parties may agree, unless reduced by the terms and conditions of this Agreement.

"Timetable" means the summary of the dates by which the Parties are scheduled to complete their various obligations under this Agreement set forth in Schedule 7, subject to adjustment as provided herein.

"Ton" means two thousand (2,000) pounds.

"Transmission Line" means that certain transmission line, including the interconnection facility, all poles, wires, cables, anchors, cross-arms and foundations, constructed by the Company to carry electrical power from the Facility to GPA's transmission system.

"Trustee" means the bond trustee or fiscal agent with respect to any Bonds.

"Unacceptable Waste" means Solid Waste which (i) by reason of its composition or other characteristics (A) may cause damage to or adversely affect the operation of the Facility, (B) is Hazardous Waste, or (C) is otherwise not eligible for disposal through the Facility as a result of any Applicable Law or (ii) consists of (1) castings, transmissions, rear ends, springs, fenders or other major parts of automobiles, motorcycles, other vehicles or marine vessels or bulky or rigid materials of more than four feet in two dimensions or two feet in three dimensions, (2) large quantities of plastics or heavy metals in excess of amounts normally occurring in residential or commercial waste, (3) lead batteries, (4) explosives or ordnance, (5) pathological, infectious or biological wastes, (6) sodium and potassium salts (other than amounts normally occurring in residential or commercial waste), (7) metals with low melting points, (8) combustible or hazardous chemicals or substances, (9) radioactive materials, (10) quantities of sulfur-containing materials in excess of amounts normally occurring in residential or commercial waste, such that the percent by weight would exceed that provided for in the Acceptable Waste Range pursuant to Schedule 17, (11) machinery (other than small household appliances), (12) liquid wastes, (13) gravel and dirt, (14) earthen materials, concrete or non-burnable construction materials or debris, (15) cleaning fluids, (16) crankcase oils or cutting oils, (17) paints, (18) adhesives, (19) corrosives, acids or poisons, and (20) large quantities of wire, cable and tires, (21) human and animal remains, sewage, manure or any other material requiring special handling prior to being Processed, or (22) any other materials, the acceptance or Processing of which, in the reasonable judgment of the Company or the Operator is likely to constitute a threat to health or safety.

"Uncontrollable Circumstance" means any act, event or condition (except as may be otherwise provided in this definition) that has a material adverse effect on the rights, the

obligations or the ability to perform of a Party under this Agreement, the Contractor, the Operator, or any of their respective subcontractors, or on the Facility or the Facility Site, if such act, event or condition is beyond the reasonable control of the Person relying thereon as justification for not performing an obligation or complying with any condition required of such Person under this Agreement or any agreement implementing the provisions of this Agreement and is not the result of such Person's fault, negligence, financial inability to perform, or breach of or default under this Agreement. The contesting in good faith by a Party of any event or condition constituting a change in any Government Rule or the failure to so contest shall not constitute or be construed as fault or negligent action or a lack of reasonable diligence of such Party. In addition, the foregoing provisions shall not be construed to require that a Party observe a higher standard of conduct than that required by Good Engineering and Operating Practice and the usual and customary standards of the industry, as a condition to claiming the existence of an Uncontrollable Circumstances. Such acts or events shall include, but not be limited to, the following:

(a) an act of God, such as a cyclone, earthquake, flood, landslide, lava flow, lightning, abnormal storm, typhoon, tsunami or other cataclysmic phenomenon of nature;

(b) fires and explosions;

(c) epidemics;

(d) an act of the public enemy, war, blockade, insurrection, riot, sabotage, general unrest, civil disorder or disturbance or similar occurrence;

(e) federal or Government pre-emption of materials in connection with a national emergency, or federal condemnation, other federal taking or restriction on operation of all or any material portion of the Facility, the Facility Site or any Landfill;

(f) power failure for a period of longer than forty-eight (48) hours or any water, sewer or other utility failure (regardless of its duration); provided, however, that any incremental fuel costs incurred in connection with any power failure for a period of less than forty-eight (48) hours shall qualify as a Pass-Through Cost and shall not be included in any calculation of the Maximum Utility Utilization Guarantee pursuant to Section 9.06;

(g) delays or failures of subcontractors or suppliers solely resulting from an event of Uncontrollable Circumstance under another clause of this definition if substitute supplies, equipment or services are not reasonably available;

(h) after November 1, 1995, (1) the final order, judgment or other official government action of any Governmental Authority unless such final order, judgment or other official government action would constitute Government Fault; (2) the suspension, termination, interruption, denial, failure to renew, or delay in approval of, any Permit; (3) the imposition of any legal requirement for issuance of any Permit other than those ones identified pursuant to Schedule 2; or (4) the adoption, modification of, or change in interpretation of any Governmental Rule, except to the extent any such adoption, modification or change in interpretation would constitute Government Fault; provided, however, that changes in applicable income tax laws or regulations or the interpretation or enforcement thereof shall not be an Uncontrollable Circumstance;

(i) any strike or walkout (1) for a duration of not more than three (3) months relating to the Facility only (including a union jurisdiction as bargaining unit limited to the employees of the Company, the Contractor, the Operator or another sub-contractor) or (2) called by a local or international union affecting an entire local or larger union

jurisdiction (not including a union jurisdiction limited to the employees of the Company, the Contractor, the Operator or other subcontractor), unless a court of competent jurisdiction has entered a final judgment that such action was principally caused by a refusal by the Person claiming the benefit of the Uncontrollable Circumstance to negotiate in good faith or was the result of a breach of a collective bargaining agreement by the Person claiming the benefit of the Uncontrollable Circumstance;

(j) any damage to or interruption of Facility operation due to the delivery by the Government of Unacceptable Waste unless such delivery constitutes Government Fault;

(k) any change by GPA in the location of the point of interconnection from that specified in the Facility design as of the Contract Date or in the interconnection standards set forth in Schedule 21 (which interconnection standards shall be specified by the Government, consistent with the Facility design specified in Schedule 1, as soon as reasonably practicable following the Contract Date), any delay by GPA in completing the work to be performed by it under the Power Purchase Agreement related to such interconnection, or any failure by GPA to accept electricity at the point of interconnection which is not due to the fault or failure of performance by the Company; and

(l) any subsurface or environmental condition at the Facility Site unless the existence and effect of such condition was known or should have been known (on the basis of the Environmental Reports or test bores performed pursuant to Section 5.05(c) and Section 5.07) to the Company prior to the Notice to Proceed Date.

"Uncontrollable Circumstance Change" means a Change arising from or required by an Uncontrollable Circumstance.

"Wheelabrator" means Wheelabrator Environmental Systems Inc. or any Affiliate thereof.

"Work" means the design, construction, start-up and Acceptance Testing of the Facility or any Change by the Company in accordance with this Agreement.

"Year" means (a) any Billing Year, (b) any Extension Period Year or (c) (i) the period from the date on which the Service Fee shall become payable by the Government pursuant to Section 7.18 until the last Day of the first September thereafter, (ii) each twelve (12) calendar month period thereafter, and (iii) the period ending concurrently with the end of the term of this Agreement and commencing on the immediately preceding October first.

"Zoning Law" means the zoning and land use laws of the Territory of Guam or any political subdivision thereof.

Section 2.02 Interpretation Generally. Except as otherwise expressly provided in this Agreement, the following rules apply to this Agreement and any Related Document:

(a) the singular includes the plural and the plural includes the singular;

(b) "or" is not exclusive and "include" and "including" are not limiting;

(c) a reference to any agreement or other contract includes permitted supplements and amendments thereto;

(d) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder, provided, however, that (i) this rule shall not adversely affect the right of any Person to assert and obtain relief under this Agreement on the grounds that any such amendment or modification constitutes Government Fault or an Uncontrollable circumstance and (ii) the term Governmental

Rule refers to laws, rules and regulations as in effect at the Contract Date and not then subject to good faith contest or legal challenge;

(e) a reference to a Person includes its permitted successors and assigns;

(f) a reference in this Agreement or in a Related Document to an article, section, exhibit or schedule is to the article, section, exhibit or schedule of such document unless otherwise indicated;

(g) any right in this Agreement may be exercised at any time and from time to time, unless otherwise stated;

(h) all obligations in this Agreement are continuing obligations throughout the term of this Agreement, unless otherwise stated or the context otherwise requires;

(i) the headings of any article, section or subsection of this Agreement are for convenience and shall not affect the meaning of this Agreement;

(j) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

(k) the words "agree," "agreement," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except as the context may otherwise require;

(l) all accounting and financial computations hereunder and thereunder shall be computed, in accordance with GAAP as in effect on the Contract Date; and

(m) all references to credit ratings are to the ratings used by Standard and Poor's Ratings Services, but shall be understood to include the equivalent ratings by Moody's Investors Services, Inc., Duff and Phelps, Inc. or other nationally recognized rating agencies.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Section 3.01 **Company Representations**. The Company represents and warrants to the Government as of the Contract Date as follows:

(a) The Company is a limited partnership and the successor to Guam Resource Recovery Partners. The sole general partners of the Company are the Partners. The Company is duly organized and validly existing under the laws of the State of Delaware and registered to do business within the Territory of Guam. The Company has the partnership power and authority to enter into and perform this Agreement and each Related Document to which it is a party.

(b) Each of the Partners is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to execute and deliver this Agreement and each Related Document on behalf of the Company.

(c) This Agreement and each Related Document to which the Company is a party are legal, valid and binding obligations of the Company, enforceable against it in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws limiting the rights of creditors and by general principles of equity.

(d) The authorization, execution and delivery of this Agreement and the Related Documents and the consummation of the transactions contemplated hereby or thereby do not and will not (i) contravene the partnership agreement of the Company or any law, rule, regulation, order, judgment or decree that applies to or binds it or any of its property or (ii) constitute a breach or default, give rise to any right of acceleration or

cancellation or result in or require the creation of any lien, charge, encumbrance or security interest under any agreement or instrument to which the Company is a party or by which it or any of its properties are bound, except in each case, for such liens, charges, encumbrances and security interests as are granted by the Company under the Financing Documents.

(e) Neither the execution and delivery by the Company of this Agreement and the Related Documents to which the Company is a party, nor the performance by it of their respective terms, requires, as of the Contract Date, the consent or approval of, the giving of notice to, or the registration with, any Governmental Authority, except for the consents and approvals evidenced by the Permits.

(f) There is no proceeding or investigation before any arbitrator or before or by any Governmental Authority pending or, to the best of the Company's knowledge, threatened against the Company, which might adversely affect its performance of this Agreement.

Section 3.02 Government Representations. The Government represents and warrants to the Company as of the Contract Date as follows:

(a) The Government has the power and authority to enter into and perform this Agreement and the Related Documents.

(b) The Government has duly authorized, executed and delivered this Agreement and each Related Document to which it is a party.

(c) This Agreement and each Related Document to which the Government is a party constitute the legal, valid and binding obligations of the Government, enforceable against it in accordance with their respective terms, except as such enforcement may be

limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws limiting the rights of creditors and by general principles of equity.

(d) The authorization, execution and delivery of this Agreement and the Related Documents will not (i) contravene any constitution, law, regulation, order, judgment or decree; or (ii) breach or constitute a default, give rise to any right of acceleration or cancellation or result in or require the creation of any lien, charge, encumbrance or security interest under any agreement or instrument to which the Government is a party or by which it or any of its properties are bound.

(e) Except as stated in Section 19.20, neither the execution and delivery by the Government of this Agreement or the Related Agreements to which the Government is a party, nor the performance of their respective terms, requires Legislative Approval (other than (i) rezoning of the Facility Site, if any, required to comply with the Zoning Law, as provided in Section 4.02(e) and (ii) in connection with the issuance of Bonds, as provided in Section 4.02(f) or the consent or approval of, the giving of notice to, or the registration with, any Governmental Authority or any referendum of voters.

(f) There is no proceeding or investigation before any arbitrator or before or by any Governmental Authority pending or, to the best of the Government's knowledge, threatened against the Government, which might adversely affect its performance of this Agreement.

(g) The Government is a party to the Amended License and, pursuant thereto, has heretofore consented to (i) the withdrawal by Enprotech Guam, Inc. as a general and limited partner of the Company and any predecessor partnerships thereof, (ii) the admission of Wheelabrator as a general and limited partner of the Company and (iii) the

reorganization of the Company as a Delaware limited partnership (such withdrawal, admission and reorganization being referred to herein as the "Reorganization").

Section 3.03 Exclusion of Additional Representations and Warranties. EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Nothing herein shall be deemed to relieve any Party of its obligations as set forth in this Agreement.

ARTICLE IV
CONDITIONS PRECEDENT

Section 4.01 Conditions Precedent. The respective obligations and liabilities of the Government and the Company hereunder other than those which by their terms arise prior to the Notice to Proceed Date shall be subject to the prior satisfaction on or prior to the Notice to Proceed Date of each of the respective Conditions Precedent set forth with respect to the Government in Section 4.02 (or the waiver thereof in writing by the Government) and with respect to the Company in Section 4.03 (or the waiver thereof in writing by the Company).

Section 4.02 Conditions to Government's Obligations.

(a) The Company shall have delivered to the Government a certificate of an authorized officer of the Company, dated as of the Financing Date, to the effect that the representations of the Company set forth in Section 3.01 are true and correct in all material respects as of such date as if made on such date and an opinion of counsel to the Company, in customary form and reasonably acceptable to the Government, to the effect set forth in clauses (a) through (f) of Section 3.01.

(b) The Company shall have delivered to the Government the certificate of an authorized officer of the Company, dated as of the Notice to Proceed Date, to the effect that the

representations of the Company in Section 3.01 are true and correct in all material respects as of such date as if made on and as of such date.

(c) As of the Notice to Proceed Date, no Person shall have commenced, announced or threatened any proceeding or investigation seeking legal or equitable relief or any other remedy in respect to the transactions contemplated by this Agreement which would materially adversely affect the Government's performance of this Agreement or the related Documents to which it is a party.

(d) As of the Notice to Proceed Date, no change in any Governmental Rule (other than a change in any Governmental Rule that would constitute Government Fault) shall have occurred that would prohibit the consummation of, or have a material adverse effect on the Government's performance of this Agreement.

(e) [Reserved]

(f) As of the Financing Date the Legislature shall have granted all requisite Legislative Approval to the issuance by GEDA or another political subdivision of the Government of an aggregate amount of Bonds in an amount sufficient to finance at least that percentage of the Facility Price and the Financing Costs not being funded by Equity from the Company.

(g) As of the Financing Date, the Guarantor shall have executed and delivered to the Government a Guaranty in the form of Exhibit A together with an opinion of counsel to Guarantor as to the enforceability thereof.

(h) As of the Financing Date, the Company shall have delivered to the Government evidence that FERC has certified that the Facility will be a "qualifying facility" under PURPA.

(i) As of the Financing Date, there shall have been no material adverse change in the business, assets, operations, prospects, financial or other condition of the Company, the Guarantor or the Contractor except as provided for in this Agreement.

(j) The Financing Date shall have occurred.

(k) The Company shall have obtained all Permits listed in Section 1 of Schedule 2 excluding design-related construction permits.

(l) The Notice to Proceed Date shall have occurred within seven hundred thirty (730) Days after the execution date of the Power Purchase Agreement (which period shall be subject to extension for Uncontrollable Circumstance or Government Fault).

(m) As of the Notice to Proceed Date, all of the documents, agreements, rights, approvals or authorizations listed in clauses (a) through (l) of this Section 4.02 shall be in full force and effect.

Section 4.03 Conditions to Company's Obligation.

(a) The Government shall have delivered to the Company a certificate of an authorized officer of the Government, dated as of the Financing Date, to the effect that the representations of the Government set forth in Section 3.02 are true and correct in all material respects as if made on such date and an opinion of counsel to the Government, in customary form and reasonably acceptable to the company, to the effect set forth in clauses (a) through (f) of Section 3.02.

(b) The Government and the GPA shall have entered into the Power Purchase Agreement, including arrangements for the timely provision of the Transmission Line at no expense to the Company, and the Government shall have pledged all its rights and revenues thereunder to the Trustee for the benefit of the Bonds.

(c) The Government shall have delivered a certificate of an authorized officer of the Government, dated as of the Notice to Proceed Date, to the effect that the representations of the Government in Section 3.02 are true and correct in all material respects as of such date as if made on and as of such date.

(d) As of the Notice to Proceed Date, no Person shall have commenced, announced or threatened any action, suit, proceeding or investigation seeking legal or equitable relief or any other remedy which could adversely effect the Company's performance of this Agreement or the Related Documents to which it is a party.

(e) As of the Notice to Proceed Date, no change in any Governmental Rule shall have occurred that would prohibit the consummation of, or have a material adverse effect on the Company's performance (or the performance of the Contractor or the Operator on behalf of the Company) of, this Agreement.

(f) As of the Financing Date the Government shall have arranged to provide the Company with a mutually acceptable Facility Site, in accordance with Section 6(b) of the Amended License; provided that the Company shall not be required to accept any Facility Site which would not be suitable for the construction and operation of the Facility thereon under Zoning Law.

(g) The Government shall have obtained all requisite Legislative Approval to the issuance by GEDA or another political subdivision of the Government of an aggregate amount of Bonds in an amount sufficient to finance the sum of the Facility Price and Financing Costs less the amount of Equity required to be provided by the Company under Section 6.04(f).

(h) All Permits listed in Section 1 of Schedule 2 shall have been obtained.

(i) As of the Financing Date there shall be in full force and effect a solid waste plan providing for the control of the flow of Acceptable Waste on Guam reasonably acceptable to the Company, which, among other things, enables the Government to direct the delivery of at least the Delivered Tonnage to the Facility in each Year.

(j) The Notice to Proceed Date shall have occurred within seven hundred thirty days (730) days after the execution date of the Power Purchase Agreement (which period shall be subject to extension for Uncontrollable Circumstance, Company Fault or Government Fault).

(k) As of the Notice to Proceed Date, there shall be on deposit with the Trustee under the Indenture, funds which, together with reasonably anticipated and legally available earnings thereon, shall be sufficient to pay all remaining Construction Costs, Phase II Development Costs, and the Development Fee, in addition to such Bond reserves as may be required under the Indenture.

(l) As of the Financing Date the Government shall have made arrangements satisfactory to the Company for the disposal of Residue, Acceptable Waste not Processed and Unacceptable Waste.

(m) All of the documents, agreements, rights, approvals or authorizations listed in clauses (a) through (l) of this Section 4.03 shall be in full force and effect as of the Notice to Proceed Date.

(n) The Government shall have delivered to the Company such information as may exist with respect to any expenditure or financial commitment, by the Government or any agency or subdivision thereof made prior to March 2, 1986, relating to the licensing, development, siting, feasibility, financing or construction of the Facility.

(o) If, pursuant to an agreement of the Parties pursuant to Section 5.07(c), the Government is to own the Facility Site, the Government shall (i) be vested with all right title and interest in and to the Facility Site, free from all liens, charges, encumbrances and security interests, other than those granted pursuant to the Financing Documents, and (ii) have entered into a binding ground lease of the Facility Site to the Company in accordance with Section 5.07(c).

Section 4.04 Satisfaction of Conditions Precedent. The Parties shall exercise good faith and due diligence in satisfying the Conditions Precedent set forth in this ARTICLE IV and each Party shall give prompt notice to the other Party when the foregoing Conditions Precedent to the other's obligations have been satisfied. If, despite such good faith and diligence, all of the said Conditions Precedent set forth in Section 4.02 and Section 4.03 are not so satisfied or are not waived by the Party whose obligations are conditioned thereon on or before seven hundred thirty days (730) Days following the execution date of the Power Purchase Agreement (subject to extension as provided in Section 4.02(l) and Section 4.03(j), then that Party may, by notice in writing to the other Party, terminate this Agreement as of the date of such notice, in which case this Agreement shall be null and void. In the event of a termination of this Agreement pursuant to this Section 4.04:

(a) If the failure to satisfy any Condition Precedent set forth in Section 4.02 or Section 4.03 is the result of (1) Company Fault, (2) in the case of the conditions set forth in Section 4.02(i), the proposed financing being unacceptable to the Credit Enhancer because of the Facility design, or (3) in the case of the condition set forth in Section 4.02(k), was not the result of Government Fault (including without limitation the failure by the Government to perform in accordance with Section 5.01(a) and Section 5.05, then

(i) the Government shall not pay the Defeasance Cost or any other payment or cost to the Company, and (ii) the Company shall have no claim against the Government arising from or related to this Agreement or the Related Documents.

(b) If such failure is not the result of either Company Fault or Government Fault (or, in the case of the conditions set forth in Section 4.02(j), the proposed financing being unacceptable to the Credit Enhancer because of the Facility design), then (i) the Government shall not pay the Defeasance Cost or any other payment or cost to the Company, and (ii) neither Party shall have any claim against the other Party arising from or related to this Agreement or the Related Documents; provided, however that, notwithstanding the provisions of Section 19.17, the Amended License shall not be deemed terminated as a result of the termination of this Agreement.

(c) Subject to the limitations stated in subpart (d) preventing the Government from being liable for any amounts not appropriated by the Legislature, if such failure is the result of Government Fault, then (i) this Agreement shall terminate, (ii) the Government shall pay on or prior to the Termination Date to the Company its Phase I Development Costs, its Phase II Development Costs incurred through the Termination Date of this Agreement and the Defeasance Cost, if any, and the License Defeasance Cost, and (iii) the Company shall have no other claim against the Government arising from or relating to this Agreement.

(d) Notwithstanding any other provision in this Agreement in this section or any other, and regardless of if there is any Government Fault, in no circumstance shall the Government be liable based upon a non-appropriation of any sum by the Legislature or for any amount not appropriated by the Legislature where such an express

appropriation is required by law. It is the express intent of the Parties that there be no such liability, and that this Agreement and its provisions be construed, severed, or rewritten as necessary to comply with Section 1423j of the Organic Act of Guam and Title 5 GCA §22401, as interpreted by *Pangelinan v. Gutierrez*, 2003 Guam 13. This provision shall apply to and supersede any contrary provision in this Agreement regardless of whether this provision is cross-referenced in such other provision.

Section 4.05 Company Reorganization. The Company shall use its reasonable efforts to cause the Reorganization Effective Date to occur within ninety (90) Days following the execution of this Agreement by the Parties hereto. If, despite such reasonable efforts, the Reorganization Effective Date has not occurred within such ninety (90) Day period, the Government may, by written notice to the Company at any time thereafter and prior to the Reorganization Effective Date, terminate this Agreement and (i) the Government shall not pay the Defeasance Cost or any other payment or cost to the Company, and (ii) neither Party shall have any claim against the other Party arising from or related to this Agreement or the Related Documents; provided, however that, notwithstanding the provisions of Section 19.17, the Amended License shall not be deemed terminated as a result of the termination of this Agreement.

ARTICLE V
DESIGN AND PERMITS FOR THE FACILITY

Section 5.01 Project Management.

(a) The Company shall design and obtain the Permits for the Facility pursuant to the terms and conditions of this Agreement, the Facility Project Manual and the Timetable consistent with Governmental Rules; provided, however, that (1) the Government shall, within the limits of Applicable Law, use its best efforts to assist in the issuance of Permits, easements,

approvals and agreements from all applicable Governmental Authorities, and (2) the Company shall not be deemed in default of this Section insofar as its failure to perform as provided herein is due to Government Fault or Uncontrollable Circumstances or would not preclude Acceptance of the Facility on or before the expiration of the Extension Period.

(b) Within thirty (30) Days after the Notice to Proceed Date, the Company shall submit to the Government a detailed progress schedule (the "CPM Schedule") covering all Work to be performed for the design and for obtaining the then remaining Permits for the Facility. The CPM Schedule shall allow for the Government's review of plans pursuant to Section 5.03 and shall provide for normal contingencies arising out of delays (other than Uncontrollable Circumstance) due to inclement weather, shipping and scheduling difficulties. Such CPM Schedule shall be based on the critical path method using "prima vara" or similar computer generated forms and shall show the order of Work, the dates upon which Work will begin on the salient features thereof and the contemplated number of days for and dates of completion for all design and permitting activities, major procurement requirements and construction milestones. Such CPM Schedule shall provide for the completion of all Work within the time provided for in this Agreement. Within fifteen (15) Days of the end of each calendar month after the Notice to Proceed Date and prior to the Acceptance Date, the Company shall furnish the Government with three (3) copies of an updated progress schedule and written reports reviewing compliance with the CPM Schedule and discussing any modifications made thereto and the reasons for the modifications.

(c) Within sixty (60) Days after the Notice to Proceed Date, the Company shall provide the Government three (3) copies of a procedures manual for managing the design,

construction and testing of the Facility, including procedures for communications, reviews, and procurement.

(d) All communications, whether oral or written, including reports, letters, drawings and documentation, concerning or related to this Agreement shall be in the English language. The system of units used in all communications (e.g. weights, measures, forces, pressures, stresses, energy, power quantities, etc.) shall be as commonly used in the United States except for manufacturer's standard shop and manufacturing drawings not specifically prepared for the Facility. The primary system of units shown in all documentation and drawings for systems or equipment design shall be the systems or equipment units in which the design of said system or equipment was carried out, with applicable equivalents in either English or metric units shown in parenthesis, as appropriate.

Section 5.02 Facility Design.

(a) The Company shall design and prepare for the construction of the Facility in accordance with the specifications set forth in the Facility Project Manual and the Timetable and as otherwise set forth in this Agreement. The design shall allow the Facility to be operated, to the extent practicable, for more than twenty (20) years if properly operated and maintained; provided, however, that the obligation to design the Facility for use beyond the term of this Agreement shall not extend or modify the Company's warranties and guarantees as specified in this Agreement.

(b) In designing the Facility, the Company shall, in accordance with Good Engineering and Operating Practice, and the terms and conditions of this Agreement, directly or through others:

(i) Design and construct the Facility so that it shall operate in a manner consistent with the specifications set forth in Section 8.01(b);

(ii) Design the Facility to be capable of Processing Reference Waste at a rate not less than three hundred (300) Tons per Day and to meet the other Performance Guarantees and Operating Parameters for a period of twenty (20) years, if properly operated and maintained;

(iii) Prepare architectural and engineering plans, process flow diagrams, designs and specifications, site plans, building plans, equipment layout plans, piping, electrical and instrument diagrams, basic engineering design data, utility needs, equipment procurement, delivery and installation schedules, operation and maintenance manuals and project schedules showing completion dates for the various phases of construction;

(iv) Design the Facility to provide for the future addition of systems for removal of metals from the Residue, and prepare a tabulation identifying the type and source of the effluent expected to be emitted by the Facility as a result of processing Acceptable Haste;

(v) To the extent reasonably practicable, design the Facility such that sufficient space is provided at the Facility Site so that the Facility shall be capable of expanding to Process all Acceptable Solid Waste generated on Guam during the term of this Agreement. The Government and the Company shall agree to expand the Processing capacity of the Facility as and to the extent provided in Section 7.11(b);

(vi) Design the Facility to provide an area of not less than 30,000 square feet for the concurrent or subsequent construction of a MRF adjacent to the

Facility in a location which will permit the integrated operation of the Facility and the MRF, including all space necessary for buildings and intake, sorting and storage areas, utility hookups and connections, and interconnections of equipment and systems between the Facility and the MRF. If the Government, in its sole discretion, elects to proceed with the design and construction of a MRF adjacent to the Facility, the Company shall have the opportunity to design, construct and/or operate the MRF as provided in Section 5.08:

(vii) Obtain on the title sheet of the design plans the signatures of appropriate officials of all Governmental Authorities which may be required by applicable Governmental Rules indicating that such agencies have reviewed and approved the plans which have been prepared. Each final plan shall carry the signature and stamp of an individual registered with the Guam Board of Registration of Professional Engineers if required by Applicable Law. The approval for the plan, specifications and design computations shall not be construed to relieve the Company of the responsibility for correcting any errors or discrepancies in the plans, specifications and design computations which may become apparent after approval has been given, nor shall the approval be construed to relieve the Company of the responsibility for designing, constructing and testing the Facility to conform to all applicable code requirements and established engineering principles and practices. The Government shall assist the Company in obtaining the required signatures; and

(viii) Design the Facility such that those areas to be made freely available for public access by the Company shall comply with the requirements of the Americans With Disabilities Act of 1990, 42 USC § 12101, et seq.

Section 5.03 **Design Review**. The Company shall allow the Government to review the design of the Facility as follows:

(a) The Company shall submit six (6) copies of all plans, drawings, specifications, construction schedules, operation and maintenance manuals, and similar design documents, but not including detailed fabrication drawings, for the design, construction and operation of the Facility, when those documents are at the thirty percent (30%) and one hundred percent (100%) stages of completion, respectively, or at such other times as the Parties may agree.

(b) Within fourteen (14) Days following the delivery of any design document, the Government shall have the right to provide written comments to the Company limited to identifying discrepancies between the design of the Facility as set forth in this Agreement, the Facility Project Manual, the Permits or Good Engineering Practice and the design as set forth in the relevant design document. The Company shall have the right of design and construction preference which shall be respected by the Parties.

(c) If the Government concludes, as evidenced by its written comments delivered to the Company, that any design document is inconsistent with this Agreement, with the Facility Project Manual, the Permits or with Good Engineering Practice, then the Company shall, within ten (10) Days of its receipt of the Government's comments, either modify the design document or provide its written response to the Government.

(d) If within ten (10) Days following the Government's receipt of any written response of the Company, the Parties shall fail to resolve their disagreement, then the matter shall be submitted for Dispute Resolution.

(e) If within the thirty (30) Day period following the Government's receipt of any written response of the Company, the Government fails to notify the Company of its disagreement, then the Government shall be deemed to have waived its right to further action with respect to such matter.

(f) The opportunity for the Government to review the design and construction of the Facility shall in no way limit, modify or excuse the Company's various warranties, obligations and Performance Guarantees set forth in this Agreement. The Government shall have no obligation to review any design documents and the Company shall not rely upon any review by the Government to conclude that the design conforms with this Agreement, the Facility Project Manual, the Permits or Good Engineering Practice; provided, however, that to the extent the Government or the Consulting Engineer directs the Company or the Contractor in writing to take or refrain from taking any action and the Company or the Contractor objects in writing to such direction with reasonable specificity (including without limitation the anticipated effect of any such direction on any Performance Guarantees or the failure of such direction to conform to this Agreement, the Facility Project Manual or Good Engineering Practice) and follows such direction, the Government shall not thereafter have the right to assert that the Company's or the Contractor's conduct conforming to such direction fails to conform with this Agreement, the Facility Project Manual or Good Engineering Practice or to assert that the Company has not met any Performance Guarantee, to the extent it is established that the Company's ability to meet such Performance Guarantee was adversely affected by such direction.

Section 5.04 As-Built Drawings and Records. Upon completion of the Facility, the "as-built" construction of the Facility shall be documented in detailed drawings, documents, notes and other descriptive materials. During construction, the Company shall keep a complete and accurate record of all field and manufacturing changes or deviations from the approved design, specifications, construction and equipment assembly drawings, and other construction documents indicating the Work as actually constructed, fabricated and installed. All such changes shall be neatly and correctly shown on the documentation affected, and kept at the Company's job site and offices. At the conclusion of the Work, the as-built records shall be consolidated, organized, catalogued, finalized and the Company shall deliver to the Government two (2) complete hard-copy sets, one (1) complete reproducible set and one (1) microfilm transparency set. These as-built deliverables shall not be marked up and shall be complete in all material respects so as to correctly reflect as-built conditions.

Section 5.05 Obligation to Obtain Permits.

(a) The Company shall be responsible for obtaining all Permits required for the design, construction and operation of the Facility in accordance with applicable laws; provided, however, that any Permit which becomes necessary after December 10, 2013, due to a change in law shall be considered an Uncontrollable Circumstance. Schedule 2, prepared by the Company after consultation with the issuing agencies, sets forth each material Permit which, to the best of the Company's knowledge, is necessary as of the Contract Date for the construction and operation of the Facility and for the use of the Facility Site; provided, however, that the failure of a Permit required for the design, construction or operation of the Facility to be listed on Schedule 2 shall not relieve or excuse the Company from its obligations under the first sentence of this Section 5.05(a). The Company shall use its best efforts to obtain all necessary Permits

from the appropriate Governmental Authorities. All permit applications and documents shall be prepared in accordance with Good Engineering Practice and all requirements of the applicable Governmental Authorities and of this Agreement.

(b) The Company shall expeditiously apply for and shall diligently pursue obtaining the Permits in accordance with the Timetable. The Government shall use its best efforts to assist in the procurement of such Permits in compliance with the procedures and requirements set forth in Schedule 2 and the Timetable. If the time set forth on the Timetable for obtaining a Permit issued by the Government is exceeded and the Company believes the Government is willfully withholding the approval or delaying its processing, the matter shall immediately be submitted to expedited Dispute Resolution by the Independent Engineer. The Independent Engineer shall be required to make its determination within thirty (30) Days of such submittal. If the Independent Engineer finds in favor of the Company, then the Construction Cost (to the extent affected by such delay) and Scheduled Acceptance Date shall be adjusted accordingly. Notwithstanding the foregoing, if the Independent Engineer determines that the dispute involves primarily a legal question, the Independent Engineer may engage a neutral attorney to advise it as to such legal question.

(c) The Company shall prepare such environmental impact assessments or environmental impact statements as may be required to obtain the Permits; provided, however, that the Government shall provide to the Company any soils reports and the results of any other soil borings which it has conducted at the Facility Site prior to the Contract Date.

Section 5.06 Time For Completion of Design. The Company shall use its reasonable efforts to complete all design documents, including those required by Section 5.03(a), in accordance with the Timetable, unless extended as a result of an Uncontrollable Circumstance,

by Government Fault or by mutual agreement; provided, however, that any such delay which affects the Acceptance Date shall have the consequences set forth in this Agreement. The Company shall use its reasonable efforts to avoid any delays in the design and construction of the Facility, but shall use its best judgment to allow for the possibility of such delays in its CPM Schedule.

Section 5.07 Facility Site.

(a) (i) The Company, at its cost, shall retain a qualified geotechnical engineer or geologist to perform initial soils testing (including bores) of the Facility Site in the proposed location of the Facility thereon and to prepare a report (the "Soils Report") thereon. Upon completion, a copy of the Soils Report shall be delivered to the Government.

(ii) The Company and the Government will jointly review the Soils Report and any environmental report prepared by the Company pursuant to Section 5.05(c), (the "Environmental Reports") and determine what changes, if any, are required as a result of the conditions disclosed by the Soils Report or the Environmental Reports, including changes resulting from any necessary changes in the location of the Facility or the Facility Site or any remediation efforts relating thereto. The Company shall make such changes, or undertake such remediation efforts, on a Direct Cost basis as if such changes were Uncontrollable Circumstance Changes. All adjustments to the Facility Price as a result thereof, including adjustments in the cost of design and/or construction, shall also be made on a Direct Cost basis as if such changes or remediation efforts were Uncontrollable Circumstance Changes. Any dispute regarding whether or not an increase in the Facility Price is necessary as a result thereof shall be settled by Dispute Resolution.

(b) The Government shall provide for roadway, sewer, electric and water connections at the boundary of the Facility Site at a location to be mutually agreed by the Government and the Company in accordance with the Timetable and without cost to the Company. The Parties further acknowledge and agree that, pursuant to Sections 6(a)(ix) and 6(b) of the Amended License, the Government is to provide the Company with a mutually acceptable Facility Site, consistent with the understanding that the Company is the owner of the Facility for tax purposes. The Government shall fulfill such obligation, consistent with the Timetable, and the Company shall cooperate with the Government in connection therewith. If the Facility Site is acquired by the Government with a portion of the proceeds of Bonds issued in connection with the financing of the Facility, the Debt Service and other charges relating to such Bonds shall be included in the Capital Charge component of the Service Fee, and the rent under such around lease will be treated as a Pass Through Cost and may be the fair rental value of the Facility Site commencing on the Acceptance Date. Whether the Facility Site is owned or leased by the Company, nothing contained herein shall preclude the Company from mortgaging its interest in the Facility and the Facility Site to secure the Bonds or any Credit Enhancer.

(c) Promptly following the Contract Date, the Parties shall negotiate in good faith as to the most favorable means of acquiring the Facility Site and holding title thereto and allowing for the unrestricted use thereof by the Company. Any agreement of the Parties relating thereto shall be set forth in writing and included as an amendment or supplement to this Agreement. If the Parties agree that the Government shall own the Facility Site, as part of such agreement the Parties shall enter into a binding ground lease of the Facility Site to the Company for an initial term ending no earlier than twenty-four (24) years after the Acceptance Date, and subject to renewal thereafter by the Company, on a fair market value rental basis and for renewal

periods of five years, for so long as the Facility continues to be operated as a solid waste disposal facility. The amount of the rental payments or any other consideration payable by the Company to the Government pursuant to any such ground lease during the term of this Agreement shall constitute Pass Through Costs. Whether the Company owns the Facility Site or acquires its rights thereto pursuant to a ground lease, the Parties shall take such action as shall be reasonably necessary to assure that (i) the Company shall be and remain, the owner of the Facility and (ii) the Operation and Maintenance Agreement, together with the Company's obligations with respect to the operation and maintenance of the Facility hereunder, shall be treated as a contract subject to the general rule of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

Section 5.08 Design of Materials Recovery Facility.

(a) In the event the Government elects, in its sole discretion, to proceed with the design and construction of a MRF adjacent to the Facility, the Government shall notify the Company of such decision and of any specifications and design requirements for the MRF which shall be consistent with the design and operation of the Facility. Within 30 days following receipt of such notice, the Company shall submit to the Government a proposal for performing the design work for the MRF, including the cost of performing such work, the schedule for performing such work, warranties and performance guarantees to be incorporated in such design, and other material terms and conditions. The Government and the Company shall negotiate in good faith to attempt to reach agreement on such matters, and, if agreement is reached, the Company shall proceed with the design of the MRF; provided, however, that if the Government and the Company are able to reach agreement on all material terms and conditions other than cost, the Government shall have the right to direct the Company to perform the design work for

the MRF on a Direct Cost basis and such other terms and conditions on which the Government and the Company have agreed. If the Government and the Company are unable, despite their good faith efforts, to agree on the cost, schedule and terms and conditions for performing such design work, the Government may engage another Person to perform such design work, and the Company shall have no further rights or obligations with respect to the design, construction, financing or operation of the MRF.

(b) If the Company proceeds with the design of the MRF for the Government as provided above, upon receipt of such design, the Government may, in its sole discretion, elect to proceed or not proceed with construction. If the Government elects to proceed with construction of the MRF, the Government and the Company shall negotiate in good faith to establish the detailed terms and conditions for such construction, including cost, schedule, warranties and performance guaranties, for such construction, the financing of such construction, and the operation and maintenance of the MRF, it being understood that in the context of such negotiations, neither party shall be obligated to assume obligations on other than a Fair Market Value basis. If the Government and the Company are unable to reach agreement on some or all of the foregoing, the Government may elect, in its sole discretion, (i) not to proceed with construction of the MRF, (ii) if practicable, to proceed with the Company on such matters on which they have been able to agree and to proceed with other Persons on the matters on which they have not been able to agree, or (iii) to proceed entirely with other Persons on the construction, financing and operation of the MRF.

(c) In the event the Government and the Company agree on the terms and conditions of the operation of the MRF by the Company, the Company shall have the right to employ the Operator or another qualified contractor, reasonably acceptable to the Government,

to perform the operation and maintenance of the MRF, but the Company shall retain responsibility for the overall operation and performance of the MRF. In the event the Government contracts with another Person for the operation and maintenance of the MRF, the Company shall not have any responsibility for the acts or omissions of such other Person.

(d) If the Company believes that the design, construction or operation of any MRF by another Person will or has adversely affected its ability to meet any Performance Guarantee or to perform its remaining obligations in accordance with this Agreement, the Company may submit the matter to Dispute Resolution (whether before or after completion of the MRF), and if so proven, the Performance Guarantees and such other obligations of the Company shall be subject to modification in accordance with any award, decision, or judgment pursuant to ARTICLE XVIII.

(e) In connection with the negotiations between the Government and the Company regarding the design, construction, financing and operation of the MRF, unless otherwise agreed in the course of such negotiations, (i) all materials recovered in the operation of the MRF shall be the property of the Government, (ii) the obligation of the Government to deliver the Delivered Tonnage pursuant to this Agreement and the Company's Performance Guarantees shall not be reduced or modified as a result of the recycling or materials recovery performed at the MRF, and (iii) the definitions of "Acceptable Waste" and "Reference Waste" shall not be modified as a result of any recycling or materials recovery performed at the MRF.

Section 5.09 Government Landfill Option.

(a) In recognition of the rights and obligations of the Company under the Amended License, the Company hereby grants to the Government an option, subject to the terms and conditions set forth herein, to offer the Company to purchase the Layon Landfill for the

Purchase Price. The Purchase Price shall equal the Layon Landfill Construction Cost plus the Layon Landfill Land Acquisition Cost. The Government must provide the Company ninety days written notice of its intent to exercise this option. In no event shall the Option Exercise Date be deemed to have occurred prior to the ninety-first date after such notice.

(b) If and only if the Government exercises the option set forth in Section 5.09(a) above, and if and only if the Company has opened the Guatali Landfill as it presently intends, then the Government is further granted the option to deposit Unacceptable Waste, and/or Acceptable Waste that cannot be disposed of at the Facility due to the total amount of Acceptable Waste exceeding of the Facility's capacity in a given year, at the Guatili Landfill. The Government's payment to the Company for such disposal at the Guatali Landfill shall be as set forth in Schedule 6, and in no event shall this option continue once the Guatali Landfill has reached its legally mandated maximum capacity.

(c) It is the express intent of the Parties that, in the event any portion or the entirety of this Section 5.09 is found unlawful, that such provision or the entire section be rewritten to comply with governing law and the Parties' intent if possible, or if that is not possible, that such provision or this entire section be severed from the Agreement.

ARTICLE VI
FACILITY PRICE; FINANCING

Section 6.01 Determination of Facility Price. The cost of constructing the Facility ("Facility Price") shall be determined as of the Financing Date and shall be the total of (a) the Construction Cost, plus the Construction Contingency Fund, (b) the Development Fee, (c) the Phase I Development Costs, (d) the Phase II Development Costs, (e) the cost of developing the Facility Site, together with the cost of acquiring the Facility Site if, pursuant to Section 5.07(c). the Parties agree that the Company shall be responsible for the acquisition of the Facility Site,

(f) the costs of the Transmission Line, (g) offsite utility costs associated with the Facility (to the extent not paid by GPA), (h) the Direct Costs of any Changes, (i) the Financing Costs, and (j) all local sales, excise and use taxes, if any, payable by the Company or the Contractor with respect to any of the foregoing costs or the goods and services relating thereto; in each case subject to adjustment, if such adjustment is provided for herein, as a result of Uncontrollable Circumstances or Government Fault.

Section 6.02 Adjustment of Facility Price. Provided that the Notice to Proceed Date occurs within seven hundred thirty (730) Days after the execution date of the Power Purchase Agreement (subject to extension as provided in Section 4.02(l) and Section 4.03(j)), the Construction Cost as set forth in Schedule 9 shall be escalated from the Base Date to the Notice to Proceed Date, as follows:

(a) fifty percent (50%) of the Base Date Construction Cost shall be escalated in accordance with the Guam Escalation Adjustment;

(b) twenty-five percent (25%) of the Base Date Construction Cost shall be escalated in accordance with the escalation of the Capital Equipment component of the U.S. Department of Commerce Producer Price Index (the "Capital Index"); and

(c) twenty-five percent (25%) of the Base Date Construction Cost shall be escalated in accordance with the escalation of the ENR Construction Cost Index (the "Labor Index");

provided, however. that no such adjustment shall be made for any period of delay in the occurrence of the Notice to Proceed Date due to Company Fault. If the Notice to Proceed Date does not occur within seven hundred thirty (730) Days after the execution date of the Power Purchase Agreement (subject to extension as provided in Section 4.02(l) and Section 4.03(j)), the

Facility Price shall be subject to good faith negotiation between the Parties. If the Parties are able to agree on a revised Facility Price, the Government and the Company shall proceed with the performance of this Agreement. If the Parties are unable to agree on a revised Facility Price and as a result one or more conditions to either Party's obligations hereunder are not satisfied, the rights and obligations of the Government and the Company shall be subject to Section 4.04.

Section 6.03 Company's Obligation to Construct the Facility. The Company shall obtain the Permits for, design, construct and complete the Facility and, if requested by the Government and, subject to the terms of Section 5.08, the MRF, in accordance with Good Engineering Practice to the Full Acceptance Standard (subject to the Company's rights under Section 7.14, Section 7.15 and Section 7.17) for the Facility Price.

Section 6.04 Financing of the Facility.

(a) The Company shall notify the Government in writing of any proposed Financing Date. The Company shall have the responsibility of providing financing arrangements for the funding of the Facility Price and Financing Costs as provided in this Section 6.04. The Company agrees to consult with the Government in the arranging of the financing, including participation in the selection of underwriters of the Bonds, the solicitation of and negotiations with Credit Enhancers (if any), obtaining ratings (if appropriate), and the structuring and pricing of the Bonds. The Company shall cooperate with the Government with respect to the structuring of the financing so as to achieve the lowest reasonable Debt Service consistent with prudent financing practices. The Government may request and the Company shall provide any information regarding financing arrangements as may be necessary for the Government to evaluate the proposal. The Government and the Company shall conduct a joint selection procedure with GEDA for the designation of underwriter(s) for any Bonds. Bond counsel for

any Bonds shall be designated by the Government and GEDA and shall be a firm of attorneys nationally recognized as having experience as bond counsel in financings of the type approved by the Government and the rendering of legal opinions in connection therewith.

(b) With respect to any tax-exempt or taxable debt issued to finance the Facility under the provisions of this Section 6.04, the Government agrees that it will cooperate with the Company to pursue the issuance by GEDA or another subdivision of the Government of Bonds in an amount sufficient to finance the maximum amount of the Facility Price (including the Construction Contingency Fund) and the Financing Costs reasonably possible. The failure of GEDA or another political subdivision of the Government to agree to issue Bonds, despite having the ability to do so, in an amount equal to the sum of the Facility Price and Financing Costs less the amount of Equity required to be provided by the Company under Section 6.04(f), or in such lesser amount as it may legally issue (for example, if some amount of the Facility Price does not qualify for tax-exempt financing) shall constitute Government Fault and shall entitle the Company to exercise its rights under Section 4.04; provided, however, that such failure is not the result of Uncontrollable Circumstances or Company Fault.

(c) Any Bonds issued by GEDA for the Facility shall be a special limited obligation of GEDA payable solely from, and recourse against the Government or GEDA under the Bonds shall be limited to, payments made by the Company to GEDA under the Bond Loan Agreement and revenues pledged pursuant to the Indenture, including Energy Revenues. The Government's only obligations in relation to the payment of Debt Service on any Bonds shall be those obligations expressly provided in this Agreement, including the obligation to pay the Capital Charge Component of the Service Fee. The Company shall have such payment

obligations to GEDA as may be set forth in the Bond Loan Agreement, the Indenture and the other Financing Documents.

(d) The Government and the Company shall each have the right from time to time to propose changing the terms of any outstanding Bonds or replacing outstanding Bonds with other Bonds or debt obligations and the proposing Party shall provide the other Party with such proposal in writing. If the terms of the Bonds are changed or the Bonds are refinanced, the Capital Charge shall be adjusted to reflect any changes in the Debt Service on such changed or replaced indebtedness. All of the costs of issuance and other financing costs related thereto, including the reasonable out-of-pocket expenses incurred by the Parties and GEDA in reviewing and participating in such transaction shall, to the extent practicable, be financed by the proceeds of any such Bonds or debt obligations; provided, however, that to the extent such transaction is undertaken at the written request of the Company alone and the costs of issuance or other financing costs related thereto (including reasonable out-of-pocket expenses) are not at least offset by Debt Service savings, the Company shall be responsible for the amount of such shortfall or the costs associated with the financing thereof.

(e) The Company shall indemnify the Government and GEDA for any liability arising out of information provided in writing by the Company for use in any official statement distributed in connection with the sale of Bonds which contains any untrue statement or alleged untrue statement of a material fact or which omits or is alleged to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Government shall indemnify the Company and GEDA, subject to the limits of the Government Claims Act, for any liability arising out of information provided in writing by the Government or GEDA for use in

any official statement distributed in connection with the sale of Bonds or indebtedness which contains any untrue statement or alleged untrue statement of a material fact or which omits or is alleged to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(f) If and to the extent requested by the Government upon reasonable prior notice or required by the Credit Enhancer but in no event prior to the Financing Date, the Company shall provide or cause others to provide equity funds ("Equity") of up to five percent (5%) of the Facility Price as of the Financing Date or, if less, Five million dollars ($5,000,000) and, if so requested by the Government upon reasonable prior notice or required by the Credit Enhancer, Equity in excess of such amount to the extent that proceeds from Bonds or other indebtedness authorized pursuant to this Agreement are not reasonably expected to be available therefor; provided, however, that the total amount of Equity which may be required shall not exceed ten percent (10%) of the Facility Price as of the Financing Date, or, if less, Ten million dollars ($10,000,000) without the written consent of the Company. Such Equity shall be provided at such time or times as the Government and the Company may determine so long as such Equity is provided in a timely manner to permit the Company to make payment of Construction Costs and provide for working capital as may be required under the Indenture or as may be required to enable to the Company to discharge any other liabilities incurred by its connection with the construction of the Facility. The Company shall give the Government written notice of any such Equity contribution. Unless otherwise agreed in writing by the Company, upon making any such Equity contribution, the Capital Charge shall be increased by an amount sufficient to amortize such Equity contribution, together with an after-tax rate of return equal to twenty-two percent (22%) per annum from the date of such contribution, payable

monthly, and fully amortized over the period commencing on the Scheduled Acceptance Date and ending on the scheduled termination of this Agreement. Funds contributed or expended by the Company as a result of Company Fault or the failure of the Company, the Contractor or the Operator to satisfy and perform their obligations under, or a breach or default by the Company, the Contractor or the Operator under, this Agreement, the Construction Contract or the Operation and Maintenance Agreement, shall not be considered contributions of Equity hereunder, nor shall they entitle the Company to increase any component of the Service Fee as a result thereof.

(g) The Company shall cause the Guarantor to guaranty all of the Company's obligations under this Agreement according to the terms of the Guaranty which shall not come into effect until the Financing Date. The Company shall have the right to substitute a Guaranty executed by a Permitted Successor Guarantor at any time at its own expense, including reasonable attorneys' fees and out-of-pocket costs and other expenses incurred by the Government, the Credit Enhancer and the Trustee in connection with such substitution, the approval of the Permitted Successor Guarantor, and the release of the predecessor Guarantor. Prior to any such replacement, the Company shall provide the Government with written notice, detailing the bases for such change and outlining the qualifications of the proposed successor. If any Change is to be made pursuant to this Agreement, the Company shall cause the Guarantor to give such written assurances to the Government as to the continued effectiveness of the Guaranty as the Government may reasonably request.

Section 6.05 Disbursement of the Facility Price. The Facility Price shall be disbursed to the Company as follows:

(a) The Company shall be paid the Construction Cost in accordance with the Construction Cost Drawdown Schedule set forth in Schedule 15, as it may be adjusted

pursuant to this Agreement. Payments under the Construction Cost Drawdown Schedule are contingent in each case upon the completion of each milestone prior to the submission of the Bond Proceeds Requisition requesting payment for the work specified by such milestone. On or before the twentieth (20th) day of each month, the Company and the Contractor shall submit to the Trustee, with a copy to the Government and the Credit Enhancer, a Bond Proceeds Requisition (including supporting materials) directing disbursement to the Company or the Contractor, as applicable, of the requested amounts from the Construction Fund on the last Banking Day of that month. Such Bond Proceeds Requisition shall set forth the amount requested to be disbursed from the Construction Fund for all milestones completed prior to the twentieth (20th) Day of that month. Each Bond Proceeds Requisition shall be supported by a monthly progress report setting forth the milestones completed through the date of the Bond Proceeds Requisition, the milestones scheduled to be completed by the last Banking Day of the month, the expected next monthly drawdown in keeping with the Construction Cost Drawdown Schedule, and any variation from the Construction Cost Drawdown Schedule, the CPM Schedule, and the Timetable. The Government shall have the right to verify that the milestones specified in the Bond Proceeds Requisition as having been completed are completed, but, except as otherwise provided in this Section 6.05, payment by the Trustee of any Bond Proceeds Requisition shall not be contingent upon the verification or approval of the Government or any other Person. If the Government believes that any milestone identified as having been completed in a Bond Proceeds Requisition was not complete in all material respects as of the submission date of such Bond Proceeds Requisition, the amount of such Bonds Proceeds Requisition shall nevertheless be paid, but if the

Independent Engineer determines that the milestone was not complete on the date of the applicable Bond Proceeds Requisition, then (i) if the milestone has not been completed by the date of the next Bond Proceeds Requisition, the overpayment shall be deducted from the next disbursement from the Construction Fund and the Company shall pay into the Construction Fund interest at the Default Rate on the amount that was disbursed based upon the achievement of such milestone for the period from the date of such disbursement until the date of the next disbursement from the Construction Fund or (ii) if the milestone has been completed by the date of the next Bond Proceeds Requisition, no amount shall be deducted from the next disbursement and the Company shall pay into the Construction Fund interest at the Default Rate on the amount that was disbursed based upon the achievement of such milestone for the period from the date of disbursement to the date of such next disbursement from the Construction Fund. The Company shall not requisition, and the Trustee shall not disburse, aggregate amounts in respect of Construction Costs, in excess of the maximum cumulative requisition schedule set forth in Schedule 15. Any disagreement between the Parties as to whether or when a milestone has been or was achieved shall be settled by Dispute Resolution. If the Company has claimed completion of a milestone later determined not to have been completed, the Government shall have the right to verify completion of each milestone prior to any disbursement from the Construction Fund for other than payments of interest on the Bonds; until such time as the Company has paid, or there is otherwise credited against subsequent disbursements to the Company, all amounts due under clauses (i) and (ii) of the third preceding sentence. If, in connection with any such proceeding, the Independent Engineer determines that the milestone in question was completed in all material

respects, the Government shall pay to the Company its costs in connection with such Dispute Resolution proceeding, together with interest thereon at the Default Rate. Neither the approval of the Bond Proceeds Requisition by the Government nor the payment of any portion of the Construction Cost shall be deemed to be acceptance by the Government of any portion of the Work. The Government shall have the right, in cooperation with the Credit Enhancer, to approve disbursement of amounts not requested by the Company to the Contractor or other party not requested by the Company if the Government reasonably believes that such disbursements are necessary to avoid jeopardizing its rights and benefits under this Agreement; provided, however, that neither the Government nor the Credit Enhancer shall be entitled to request disbursement of funds from the Construction Fund without the approval of the Company unless an Event of Default by the Company has occurred and the Company or the Guarantor has failed to make the payments required by ARTICLE XV.

(b) The Company shall be paid its Phase I Development Costs on the Financing Date in the amount of One million five hundred thousand dollars ($1,500,000).

(c) The Company shall be paid its Phase II Development Costs on and after the Financing Date, against Bond Proceeds Requisitions submitted in accordance with the procedures set forth in Section 6.05(a), with the amount of Phase II Development Costs payable under any such requisition to be equal to the aggregate of the amounts specified on Schedule 12 for those milestones completed prior to the date of such requisition and therein certified as having been achieved.

(d) The Development Fee shall be paid to the Company as part of the monthly drawdown from the Construction Fund, in proportion to the percentage of Construction Costs disbursed during such month.

(e) Those portions of the Facility Price referred to in clauses (e), (f), (g), (i) and (j) of Section 6.01 shall be paid to the Company as and when incurred by the Company, upon requisition by the Company therefor, accompanied by documentation evidencing the amounts so incurred.

ARTICLE VII
CONSTRUCTION OF THE FACILITY

Section 7.01 Construction Contract.

(a) The Company shall cause the Facility to be constructed, and shall enter into a Construction Contract to construct the Facility, in a manner consistent with this Agreement, the Facility Project Manual, the design approved under Section 5.03, the CPM Schedule and the Timetable. The Contractor shall be Wheelabrator, unless such Contractor (or any subsequent Contractor) is replaced by a Permitted Successor Contractor; provided, however, that prior to any such replacement, the Company shall provide the Government with written notice, detailing the bases for such change and outlining the qualifications of the proposed successor. Prior to designating any Permitted Successor Contractor, the Company shall provide a full detailed and substantiated disclosure of the reasons for the Change.

(b) The Construction Contract shall require the Contractor to furnish or procure all services, labor, equipment and material necessary to construct the Facility in its entirety, including (i) providing all materials, machinery, equipment and supplies required for construction and operation of the Facility; (ii) conducting engineering inspections of all materials and equipment to be incorporated into the Facility as the Contractor deems appropriate;

(iii) developing delivery schedules for all items of material and equipment to be incorporated into the Facility to meet progress requirements and taking all reasonable measures to insure compliance with such schedules, including routing, classifying and tracing shipments; (iv) organizing, planning, directing and supervising all construction operations necessary to complete the Facility in its entirety, including supplying a staff to supervise construction and let subcontracts; and (v) obtaining all necessary building permits and similar non-discretionary construction Permits.

(c) The Construction Contract and other subcontracts entered into by the Company or the Contractor for the design, construction, start-up and Acceptance Testing of the Facility shall neither conflict with nor supersede or abrogate any of the terms or provisions of this Agreement. The Construction Contract shall contain provisions obligating the parties thereto to submit disputes involving the Government to Dispute Resolution pursuant to ARTICLE XVII of this Agreement.

(d) Subject to Section 5.07(c), the Company shall, or shall cause the Contractor to, prepare the Facility Site for construction, pay or cause to be paid from the Construction Fund or other account established for the payment of Construction Costs all costs, royalties, fees, license payments, insurance (as provided in ARTICLE XVI), and similar expenses required with respect to the Company's performance under this Agreement and adopt all required or reasonable precautions to prevent injury or damage to persons and property in or about the Facility and the Facility Site.

(e) The Company and the Contractor shall have the right to enter upon the Facility Site for all of the purposes set forth in this Agreement.

(f) In its construction of the Facility, the Company shall comply with and cause the Contractor to comply with all applicable Governmental Rules and with the conditions and requirements of all Permits in all material respects.

(g) The Government shall, at its own expense, use its best efforts to furnish sewer, water, electrical and road access at the Facility Site boundary prior to the Contractor's field mobilization pursuant to the Timetable. If, despite such best efforts, the Government is unable to satisfy any of the foregoing requirements in accordance with the Timetable and, as a result thereof, the Company is delayed or incurs additional expense in its performance hereunder, then the Scheduled Acceptance Date or the Extension Period, if applicable, the Timetable and the CPM Schedule shall be adjusted to reflect the effect of any such delay, and the Construction Cost or Phase II Development Cost, if applicable, shall be equitably adjusted to reflect any increases caused by such circumstance, as determined by agreement of the Government and the Company or as part of a Dispute Resolution proceeding.

Section 7.02 Inspection by Government and Consulting Engineer. At all reasonable times and with reasonable prior notice, the Government and its Consulting Engineer shall have full access to the Facility and the Facility Site. The Company shall review the design and construction of the Facility with the Government so that the Government may verify that the Work does not materially deviate from the Facility Project Manual or the design documents; provided, however, such review shall in no way modify or constitute a waiver of any of the obligations of the Company under this Agreement except to the extent that such modification or waiver is approved in writing by the Consulting Engineer and the Government's Authorized Representative. The Government shall cause its representatives while at the Facility and the

Facility Site to comply with all reasonable safety, insurance and security rules adopted by the Company and shall not interfere with the Work at the Facility Site.

Section 7.03 Contract Date and Progress of Construction. Subject to obtaining use and control of the Facility Site consistent with Section 5.07(c), the Company shall use its reasonable efforts to cause construction of the Facility to commence in accordance with the Timetable. After the Notice to Proceed Date, the Company shall provide or cause to be provided sufficient labor and materials to continue the progress of the Work in a regular diligent and uninterrupted manner in accordance with the Timetable, subject to Uncontrollable Circumstance and Government Fault.

Section 7.04 Quality Control Procedures. The Company shall be responsible for all quality control with respect to Work performed by the Contractor or any subcontractors. Within sixty (60) days after the Notice To Proceed, the Company shall provide or cause the Contractor to provide the Government three (3) copies of a Quality Control Manual for the Work to be performed under the Construction Contract. In addition to construction procedures, the Quality Control Manual shall include instructions for handling, storage, preservation, packaging and shipping to protect the quality of materials and equipment and to prevent damage, loss or deterioration. Subject to the provisions of Section 7.02, the Government reserves the right to audit and inspect on a random or routine basis the Company's, the Contractor's and any subcontractors' quality control procedures as they pertain to the Facility. Additionally, the Government and its Consulting Engineer shall have the right to witness any quality control tests or inspections and shall have access to all test data within normal working hours and with reasonable notice, including test procedures, test specifications and test results. The Government shall have the right to request that the Company cause to be replaced or modified at the

Company's or the Contractor's cost, any construction material or equipment which is inconsistent in any material respect with the specifications in the Quality Control Manual. In the event that the Company disputes its obligation to replace or cause to be replaced such nonconforming material or equipment, the matter shall be resolved by Dispute Resolution.

Section 7.05 Performance and Payment Bonds. The Company shall require that the Construction Contract provide for Work that is customarily subject to bonding shall be the subject of standard form AIA performance and labor and material payment Bonds in the amount of such contracts and in the case of the Construction Contract naming the Government as an additional named obligee.

Section 7.06 Delays in Construction. In the event of any delay in the design, construction, start-up or Acceptance Testing of the Facility caused by Government Fault or Uncontrollable Circumstance or by the submission of a dispute to Dispute Resolution which dispute is resolved in favor of the Company, then the Scheduled Acceptance Date, the Timetable, the CPM Schedule and the Extension Period, if applicable, shall be adjusted to reflect the effect of any such delay, and the Construction Cost and Phase II Development Cost, if applicable, shall be equitably adjusted to reflect any increases caused by such Government Fault, Uncontrollable Circumstance or Dispute Resolution. If any delay in the design, construction, start-up or Acceptance Testing of the Facility or any Change in the design or construction of the Facility is caused by Company Fault, there shall be no adjustment of the Scheduled Acceptance Date, the Extension Period, or any Construction Cost, Phase II Development Cost or other cost payable by the Government as a result thereof, and any increase in costs shall be the responsibility of the Company. Without limiting the generality of the foregoing, in the event that Acceptance and/or the Extension Period are delayed as a result of either (i) Government Fault or Uncontrollable

Circumstance or (ii) Company Fault, and all Bond proceeds allocated to the payment of Debt Service prior to Acceptance have been exhausted, the payment of Debt Service as and when due and the Capital Charge associated with any Equity shall nonetheless be and remain the obligation and responsibility of the Government, unless the delay is due to Company Fault.

Section 7.07 Government Change Requests Prior to Acceptance.

(a) The Government shall have the right to request, by written notice to the Company, Changes (each, a "Government Change"); provided, however, that any Government Change that would (i) materially alter the Company's risk under this Agreement, and (ii) not be necessary for the Government to perform its obligations under this Agreement or to comply with any Applicable Law (unless any action underlying such Applicable Law would constitute Government Fault), shall require the prior agreement of the Company. If the Company receives a request for a Government Change, the Company shall send to the Government within ten (10) Days of such request, or, if such Government Change is not agreed to by the Company, within ten (10) Days of the determination pursuant to Dispute Resolution that such Government Change may be required by the Government without agreement of the Company, a written estimate of the cost to prepare a firm proposal and the information contemplated by this Section 7.07 resulting from the Government Change. If the Government does not agree with the estimated cost to prepare a firm proposal, then it may direct the Company to prepare the proposal and the Company's Direct Cost of preparing the proposal shall be determined by Dispute Resolution. Pending completion of such Dispute Resolution, the Government shall pay the cost of preparing such proposal in accordance with the estimate provided by the Company. After Dispute Resolution, any amount previously paid by the Government in excess of the Company's Direct Cost of preparing such proposal as determined by Dispute Resolution shall be refunded to the

Government, together with interest accrued thereon at the Default Rate from the date of original payment to the Company to the date of such refund. If, however, the Direct Cost of preparing the proposal, as determined by Dispute Resolution, is in excess of the written estimate previously delivered by the Company to the Government, the Government shall pay the amount of such excess to the Company, together with interest accrued thereon at the Default Rate from the date of original payment to the date of the final payment. The Company shall furnish at the Government's expense a detailed proposal within thirty (30) Days after the receipt of the Government's written approval or direction that such cost be determined by Dispute Resolution, or within such other period of time as the Parties may agree, describing in reasonable details (i) the cost of the Government Change, which cost shall consist of the Company's determination of the Direct Costs of such Government Change and the costs (including increased Capital Charges, Phase II Development Costs and Construction Costs) associated with any delay in the design, construction, start-up or Acceptance Testing of the Facility resulting therefrom, (ii) the necessary revisions to the Construction Contract and other construction documents, and (iii) the expected total effect of the Government Change on the Facility, including any increase or decrease in the Operation and Maintenance Charge, the Capital Charge, the Pass Through Costs, the Scheduled Acceptance Date, Extension Period, Delivered Tonnage, the Performance Guarantees, and any other appropriate modification to any obligation of either Party under this Agreement. The Government shall notify the Company in writing within thirty (30) Days of the receipt of the proposal if the Government wishes to proceed with the Government Change on the terms of the proposal. If the Government agrees to the proposal, the Government may direct the Company to proceed with the Government Change at the price set forth in the proposal, the items referred to above shall be adjusted in accordance with the Company's proposal, and the

Company shall undertake and expeditiously complete the Government Change. Notwithstanding the foregoing, to the extent the Company is required to estimate or project the costs or operational impact of any Governmental Change pursuant to this Section 7.07(a), the Government shall be solely responsible for the actual cost and operation impact thereof; provided, however, that the Company exercised good faith in providing its estimates and any such increased cost or operational impact is not the result of Company Fault. If the Government wishes to proceed with the Change but the Parties do not agree on the items set forth in the Company's proposal, then the Government may require the Company to complete the Government Change in the manner and under the circumstances set forth in Section 7.07(b) and Section 7.07(c). Notwithstanding the foregoing, the obligation of the Company to undertake any Government Change pursuant to this Section 7.07 shall be contingent on an amount equal to the cost of such Change having been deposited in the Construction Fund or then being available in the Construction Contingency Fund for the payment thereof. In the event such amounts are not already available in the Construction Fund or the Construction Contingency Fund, the Company will cooperate with the Government in obtaining alternative financing for such Government Change and will use all reasonable efforts (including modifications of this Agreement) to facilitate such financing, so long as such efforts do not have a material adverse effect on the Company's rights and obligations hereunder or require the Company, the Contractor, the Operator or the Guarantor to expend any of their respective funds. Subject to the availability of such funding from the Government, the Company shall be responsible for providing for the design and construction of any such Government Change.

(b) If the Government and the Company cannot agree as to the cost of a Government Change, then the Government shall have the right, subject to the funding

requirements of Section 7.07(a), to require the Company to perform such Government Change and the Company shall be paid the Direct Cost of such Government Change; provided, however, that if there is a dispute as to the design of the Change, such dispute shall be decided pursuant to Section 18.02 by the Independent Engineer and the Company shall not be obligated to commence work on the Change prior to the conclusion of such Dispute Resolution; provided, further, that any delay attributable to the Company's failure to design the Change in accordance with Good Engineering and Operating Practice or in accordance with the results of any Dispute Resolution regarding the design of such Change shall not extend the Scheduled Acceptance Date or any other times for the Company's performance hereunder, and any costs attributable to such delays shall be the Company's responsibility. Pending completion of Dispute Resolution, a portion of the cost of the Government Change shall be paid upon requisition by the Company as the Work progresses from the Construction Contingency Fund up to the amount of the Government's estimate of the cost of the Government Change, which payment in the aggregate shall be equal to the Government's estimate of the Direct Costs of such Government Change. If such payments are insufficient to complete any such Government Change prior to the completion of Dispute Resolution, the Company may halt further Work on such Government Change pending either the deposit of additional necessary funds by the Government into the Construction Contingency Fund or other suitable account or the outcome of such Dispute Resolution. After Dispute Resolution, any amounts not previously paid to the Company but which were determined to be due to the Company by Dispute Resolution shall (to the extent not previously paid from amounts available in the Construction Contingency Fund) be deposited by the Government in the Construction Fund or (to the extent previously advanced by the Company) reimbursed to the Company, together with interest thereon at the Default Rate from the date

advanced until the date repaid, and any amounts previously paid to the Company but which were determined not to be due shall be refunded to the Government or deposited in the Construction Contingency Fund, as appropriate, together with interest thereon at the Default Rate from the date paid until the date refunded.

(c) If the Government and the Company cannot agree as to the resulting impact, if any, of a Government Change on the Operation and Maintenance Charge, the Pass Through Costs, the Scheduled Acceptance Date, Extension Period, the Delivered Tonnage, the Performance Guarantees or any other provision of this Agreement, then the dispute shall be determined by Dispute Resolution; provided, however, that if the revised requirements of this Agreement relating to Performance Guarantees either cannot be satisfied in the time and manner determined by such Dispute Resolution or are satisfied in such a manner that either Party believes that such revised requirements were not correctly determined by such Dispute Resolution, then either Party shall be entitled to demonstrate that the results of such Dispute Resolution were incorrect and that such revised Performance Guarantee(s) items should be further revised due to the actual impacts of such Government Change. Any such claim which cannot be settled by agreement of the Parties shall be settled by another Dispute Resolution, with the Party seeking to demonstrate that the results of the prior Dispute Resolution were incorrect having the burden of proof. Subject to the payment and funding requirements of Section 7.07(b) and (c), the Government shall have the right to compel the Company to proceed with a Government Change prior to the resolution of any dispute regarding the impact of such Change, and both Parties shall accept the determination by Dispute Resolution of the effects of such Government Change as if such determination had been made prior to the commencement of such

Government Change, subject to a Party's right to later challenge the accuracy of any such determination as provided above.

(d) In the event of any delay in design, construction, start-up or Acceptance Testing of the Facility caused by the submission of a dispute with respect to a Government Change to Dispute Resolution, the Scheduled Acceptance Date, the Timetable, the CPM Schedule and the Extension Period, if applicable, shall be adjusted to reflect the effect of any such delay, and the Construction Cost and Phase II Development Cost, and the Operation and Maintenance Charge, if applicable, shall be equitably adjusted to reflect any increases or decreases caused by such delay, as determined by agreement of the Government and the Company or as part of such Dispute Resolution proceeding.

Section 7.08 Uncontrollable Circumstance Changes Prior to Acceptance. If before the Acceptance Date an Uncontrollable Circumstance necessitates a Change, then the Company's obligation to provide for the design, construction, start-up and Acceptance Testing of the Facility, shall be modified as provided in this Section 7.08.

(a) Except as provided in Section 7.08(e), within ten (10) Days after the occurrence of an Uncontrollable Circumstance adversely affecting the construction, start-up, operation or Acceptance Testing of the Facility or a Party's actual knowledge of such occurrence, whichever is later (subject in either case to a Party's rights with respect to late notice as provided in Section 11.02), such Party shall provide the other Party with notice of such event, followed by prompt written confirmation thereof; provided, however, that, subject to a Party's right with respect to late notice as provided in Section 11.02, the failure to give such notice within such ten (10) day period shall not prevent the later assertion of such Uncontrollable Circumstance except to the extent it prejudices or damages the other party. As soon as is

practicable following such notice, the Company shall provide the Government, at Government expense, with a written description of (i) the proposed cost of any required Uncontrollable Circumstance Change, which cost shall consist of the Company's determination of the Direct Costs of such Uncontrollable Circumstance Change, (ii) the Capital Charge or Construction Cost modification resulting from any delay in the design, construction, start-up or Acceptance Testing of the Facility resulting therefrom; (iii) the necessary revisions to the Construction Contract and other construction documents; (iv) the purpose of the Uncontrollable Circumstance Change; and (v) the total expected effect of the Uncontrollable Circumstance on the Facility including any increase or decrease in the Operation and Maintenance Charge, the Capital Charge, the Pass Through Costs, the Scheduled Acceptance Date, Extension Period, the Delivered Tonnage, the Performance Guarantees or any other provision of this Agreement. If the Government notifies the Company in writing within thirty (30) Days of receipt of the proposal that the Government wishes to proceed with the Uncontrollable Circumstance Change on the terms of the proposal or on the terms of the proposal other than price, the Government may direct the Company to proceed with the Uncontrollable Circumstance Change on the terms and conditions of the proposal and either at the price set forth in the proposal or on a Direct Cost basis, the items described in clauses (i) through (v) above shall be as set forth in the Company's proposal (except that all cost items may be adjusted to reflect proceeding on a Direct Cost basis, if applicable), and the Company shall undertake and expeditiously complete the Uncontrollable Circumstance Change. Notwithstanding the foregoing, the Company may suspend Work on any Uncontrollable Circumstance Change if (A) funds sufficient to pay the costs of such Work (determined as provided above) and available therefor are not then on deposit in the Construction Fund or the Construction Contingency Fund (either as a result of an appropriation or financing

by the Government or from financing obtained from the Company pursuant to Section 7.10) or (B) the Government has not otherwise provided financial assurances reasonably satisfactory to the Company as to the future availability of such funds.

(b) If the Government and the Company cannot agree on the cost of such Uncontrollable Circumstance Change or other items set forth in the Company's proposal, the Government shall have the right, subject to the funding limitations of Section 7.08(a), to require the Company to immediately perform such Uncontrollable Circumstance Change and the Company shall be paid the Direct Costs of such Uncontrollable Circumstance Change; provided, however, that if there is a dispute as to the design of the Change, such dispute shall be decided pursuant to Section 18.02 by the Independent Engineer and the Company shall not be obligated to commence Work on the Change prior to the conclusion of such Dispute Resolution; provided, further, that any delay attributable to the Company's failure to design the Change in accordance with Good Engineering and Operating Practice or with the determination of any Dispute Resolution regarding the design of such Change shall not extend the Scheduled Acceptance Date, Extension Period or any other times for the Company's performance hereunder, and any costs attributable to such delays shall be the Company's responsibility. Pending completion of Dispute Resolution, the cost of the Uncontrollable Circumstance Change shall be paid out of the Construction Contingency Fund or insurance (including business interruption insurance) proceeds and, if such amounts are insufficient or are earmarked for other purposes (and therefore unavailable), out of the proceeds of financing obtained from the Company pursuant to Section 7.10. If all such amounts are insufficient to complete any such Uncontrollable Circumstance Change prior to the completion of Dispute Resolution, the Company may halt further work on such Uncontrollable Circumstance Change pending the outcome of such Dispute Resolution.

The total cost of Uncontrollable Circumstance Change shall consist of the amount of the Direct Cost determined by the Dispute Resolution, which amount shall, to the extent not previously paid from insurance proceeds or amounts available in the Construction Contingency Fund, be deposited by the Government in the Construction Fund or, to the extent previously advanced by the Company other than as part of the financing provided by the Company pursuant to Section 7.10, be reimbursed to the Company, together with interest at the Default Rate. However, if the Direct Cost as determined by Dispute Resolution is less than the amounts previously paid to the Company, the Company shall (i) cancel some or all of the debt relating to financing provided by the Company pursuant to Section 7.10 up to the amount of such excess, including all interest on the debt so canceled, and to the extent such excess exceeds the amount of any such outstanding debt and accrued interest, or (ii) refund such excess to the Government, together with interest thereon at the Default Rate from the date paid to the date refunded.

(c) If the Government and the Company cannot agree on the impact, if any, of a Change on the Operation and Maintenance Charge, Capital Charge, Construction Cost, the Pass Through Costs, the Scheduled Acceptance Date, the Extension Period (if applicable), the Timetable, the CPM Schedule, the Delivered Tonnage or the Performance Guarantees or any other provision of this Agreement, the dispute shall be resolved by Dispute Resolution.

(d) In the event of any delay in design, construction, start-up or Acceptance Testing of the Facility caused by the submission of a dispute with respect to an Uncontrollable Circumstance Change to Dispute Resolution, which dispute is resolved in favor of the Company, then the Scheduled Acceptance Date or the Extension Period, if applicable, the Timetable and the CPM Schedule shall be adjusted to reflect- the effect of any such delay, and the Construction Cost or Phase II Development Cost, if applicable, shall be equitably adjusted to reflect any

increases or decreases caused by such delay, as determined by agreement of the Government and the Company or as part of such Dispute Resolution proceeding.

(e) If an Uncontrollable Circumstance creates an emergency situation in which the notice and other procedures set forth in this Section 7.08 for making Uncontrollable Circumstance Changes cannot be adhered to without endangering persons, property or public health or safety, the Company shall give the Government as much prior notice as is reasonably possible under the circumstances and shall have the authority to make emergency Uncontrollable Circumstances Changes costing not more than One million dollars ($1,000,000.00) for any one (1) Change or more than Two million dollars ($2,000,000.00) in the aggregate prior to the Acceptance Date. The Company shall be compensated for the Direct Cost of such emergency Uncontrollable Circumstance Changes, unless the Company and the Government agree to other compensation.

Section 7.09 Company Requested Chances. The Company may, at its expense, at any time after thirty (30) Days prior written notice to the Government setting forth the information required under Section 7.07(a), make any Changes which shall (i) improve the efficiency of the Facility, (ii) not increase the Construction Cost, (iii) not adversely effect the Performance Guarantees, or (iv) not increase the Operation and Maintenance Charge or the Pass Through Costs or extend the Scheduled Acceptance Date or otherwise affect the Government's performance under this Agreement; provided, however, that if, within thirty (30) Days after receipt of any such notice, the Government shall give notice to the Company disputing any of the matters set forth in the foregoing clauses (i) through (iv), the Company shall not commence any such Change pending Dispute Resolution of such matter.

Section 7.10 Financing of Changes Prior to Acceptance. To finance Changes made under Section 7.07 and Section 7.08, the Parties shall make provision for Bond proceeds in the amount of five percent (5%) of the Construction Cost to be held in a separate interest bearing account (the "Construction Contingency Fund") by the Trustee. The Construction Contingency Fund may only be used at the direction of the Government to finance or pay for Changes made under Section 7.07 and Section 7.08 or adjustments to the Construction Cost permitted under this Agreement and may not be used to finance or pay fixed costs payable by the Company hereunder, or the cost of items resulting from Company Fault or a Company Change. Should such Construction Contingency Fund not be provided for in connection with the sale of the Bonds, or should the amount in the Construction Contingency Fund not be sufficient to pay for Changes made under Section 7.07 or Section 7.08, the Company shall use its reasonable efforts to assist the Government in obtaining financing for such Changes, including cooperating in the sale of Additional Bonds and, if necessary, agreeing to modify this Agreement so long as such modifications do not have a material adverse effect on the rights and obligations of the Company hereunder; provided, however, that the Company shall not be required to provide financing in excess of the amounts hereafter required in this Section 7.10. If, despite such efforts, such financing cannot be arranged, the Government shall have the option with respect to Changes made under Section 7.08 to obtain debt financing from the Company at an interest rate of three hundred (300) basis points above the Prime Rate, for a term of not more than the lesser of the remaining term of this Agreement or five (5) years, amortized in equal monthly installments, and such other terms and conditions as shall be agreed upon by the Parties. The Company's obligation under this Section 7.10 to finance Changes shall be limited in an aggregate amount to two percent (2%) of the Facility Price as of the Contract Date.

Section 7.11 Expansion.

(a) Subject to the provisions of Section 7.09 and compliance with the requirements of all Permits, Government Rules and other legal requirements, the Company, with the approval of the Government, may expand the Guaranteed Capacity of the Facility using the same or different technologies on the condition that such expansion is reasonably expected to result in the least cost of the disposal of Acceptable Haste in excess of Delivered Tonnage to the Government as compared to other alternatives.

(b) (i) The Company and the Government agree to consult with each other from time to time with regard to their respective assessments of the volume of Acceptable Haste then being generated, or likely to be generated within the foreseeable future, within the Territory of Guam. In recognition of the rights and obligations of the Company under the Amended License, in the event that either the Company or the Government determine in their reasonable judgment that there is sufficient Acceptable Waste (or in the foreseeable future there is likely to be sufficient Acceptable Waste) being generated, or likely to be generated, within the Territory of Guam to warrant the expansion of, or addition to, the Acceptable Waste disposal capacity of the Facility, then, upon written request of either Party to the other, the Company and the Government shall enter into good faith negotiations for the design, construction and operation of additional waste reduction, resource recovery and electrical generation facilities (the "Expansion Facilities") with a capacity sufficient to Process the volume of Acceptable Waste then available for delivery to such facilities within the Territory of Guam (or such greater capacity as may be agreed upon by the Parties), after taking into account the quantity of Acceptable Waste then being Processed at the Facility. Such negotiations shall encompass the location, capacity, preliminary design specifications, design and construction schedule for, and

operating parameters of, such Expansion Facilities (collectively, the "Expansion Facilities Specifications"). The Expansion Facilities, as set forth in the Expansion Facilities Specifications may, but shall not be required to be, incorporated into the physical structure of the Facility or located at the Facility Site. As part of the Expansion Facilities Specifications, the Company shall furnish to the Government the costs that would be charged by the Company to complete the design of the Expansion Facilities, together with a non-binding estimate of the cost of permitting, constructing and operating the Expansion Facilities. Unless otherwise specified by the Company and agreed to by the Government, the Contractor shall be the construction contractor of the Expansion Facilities and the Operator shall be the operator of the Expansion Facilities.

(ii) Within one hundred twenty (120) Days following the successful negotiation of the Expansion Facilities Specifications, the Government shall retain, at its cost, a qualified geotechnical engineer or geologist to perform initial soils testings (including borings) of the agreed-upon site for the Expansion Facilities (if other than the Facility Site) and to prepare a soils report thereon, copies of which shall be delivered to the Government and the Company. The Company and the Government shall jointly review such report and determine what changes to the Expansion Facilities Specifications, if any, are required as a result of the soils conditions reported at the Expansion Facilities site. All adjustments to the Expansion Facilities Specifications shall be subject to mutual agreement between the Government and the Company, based upon good faith negotiations.

(iii) If so requested by the Government, the Company shall undertake the design of the Expansion Facilities, at a cost and within the timetable agreed upon as part of the Expansion Facilities Specifications. On or prior to the completion of such design, the Company shall furnish to the Government the costs that would be charged to the Government by

the Company (including fixed and variable components) in order to permit and construct the Expansion Facilities, in accordance with the specifications and timetable set forth in the Expansion Facilities Specifications and Applicable Law, as then in effect. If such costs are acceptable to the Government, the Government shall give written notice to the Company to proceed with the permitting, construction and operation of the Expansion Facilities, whereupon the costs so quoted to and accepted by the Government shall be deemed incorporated in, and become part of, the Expansion Facilities Specifications.

(iv) Unless otherwise agreed by the Company and the Government, the Government shall be responsible for the acquisition, at its cost, of the agreed-upon site of the Expansion Facilities, in accordance with the schedule set forth in the Expansion Facilities Specifications.

(v) The obligation of the Company to design, construct and operate the Expansion Facilities is subject to the Government's providing the funding therefor in the amounts, and in accordance with the schedule, set forth in the Expansion Facilities Specifications, as from time to time in effect, together with the requisite on-going operation and maintenance expenses associated with the Expansion Facilities. In connection therewith, the Government and the Company shall conduct good faith discussions with respect to the most economical and efficient means of securing such funding, and the Company shall use its reasonable efforts to cooperate with the Government in connection therewith, it being understood that neither the Company, the Contractor, the Operator or the Guarantor shall be under any obligation to incur or assume any indebtedness or make any equity contribution in connection therewith, except as may be agreed to by the Person providing such funding, at its sole option.

(vi) The Government agrees that during the term of this Agreement it shall not contract for the design, permitting, construction or operation of a waste reduction, resource recovery and electrical generation facility with any Person other than the Company or its Affiliates (A) unless the Government shall have engaged in good faith negotiations with the Company therefor in accordance with Section 7.11(b) for at least 180 days, but the Parties shall have failed to have reached an agreement during such time, and (B) the Government shall have given the Company (1) a copy of the terms of any such contract, and (2) the right to design, permit, construct and operate such new facility on terms no less favorable to the Government than those set forth in such contract; provided, however, that the Company submits its offer to the Government on substantially equivalent terms within 120 days of receipt of such other contract.

(vii) If the Government and the Company successfully negotiate an agreement with respect to Expansion Facilities, the Parties shall memorialize their agreement with respect to the Expansion Facilities Specifications, the permitting, construction and operating costs associated therewith, and the procedures and schedule for such permitting, construction and operations in a supplement to this Agreement. The Parties may also enter into a supplement to the Power Purchase Agreement, or enter into a separate power purchase agreement, to provide for the purchase and sale of Energy Products produced by the Expansion Facilities.

(c) (i) The Parties recognize that within the term of the Amended License there is expected to be generated and available in the Territory of Guam sufficient Acceptable Waste to provide the thermal energy required to support a Facility with electrical generation facilities having a rated generating capacity of at least 40 megawatts. In recognition of the foregoing and the rights and obligations of the Company under the Amended License, the Parties

shall, promptly after the Contract Date, commence and pursue in good faith negotiations for the design, construction and operation of ancillary electrical generation facilities with a rated generating capacity which, together with the rated generating capacity of the Facility, shall equal 40 megawatts (the "Ancillary Generating Capacity"). Such negotiations shall encompass the location, capacity, preliminary design specifications, design and construction schedule for, and operating parameters of, such Ancillary Generating Capacity (collectively, the "Ancillary Generation Specifications"). The Ancillary Generating Capacity, as set forth in the Ancillary Generation Specifications, may, but shall not be required to be, incorporated into the physical structure of the Facility or be associated with or fueled by the Processing of Acceptable Waste. Unless otherwise specified by the Company and agreed to by the Government, the Contractor shall be the construction contractor of the Ancillary Generating Capacity and the Operator shall be the operator of the Ancillary Generating Capacity.

(ii) In conjunction with, or promptly upon the successful negotiation of, the Ancillary Generation Specifications, the Government shall, or shall cause GPA to, negotiate with the Company, in good faith the terms of a power purchase agreement relating to the Energy Products of the Ancillary Generating Capacity (the "Supplemental Power Purchase Agreement"). Such Supplemental Power Purchase Agreement shall provide for the purchase by the Government or GPA from the Company (or such Affiliate thereof as holds title to the Ancillary Generating Capacity (the "Production Affiliate"), on a take-or-pay basis, of the electric capacity and energy of the Ancillary Generating Capacity for its estimated useful life. The rights of the Company or the Production Affiliate under the Supplemental Power Purchase Agreement may be pledged and assigned to secure the financing of the Ancillary Generating Capacity by the Company or the Production Affiliate. Upon successful negotiation of the Ancillary Generation

Specifications and the Supplemental Power Purchase Agreement, and subject to the successful financing of the capital costs associated with the Ancillary Generating Capacity, the Company shall, or shall cause the Production Affiliate to, design, permit and construct the Ancillary Generating Capacity in accordance with the Ancillary Generation Specifications.

(iii) Unless otherwise agreed by the Parties, the Ancillary Generating Capacity shall be owned and subject to mortgage or disposition by the Company or its Production Affiliate, subject only to such limitations as may be set forth in the Supplemental Power Purchase Agreement.

(iv) If the Parties fail to reach agreement on the terms of the Ancillary Generation Specifications and the Supplemental Power Purchase Agreement, prior to contracting for the design, permitting, construction or operation of new electrical generation capacity in the Territory of Guam with a third party during the term of this Agreement, the Government shall first (1) give the Company a copy of the terms of such contract, and (2) offer the Company the opportunity to design, permit, construct and operate such new electrical generation capacity on terms no less favorable to the Government than those set forth in such contract; provided, however, that (A) the Company submits its offer to the Government within 120 days of receipt of such other contract and (B) the rights of the Company and the obligations of the Government under this Section 7.11(c)(iv) shall be subject to Applicable Law, including applicable procurement and bidding requirements, if any.

Section 7.12 Acceptance Test Procedures; Acceptance.

(a) Testing. The Company and the Contractor, in cooperation with the Operator, shall be responsible for start-up operations of the Facility and for the performance and execution of Acceptance Testing and shall furnish all labor, supervision, materials (other than

Acceptable Waste), services, equipment and instrumentation necessary to perform and execute such Acceptance Tests; provided, however, that the Government shall be responsible for providing electric, water and sewer service in quantities sufficient to permit Acceptance Testing. The Company and the Contractor shall not be authorized to commence Acceptance Testing until the Work on the Facility has reached Substantial Completion.

(b) Test Plan. No later than ninety (90) Days prior to the initiation of Acceptance Testing, the Company shall deliver to the Government a test plan setting forth in detail the procedures to be used, the specific measurements to be made, the proposed usage of permanent and temporary instrumentation and the organization of the test team, the staffing and monitoring requirements during start-up, shakedown and Acceptance Testing, the Acceptance Testing schedule, the estimated Acceptable Waste quantities and delivery schedules required for such Acceptance Testing and the Facility operating and maintenance schedule during such Acceptance Testing. The test plan shall also make provision for measuring and determining the Processing capacity of the Facility, the quantities of electrical energy produced and adjustments to the Performance Guarantees, the Acceptance Tests and the Performance Tests to account for deviations of the Acceptable Waste from the Acceptable Waste Range pursuant to Section 7.17 as well as a determination of the compliance of the Facility with the terms and conditions of applicable Permits and Governmental Rules. If the Company and the Government are unable to agree upon a test plan within thirty (30) Days of such submission, the matter shall be resolved by Dispute Resolution.

(c) Notice of Start-Up and Acceptance Testing. The Company shall give the Government (i) at least ninety (90) Days prior written notice of the approximate start-up date of the Facility, which notice Shall include projected delivery schedules and approximate quantities

of Acceptable Waste necessary for start-up operations, and (ii) at least thirty (30) Days prior written notice of the schedule for Acceptance Testing, the date and time of the Acceptance Tests and the total Acceptable Waste quantities and the delivery schedule necessary for the performance of such Acceptance Testing. The Government shall cause to be delivered the requested quantities of Acceptable Waste. If the Government's failure to deliver the requested quantities of Acceptable Waste directly results in a delay of Acceptance Testing, then (i) the Scheduled Acceptance Date shall be extended by the number of Days of any such delay which occurs prior to the Scheduled Acceptance Date, or (ii) if such delay occurs after the Scheduled Acceptance Date, the damages payable by the Company pursuant to Section 7.14 and Section 7.15 for each Day of such delay shall be suspended, and the Extension Period shall be extended by the number of Days of such delay. If any such failure to deliver Acceptable Waste by the Government results in the delay or interruption of Acceptance Testing, or prevents the completion of Acceptance Testing, then such Acceptance Test, or any portion thereof, shall be repeated, and -the Scheduled Acceptance Date shall be extended by the number of Days required to commence and repeat such test(s). In such event, the Government shall pay the Company for its Direct Costs incurred as a result of such repeated Acceptance Testing and delay, together with any Service Fee otherwise then payable by the Government pursuant to this Agreement. If such interruption occurs after the Scheduled Acceptance Date, the Extension Period shall be extended by the number of Days of such delay, and the damages payable by the Company pursuant to Section 7.14 and Section 7.15 shall be suspended for the number of Days required to repeat such test(s). The Government and the Company shall use reasonable efforts to reasonably adjust the Acceptance Test(s) or schedule to prevent delays due to a shortage of Acceptable Waste. Any disputes between the Parties with respect to the number of Days of such delay shall be resolved

by Dispute Resolution. Upon the completion of Acceptance Testing, the Company shall notify the Government whether or not the Government should begin to make regular deliveries of Acceptable Waste to the Facility.

(d) Inspection. The Government and the Consulting Engineer, at the Government's sole expense, shall have the right to verify the preparation for and the conduct of Acceptance Testing for the purpose of verifying compliance with the approved test plan and verifying the integrity of the Acceptance Test results. The Company shall cooperate fully with the Government and Consulting Engineer in this regard.

(e) Acceptance Test Results. The Company, upon completion of the Acceptance Tests, including the receipt of any laboratory analysis, shall furnish the Government with a written report certified by the Company describing (i) the Acceptance Tests conducted, (ii) the results of the Acceptance Tests, (iii) whether any of the Performance Guarantees were satisfied, and (iv) the Company's estimate of the date of initiation of additional Acceptance Testing, if necessary, and the desired amount and delivery schedule of additional Acceptable Waste to the Facility. If the Company maintains that the Performance Guarantees were not satisfied as a result of the failure of the Solid Waste delivered by the Government pursuant to Section 7.12(c) to constitute Acceptable Waste or Reference Waste, the Company shall so state in the report certified by the Company pursuant to this Section 7.12(e), together with a certification of the characteristics of the Solid Waste so delivered. Based on the characteristics of the Solid Waste so delivered, the Acceptance Tests or Performance Tests shall be adjusted as provided in Section 7.12(b) and Schedule 8.

(f) Certification. (i) Within thirty (30) Days of the Government's receipt of the Company's final report and certification of Acceptance Test results and all relevant and

pertinent test data, the Government shall determine whether the Company correctly certified such results. During such thirty (30) Day period, the Company and Consulting Engineer shall work to correct any discrepancies in the Company's certification to the extent feasible and such corrected certification shall not be treated as a new certification. If the Government rejects the Company's certification of the results of such Acceptance Testing or any contention by the Company that the Performance Guarantees were not satisfied as a result of the character of the Solid Waste delivered by the Government, the Government shall describe in reasonable detail the basis of its rejection and it shall attach a certificate setting forth the basis for such rejection. If the Company does not concur in any such rejection, the matter shall be considered a dispute and shall be resolved in accordance with Dispute Resolution.

(ii) From the date of completion of the Acceptance Tests reported in the Company's certification until the completion of Dispute Resolution, the Company shall be paid the service Fee (or the appropriate portion thereof) based upon the certification of the Company in accordance with the terms of Section 10.01, Section 7.14, Section 7.15, Section 7.17 or Section 7.18, as applicable. Upon finalization of Dispute Resolution, any monies which should not have been paid to the Company will be refunded to the Government, with interest at the Default Rate, within thirty (30) Days.

Section 7.13 Determination of Acceptance Date. The Acceptance Date shall be determined as follows:

(a) In the event that the Government fails to respond within thirty (30) days of its receipt of the certification from the Company that the Facility has satisfied the Acceptance Tests and the Government was notified to begin delivery of the Delivered Tonnage, then the Acceptance Date shall be the date of completion of the Acceptance

Tests reported in the Company's certification; provided, however, if the Company did not so notify the Government to begin delivery of the Delivered Tonnage, then the Acceptance Date shall be the date of the Company's certification; or

(b) In the event that the Government's Consulting Engineer certifies that the Facility has satisfied the Acceptance Tests and the Government was notified to begin delivery of the Delivered Tonnage, then the Acceptance Date shall be the date of completion of the Acceptance Tests reported in the Company's certification; provided, however, that if the Company did not so notify the Government to begin delivery of the Delivered Tonnage, then the Acceptance Date shall be the date of the Company's certification; or

(c) In the event that the Government rejects the Company's certification and it is determined by Dispute Resolution that the Company's certification was correct and the Government was notified to begin delivery of the Delivered Tonnage then the Acceptance Date shall be the date of completion of the Acceptance Tests reported in the Company's certification; provided, however, that if the Company did not so notify the Government to begin delivery of the Delivered Tonnage, then the Acceptance Date shall be the date of the Company's certification.

Section 7.14 Acceptance at Less Than Guaranteed Capacity.

(a) If the Facility is unable to Process Acceptable Waste at a rate equal to or exceeding the Guaranteed Capacity but the Acceptance Tests demonstrate that the Facility is able to Process Acceptable Waste at a rate of at least eighty-five percent (85%) of the Guaranteed Capacity in compliance with Governmental Rules, the Company may certify such percentage of Guaranteed Capacity to the Consulting Engineer and the Government in the manner provided in

Section 7.12, and an Acceptance Date shall be determined according to Section 7.13. In that event, for the one year period following the Acceptance Date, the Company shall cause the Operator to operate the Facility and use its reasonable efforts to increase the Processing rate. The one-year period shall, at the Company's option, be extended by a number of Days equal to the aggregate of number of Days of delay in the Work due to Government Fault or the occurrence of an Uncontrollable Circumstance during the one-year period. Until the earlier of the end of such one year period or the date Acceptance Testing demonstrates that the Facility is able to Process at a rate equal to or exceeding the Guaranteed Capacity, the Government shall pay the Service Fee but the amount of the Operation and Maintenance Charge component of the Service Fee shall be reduced by multiplying such amount by the Pro Rata Percentage; provided, however, that at the conclusion of such one (1) year period such Pro Rata Percentage shall be recalculated based upon the actual number of Tons of Acceptable Waste Processed by the Facility during such period and such adjusted Pro Rata Percentage shall be applied to recalculate the Operation and Maintenance Charge payable to the Company in respect of such period. If the amount of the Operation and Maintenance Charge, as so recalculated, (a) exceeds the amount theretofore paid to the Company in respect of such period, the amount of such excess shall be added to the Service Fee payable by the Government during the first -annual adjustment described in Section 10.03 which follows the Acceptance Date certified under this Section 7.14(a), or (b) is less than the amount theretofore paid to the Company in respect of such period, such shortfall shall be deducted from such Service Fee in connection with such adjustment. In addition, the Company shall be liable to the Government for an amount equal to the product of (A) the Landfill Charge (excluding the $7.50 per Ton surcharge included in the definition of such term in Section 2.01) and (B) seventy percent (70%) (to take account of the excess landfill

utilization occasioned by the failure to Process at the Guaranteed Capacity) of the difference between (1) the number of Tons which would have been Processed during such period had the Facility operated at Guaranteed Capacity and (2) the number of Tons of Acceptable Waste actually Processed during such period. Such amount, as calculated above, shall be deducted from the Service Fee during the first annual adjustment described at Section 10.03 which follows the Acceptance Date certified under this Section 7.14(a).

(b) If as of the last Day of the one (1) year period following the Acceptance Date, extended if applicable pursuant to Section 7.14(a), the Company has not certified that the Facility is able to Process Acceptable Waste at a rate that meets or exceeds the Guaranteed Capacity, then in addition to the reduction to the Operation and Maintenance Charge set forth in Section 7.14(a), the Capital Charge component of the Service Fee shall be reduced by multiplying the Capital Charge by the Pro Rata Percentage; provided, however, that at the conclusion of such one (1) year period following such reduction in the Capital Charge component of the Service Fee (extended if applicable pursuant to Section 7.14(a)), the Pro Rata Percentage shall be recalculated based upon the actual number of Tons of Acceptable Waste Processed by the Facility during such period and such adjusted Pro Rata Percentage shall be applied to recalculate the Capital Charge payable to the Company in respect of such period. If the amount of the Capital Charge, as so recalculated, (a) exceeds the amount theretofore paid to the Company in respect of such period, the amount of such excess shall be added to the Service Fee payable by the Government during the second annual adjustment described in Section 10.03 following the Acceptance Date certified under Section 7.14(a), or (b) is less than the amount theretofore paid to the Company in respect of such period, such shortfall shall be deducted from such Service Fee in connection with such adjustment. At the conclusion of the next one (1) year

period (extended if applicable pursuant to Section 7.14 ran, a similar recalculation and adjustment shall be made, unless the Company has theretofore certified that the Facility is able to Process Acceptable Waste at a rate that meets or exceeds the Guaranteed Capacity.

(c) After the last Day of the one (1) year period following an Acceptance Date established under Section 7.14(a), extended if applicable pursuant to Section 7.14(a), the Company shall have two (2) additional years to increase the Processing rate. If during that period Performance Testing demonstrates that the Facility is able to Process at a rate which meets or exceeds the Guaranteed Capacity, then the reductions in the components of the Service Fee set forth in Section 7.14(a) and Section 7.14(b) shall terminate.

(d) If as of the last Day of the three (3) year period, extended if applicable pursuant to Section 7.14(a), following an Acceptance Date established under Section 7.14(a), Performance Testing has not demonstrated that the Facility is able to Process at a rate which meets or exceeds the Guaranteed Capacity for a reason other than Government Fault or Uncontrollable Circumstance (after adjustment of the Performance Guarantees as provided in Section 7.12(b) and Schedule 8 to account for any deviation of Acceptable Waste from the Acceptable Waste Range), then the reductions in the Service Fee determined under Section 7.14(a) and Section 7.14(b); as then in effect, shall become permanent for the remaining term of this Agreement, the number of Tons of Acceptable Waste required to be Processed to reach Guaranteed Capacity shall be deemed to be reduced to the number of Tons of Acceptable Waste per year established by the last certification of Facility Processing capacity, and the Delivered Tonnage shall be proportionately reduced.

(e) The Company shall pay the Direct Costs, excluding profit, incurred by the Government, including the costs of the Consulting Engineer, relating to any Acceptance Testing performed after an Acceptance Date established under Section 7.14(a).

Section 7.15 Extension of Acceptance Date.

(a) If Acceptance has not occurred before the Scheduled Acceptance Date and the Facility does not meet the standards for the application of the provisions set forth in Section 7.14(a) (after adjustment of the Performance Guarantees as provided in Section 7.12(b) and Schedule 8 to account for any deviation of Acceptable Waste from the Acceptable Waste Range) for a reason other than Government Fault or Uncontrollable Circumstance, then the Extension Period shall occur and (i) the Company shall cause the Contractor to complete the Facility and shall have up to an additional thirty (30) months to cause the Facility to reach Guaranteed Capacity and to be certified under Section 7.12, (ii) during such Extension Period, the Government shall pay to the Company, for each Billing Month (A) the sum of (1) the monthly Operation and Maintenance Charge that would have been in effect pursuant to Section 10.02 multiplied by the Pro Rata Percentage, (2) fifty percent (50%) of the Capital Charge multiplied by the Pro Rata Percentage, and (3) the Pass Through Costs, less (B) the product of $7.50 per Ton multiplied by the Bypassed Waste Amount; provided, however, that if the amount in clause (B) is greater than the amount in clause (A), the Company shall pay the difference between clause (B) and clause (A) to the Government in such Billing Month; provided, further, that if during the Extension Period the Company is prevented or delayed from reaching the Guaranteed Capacity by Uncontrollable Circumstance or Government Fault, then the Extension Period shall be extended by the period of delay resulting solely from such Uncontrollable Circumstance or Government Fault and, to the extent such delay results from Government Fault (and not from

Uncontrollable Circumstance), the Government shall again be obligated to pay the full Capital Charge during the period in which the Company is so prevented or delayed. Notwithstanding the foregoing, if at the conclusion of any Billing Month during the Extension Period the Company can demonstrate that during the immediately preceding twelve (12) month period the Facility Processed Acceptable Haste at a rate that meets or exceeds the Guaranteed Capacity (after giving effect to any equitable adjustment required to take account of any Government Fault or Uncontrollable Circumstance during such period), then the Government shall pay to the Company for such Billing Month an amount equal to the amount that would otherwise have been payable to the Company in respect of such period pursuant to Section 10.01 had the Acceptance Date occurred on or before the commencement of such Billing Month.

(b) During each Billing Month or portion thereof of the Extension Period, the Government shall deliver all of the Acceptable Waste that the Company may request, up to the Delivered Tonnage; provided, however, that if, for reasons outside of its control, the Government shall be unable so to deliver the Delivered Tonnage, the Government shall not be deemed in default under this Agreement or be subject to any forfeiture or surcharge penalty hereunder for its failure so to deliver the Delivered Tonnage, if and for so long as (i) during such period the Government did not permit the delivery of Acceptable Waste (other than Acceptable Waste rejected by the Company pursuant to Section 8.10) to any facility other than the Facility, and (ii) the Government continues to pay in full the Service Fee in such amounts and at such times as are provided for in this Agreement.

(c) Within twenty (20) Days of the commencement of the Extension Period, the Company shall furnish the Government with a statement setting forth the amount and computation of the fee described in (a) expected to be in effect for the first Extension Period

Year. If the actual amount of any of the costs in Section 7.15(a)(ii) cannot be determined with certainty, then such amount shall be based upon the Company's good faith estimate of such item. Within thirty (30) Days after the conclusion of the first Extension Period Year, the Company shall furnish the Government with a statement setting forth the difference, if any, between the aggregate fee paid by the Government during such Extension Period Year pursuant to the Company's good faith estimate, and the amount (detailed by cost component) actually payable by the Government in respect of such Extension Period Year pursuant to Section 7.15(a). Within sixty (30) Days after delivery of such statement, the amount of the fee actually paid shall be adjusted by refund (by the Company) or additional payment (by the Government), in each case, plus interest at the Default Rate from the dates the underpayments or overpayments were made, to reflect the actual amount of each item previously estimated, and the amount of the fee to be paid by the Government shall be adjusted for the remainder of the Extension Period. At the conclusion of the Extension Period, the fees actually paid by the Government shall be similarly adjusted by refund or additional payment, in each case, plus interest at the Default Rate, to reflect the actual amount of each item previously estimated.

(d) If as of the conclusion of the Extension Period, Acceptance Testing has not demonstrated that the Facility is capable of Processing Acceptable Waste at a rate equal to or greater than eighty-five percent (85%) of the Guaranteed Capacity, then the Government may terminate this Agreement in accordance with Section 15.02. If as of the conclusion of the Extension Period, Acceptance Testing demonstrates that the Facility is capable of reliably Processing Acceptable Waste at a rate equal to or greater than eighty-five percent (85%) of the Guaranteed Capacity in compliance with Governmental Rules, then the Company may certify such lesser percentage as provided in Section 7.14(a), the Service Fee shall be reduced as

provided in Section 7.14(a) and Section 7.14(b), and the Acceptance Date shall be the date of such certification.

(e) At any time during the Extension Period, the Company may conduct Acceptance Testing pursuant to Section 7.13 and may have an Acceptance Date determined under Section 7.13 before the expiration of the Extension Period. The Company shall pay the Government's Direct Costs of monitoring such Acceptance Testing, excluding profit, including the costs of the Consulting Engineer, occurring after the Scheduled Acceptance Date.

Section 7.16 Early Extension Period. During the period prior to the Scheduled Acceptance Date, if the Facility is not yet able to certify that the Facility is able to meet the Performance Guarantees, the Company may elect to begin the Extension Period and shall be compensated for Processing Acceptable Waste as set forth in Section 7.15: provided, however, that (i) if the Company elects to begin the Extension Period prior to the Scheduled Acceptance Date, the Extension Period shall expire thirty (30) months after the date of such election (subject to extension as a result of Uncontrollable Circumstance or Government Fault as provided in Section 7.15), and (ii) if the Facility is not capable of Processing Acceptable Waste at a rate equivalent to fifty percent (50%) or more of the Guaranteed Capacity (as demonstrated over any 7 consecutive Day period), the Company shall not be entitled to any amount in respect of the Capital Charge component of the compensation that would otherwise be payable pursuant to Section 7.15. At the Scheduled Acceptance Date, if the Facility has not yet passed all of the Acceptance Tests and has not yet demonstrated that it is able to Process Acceptable Waste at a rate equal to or exceeding the Guaranteed Capacity, but the Acceptance Tests demonstrate that the Facility is able to Process Acceptable Waste at a rate of at least eighty-five percent (85%) of the Guaranteed Capacity in compliance with Government-Rules, the Company may elect to

continue the Extension Period or to apply the provisions of Section 7.14. However, if the Company elects to apply the provisions of Section 7.14, all further rights to an Extension Period under Section 7.15 and Section 7.16 shall terminate.

Section 7.17 Acceptance at Less Than Performance Guaranteed. If the Facility is able to Process Acceptable Waste at a rate equal to or exceeding eighty-five percent (85%) of the Guaranteed Capacity in compliance with Governmental Rules, but is otherwise unable to meet Energy Efficiency Guarantee, the Lime Consumption Guarantee, the Residue Quality Guarantee or the Maximum Utility Utilization Guarantee, the Company may certify the performance of the Facility with respect to each of the other Performance Guarantees in the manner provided in Section 7.12 and the Facility shall be Accepted and the Acceptance Date shall be deemed to have occurred pursuant to the provisions of Section 7.13 and Section 7.14; provided, however, that the Service Fee shall be adjusted or payments otherwise made by the Company to take into account the reduced level of performance with respect to each of such Performance Guarantees in the manner set forth in Section 10.05 (in the case of the Energy Efficiency Guarantee), Section 9.04 (in the case of the Lime Consumption Guarantee), Section 10.06 (in the case of the Residue Quality Guarantee) and Section 9.06 (in the case of the Maximum Utility Utilization Guarantee). The Company shall prepare amendments to the Performance Guarantee Schedules to reflect the reduced levels of performance which shall be incorporated into this Agreement as an amendment.

Section 7.18 Failure to Reach Acceptance Caused by Uncontrollable Circumstance or Government Fault. If the Scheduled Acceptance Date is not met due to the Government Fault or Uncontrollable Circumstance, then (a) the Company shall take appropriate measures to reduce the Operation and Maintenance Charge and the Pass Through Costs, and (b) commencing

on the Scheduled Acceptance Date, the Government shall pay to the Company the Service Fee reduced pursuant to this Section 7.18 and the Scheduled Acceptance Date shall be adjusted as provided in Section 7.06.

Section 7.19 Early Completion. If the Facility shall be Accepted and the Acceptance Date occurs (or is deemed to occur hereunder) prior to the Scheduled Acceptance Date, the Government shall pay to the Company, on the Acceptance Date, an amount equal to twenty-five percent (25%) of the Debt Service that would otherwise have accrued during the period from such Acceptance Date through the Scheduled Acceptance Date (assuming, insofar as any Bonds are then accruing interest at an adjustable rate, that the rate in effect on the Acceptance Date would remain in effect throughout such period). If the Government shall contend that the amount of any payment owing to the Company pursuant to this Section 7.19 is less than the amount contended by the Company, the Government shall pay such lesser amount on the Acceptance Date and the remainder of such amount shall be subject to Dispute Resolution; provided, however, that if it is ultimately determined that the Company is entitled to all or a portion of such disputed amount, the Government shall promptly pay such amount to the Company, together with interest thereon from the Acceptance Date to the payment date, computed at the Default Rate.

ARTICLE VIII
OPERATION AND MAINTENANCE OF TEE FACILITY BY COMPANY

Section 8.01 Overall Responsibility.

(a) The Company shall be responsible for the operation, maintenance and repair of the Facility as provided in this Agreement. The Company shall, at its sole cost and expense, enter into Operation and Maintenance Agreements with one or more Operators and perform its obligations thereunder. The Operator shall be Wheelabrator, unless such Operator

(or any subsequent Operator) is replaced by a Permitted Successor Operator; provided, however, that prior to any such replacement, the Company shall provide the Government with written notice, detailing the bases for such-change and outlining the qualifications of the proposed successor. In the event such approval is requested, the Company shall provide a full detailed and substantiated disclosure of the reasons for the change.

(b) The Company shall be responsible for providing, and the Operation and Maintenance Agreement shall provide for, management, supervision, personnel, materials, equipment, services and supplies (other than Acceptable Waste, water, sewer service and power) necessary to operate, maintain and repair the Facility, including repair and replacement due to design and construction errors and omissions, throughout the term of this Agreement in a manner consistent with this Agreement, all applicable Governmental Rules and Good Engineering and Operating Practice in order to receive (subject to Section 8.08, Section 8.10 and Section 8.11) Acceptable Waste during the Receiving Time, and to Process (subject to Section 8.11) such Acceptable Waste and generate electricity. The Operator will use reasonable efforts to have the Operation and Maintenance Agreement and all subcontracts thereunder contain provisions obligating the parties thereto to submit disputes involving the Government to Dispute Resolution pursuant to ARTICLE XVIII.

(c) The Government shall cause the Delivered Tonnage to be delivered to the Facility; provided, however, that the Company shall not be obligated to accept more than three hundred fifty (350) Tons in any Business Day or one thousand seven hundred fifty (1750) tons in any week or such lesser amount as may be established by Applicable Law or Permits; provided further, that the Government shall not be obligated to deliver Acceptable Waste to the Facility in excess of the amount of Acceptable Waste that the Facility is capable of accepting on any given

day for any reason other than Government Fault. The Government shall cause delivery of Delivered Tonnage to be made in accordance with the weekly schedule of deliveries furnished by the Company and agreed to by the Government, subject to daily variations within the foregoing limits. Notwithstanding the foregoing, if, for reasons outside of its control, the Government shall be unable so to deliver the Delivered Tonnage, the Government shall not be deemed in default under this Agreement or be subject to any forfeiture or surcharge penalty hereunder for its failure so to deliver the Delivered Tonnage, if and for so long as during such period the Government did not permit the delivery of Acceptable Waste (other than Acceptable Waste rejected by the Company pursuant to Section 8.10) to any facility other than the Facility, it being understood and agreed that the Government's delivery of Acceptable Waste (other than Acceptable Waste rejected by the Company pursuant to Section 8.10) to any facility other than the Facility shall be deemed a material breach of this Agreement .

(d) Not later than ninety (90) Days before the Scheduled Acceptance Date, the Government shall furnish the Company with a statement of the estimated amount of Acceptable Waste generated on the island of Guam based on the tonnage disposed of in each week during the most recent calendar year.

(e) Reserved.

(f) After the Acceptance Date, the Company shall receive Acceptable Waste during the Receiving Time, and shall Process all such Acceptable Waste which is delivered to the Facility throughout the term of this Agreement, subject to the right of the Company to reject waste pursuant to Section 8.10.

(g) Subject to Section 5.09, the Government shall provide the Landfill and pay as a Pass Through Cost the Company's cost of transportation to the Landfill and the cost of

disposal of the Residue, Unacceptable Waste and Acceptable Waste rejected pursuant to Section 8.10(a).

Section 8.02 Safety of Persons and Property. The Company agrees that it will cause the Operator to: (a) take all reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the Facility, to any property on the Facility Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, equipment, structures and utilities; (b) establish and maintain safety procedures for the Facility for the protection of employees, invitees, permittees and all other persons at the Facility Site in accordance with applicable Governmental Rules and with Good Engineering and Operating Practice; (c) comply with applicable Governmental Rules and Permits relating to the safety of persons or property at the Facility or their protection at the Facility from damage, injury or loss; and (d) designate a qualified and responsible member of its organization whose duties shall be safety and the prevention of fires and accidents at the Facility and the Facility Site and to coordinate such activities as shall be necessary with Federal and local officials.

Section 8.03 Repair and Maintenance of the Facility and Facility Site. The Company, at its sole cost and expense except to the extent such costs and expenses constitute Pass Through Costs, shall cause the Operator to (a) operate and maintain the Facility and the site in a good, clean, orderly and litter-free condition, including implementing good housekeeping procedures, making necessary repairs, purchasing, maintaining and installing necessary replacement equipment or parts for the Facility and maintaining an adequate inventory of spare parts and equipment, in each case consistent with Good Engineering and Operating Practice and with meeting the Performance Guarantees and the other obligations of the Company set forth in this Agreement, (b) maintain within the Facility Site all landscaping, drainage systems (including

storm water drainage systems and pipes, manholes, inlets, headwalls, scales, scale house, flared-end sections, cleanouts, rip-raps, and on-site roadways), (c) operate the Facility and equipment and perform all tests or testing on a Pass Through Cost Basis as may be required by the Permits and applicable Governmental Rules, (d) notify the Government promptly if any major equipment should fail or be seriously damaged and repair or replace such equipment, or procure a substitute unit of comparable quality, and (e) upon reasonable notice, and subject to the requirements of liability insurance policies and the need to obtain waivers of liability, be responsive to requests for information from the public and designate a person who consistent with other responsibilities, shall conduct the public on tours of portions of the Facility from time to time. Notwithstanding the foregoing, nothing contained in this Section 8.03 shall require the Company to make any expenditures that would be properly classified as capital additions under GAAP and which are required as a result of Government Fault or Uncontrollable Circumstance unless sufficient funds therefor have previously been made available by the Government or from proceeds of insurance procured pursuant to Section 16.02.

Section 8.04 Personnel and Training.

(a) The Company shall cause the Operator to staff the Facility with the appropriate number of hourly and salaried employees consistent with Good Engineering and Operating Practices in sufficient numbers to enable the Company to perform all of its obligations and duties under this Agreement in a timely and efficient manner. All of the Operator's personnel shall be appropriately trained in accordance with all applicable Governmental Rules so that the Facility will be started-up, Acceptance Tested, operated and maintained in accordance with and consistent with Governmental Rules, the requirements of the Permits and Good Engineering and Operating Practices. The plant manager and one other supervisor shall have not

less than two (2) years of experience in a management, assistant management or responsible supervisory position in a resource recovery facility similar in complexity to the Facility.

(b) The Company shall cause the Operator to train all of its operating and maintenance personnel in their respective operation and maintenance tasks for the Facility. The Company shall cause the Operator to provide sufficient classroom and on-the-job training of operations and maintenance personnel to insure their competence in operating and maintaining the Facility.

(c) The Company shall cause the Operator to arrange for appropriate members of its operation and maintenance staff to be available during the design and construction of the Facility in order to facilitate start-up, Acceptance Testing and continuous operation. The Operator's plant manager shall be at the Facility Site full-time at least four months prior to the Scheduled Acceptance Date.

Section 8.05 Receiving Time/Hours of Operation.

(a) Except as otherwise provided in this Agreement, the Facility shall be open to receive Acceptable Waste every Business Day from 7:00 a.m. to 4:00 p.m. The Government and the Company may, by mutual agreement, change the times during which the Facility will be open to receive Acceptable Waste. If any such change will cause an increase in the Operation and Maintenance Charge, then the Government shall pay all of the Company's Direct Costs incurred by any extended hours of operation.

(b) The Company agrees to cause the Operator to receive Acceptable Waste at the Facility at hours other than the Receiving Time, if (i) requested by the Government to accommodate unusual quantities of Acceptable Waste resulting from an emergency or from programs of the Government designed to promote clean-up of an area of the island of Guam; and

(ii) the Government provides the Company with reasonably adequate advance notice of such delivery of Acceptable Waste to enable the Company to respond to such a request.

(c) If the Company receives Acceptable Waste at the Facility pursuant to Section 8.05(b), the Government shall pay the Company its Direct Costs resulting from the operation of the Facility at other than the Receiving Time.

(d) The Company shall use its reasonable efforts to Process all Acceptable Waste received at the Facility even after the Facility has Processed the Guaranteed Capacity of Acceptable Waste in any Billing Year, but no such additional Processing shall be deemed to (i) increase the Guaranteed Capacity without the written consent of the Company, or (ii) preclude the Company from Processing Acceptable Waste from sources other than the Government and retaining any revenues associated therewith, including, but not limited to, revenues from the sale of Energy Products produced therefrom.

Section 8.06 Inspection of the Facility; Recordkeeping and Reporting.

(a) (i) The Government may, on reasonable notice and at a reasonable time, and in a manner not to interfere with operations and at its cost and expense and with the full cooperation of the Company and the Operator, inspect the Facility for the purpose of determining whether the Company is in compliance with all of its obligations under this Agreement. If such inspection shall reveal that the Company and/or the Operator is not in compliance with such obligations, then the Government shall provide the Company with a written report of such noncompliance. The Company shall have thirty (30) Days from the date of the Company's receipt of written notice by the Government of such noncompliance to cause Operator to correct or take appropriate steps to commence the correction of such noncompliance, to test the Facility or to dispute any such report. Any dispute arising with respect to such

inspection and report shall be resolved in accordance with Dispute Resolution. The Company shall not be required to repair the Facility to the extent it violates a Performance Guarantee for which specific damages are provided, and such damages are being paid by the Company. This inspection right is in addition to the Government's right to require the Company and the Operator to test the Facility pursuant to Section 9.08.

(ii) Inspections by Federal or local officials pertaining to the Permits may be conducted as provided by Applicable Law.

(b) The Company shall establish and maintain in cooperation with the Operator an information system to provide storage and ready retrieval of all information necessary to verify calculations made pursuant to this Agreement.

Section 8.07 Operation and Maintenance Manuals. The Company shall cause the Operator to promptly deliver to the Government two (2) copies of any revisions of the Operation and Maintenance Manuals throughout the term of this Agreement.

Section 8.08 Shutdowns for Scheduled Maintenance. The Company shall submit to the Government, prior to the first Day of each Billing Year, an operating schedule for such Billing Year stating the projected periods of operation (which shall not be less than the Guaranteed Availability) and shutdowns for scheduled maintenance and the work to be performed during any shutdown, which shall be consistent with this Agreement and Good Engineering and Operating Practice. The Operator shall give not less than thirty (30) days written notice of scheduled maintenance, or in the case of an Uncontrollable Circumstance or maintenance during an unscheduled outage, reasonable (but not necessarily prior) notice.

Section 8.09 Increase of Delivered Tonnage. Upon sixty (60) days notice to the Government, the Company may request that the Government increase the number of Tons of

Acceptable Waste to be delivered to the Facility in any Billable Year to any amount not exceeding one hundred thousand (100,000) Tons with commensurate increases in the maximum amounts set forth in Section 8.01(c). If sufficient Acceptable Waste is available within Guam, the Government shall increase the number of Tons of Acceptable Waste delivered to the Facility, but such increase shall neither increase the Delivered Tonnage nor the Performance Guarantees hereunder. Moreover, the Facility shall in no event Process more Acceptable Waste per Day than permitted by Applicable Law.

Section 8.10 Rejection of Acceptable Waste.

(a) Company's Rejection Rights. The Company through the Operator may reject: (i) Acceptable Waste delivered at hours other than the Receiving Time; (ii) Acceptable Waste delivered in excess of three hundred fifty (350) Tons per Business Day or one thousand seven hundred fifty (1,750) Tons per week or such lesser amounts as may be established by Applicable Law or Permits; (iii) Acceptable Waste which the Facility is unable to accept or Process as a result of (A) an Uncontrollable Circumstance or (B) Government Fault; (iv) subject to Section 8.11, Unacceptable Waste; (v) Acceptable Waste delivered during periods of (1) scheduled and (2) unscheduled maintenance; and (vi) Acceptable Waste when more than seven hundred fifty (750) Tons of Acceptable Waste are stored at the Facility. The Company shall promptly notify the Government whenever the Facility is not capable of accepting Acceptable Waste for any reason and shall in such notice specify the reasons therefor. The Company shall not reject Acceptable Waste because the Facility has already Processed the Guaranteed capacity in any Billing Year. Even after the Facility has Processed the Guaranteed Capacity in any Billing Year, the Company shall continue to accept and Process Acceptable Waste unless it is permitted to reject such Acceptable Waste pursuant to this Section 8.10(a) or

unless such acceptance and processing would, in the reasonable opinion of the Company, cause it to violate Permit or applicable law or jeopardize health and safety standards at the Facility.

(b) Effect of Rejection Rights on Delivered Tonnage. (i) All Acceptable Waste which is not Processed by the Company pursuant to clauses (i), (ii), (iii)(B), (iv), (v)(1) or (v)(2) (provided that the unscheduled maintenance periods, together with scheduled maintenance periods, do not exceed fifty-five (55) Days in any Billing Year) of Section 8.10(a) shall not be credited to the Delivered Tonnage.

(ii) All Acceptable Waste which is available for Processing (whether or not actually delivered to the Facility) and which is not Processed by the Company (A) pursuant to clauses (iii)(A), (v)(1) or (v)(2) (to the extent the aggregate scheduled and unscheduled maintenance periods exceed fifty-five (55) Days in any Billing Year) or (vi) (but not in excess of three hundred fifty (350) Tons per Day or one thousand seven hundred fifty (1,750) Tons per Week) of Section 8.10(a), (B) because of Company Fault or (C) without cause, shall be credited to the Delivered Tonnage.

Section 8.11 Inadvertent Deliveries of Unacceptable Waste.

(a) The Government shall use reasonable efforts, in good faith, to cause only Acceptable Waste to be delivered to the Facility and to minimize the quantities of Unacceptable Waste included therein and shall comply in all material respects with the Government Rules regulating the collection and disposal of Solid Waste. The Company and the Government agree that inadvertent deliveries of nominal amounts of Unacceptable Waste to the Facility shall not constitute a breach of the Government's obligations hereunder or otherwise be deemed to be Government Fault. The Company shall not reject entire loads of Solid Waste because included in the load are small quantities or concentrations of Unacceptable Waste, whether or not readily

separable, unless, with respect to any such Unacceptable Waste which is not readily separable, the Company reasonably believes that the acceptance or Processing thereof would violate its Permits or Applicable Law, or pose a threat to the health and safety of its employees or the general public.

(b) Unacceptable Waste which is delivered inadvertently, notwithstanding compliance with the first sentence of Section 8.11(a), to the Facility may be removed by the Operator and placed in roll-on, roll-off containers for transport to the Landfill or, in the case of any Unacceptable Waste requiring special handling, may be removed and disposed of in such manner as the Company deems prudent pursuant to Good Engineering and Operating Practice and Applicable Law. The Government shall pay for the transportation charges and Landfill Charges and other disposal costs for all such Unacceptable Waste on a Direct Cost basis as a Pass Through Cost, and the amount of such Unacceptable Waste shall not be credited toward the Delivered Tonnage nor be considered Processed. Except in connection with this (b) or the Company's recycling activities, the Company shall not permit separate sorting or scavenging of any such Unacceptable Waste at the Facility.

(c) If the Company and the Government cannot agree whether any Solid Waste constitutes Unacceptable Waste, the Company may reject such Solid Waste as Unacceptable Waste and the Parties shall resolve such dispute pursuant to Dispute Resolution. If resolution of such dispute pursuant to Dispute Resolution determines that such Solid Waste was Acceptable Waste, then the quantity of such Solid Waste rejected by the Company shall, subject to Section 8.10(b), be credited to the Delivered Tonnage.

(d) The Company shall cause the Facility to be operated in a manner which is not likely to pose a threat to health or safety or to cause damage to or to adversely affect the

operation of the Facility. It is understood that, notwithstanding the Government's reasonable efforts to minimize the quantities of Unacceptable Waste delivered to the Facility and the Company's efforts to separate or eliminate any Unacceptable Waste in the Solid Waste delivered to the Facility, Unacceptable Waste, including bulky items, tramp metals, propane cylinders, rugs, rope and wire, will be inadvertently delivered with Acceptable Waste. The Government shall use all reasonable efforts to limit the delivery of such Unacceptable Waste, and the Company shall use all reasonable efforts to identify, separate and remove all such Unacceptable Waste prior to Processing. However, if, notwithstanding such efforts, Unacceptable Waste is Processed at the Facility, the Government shall be liable and responsible for any damage or injury caused thereby, including any damage to the Facility or third parties.

(e) Notwithstanding the foregoing, nothing contained in this Section 8.11 shall be deemed to permit the Government to deliver to the Facility, or require the Company to accept or Process at the Facility, any Hazardous Waste.

Section 8.12 Delivery, Weighing, Receiving and Storage of Waste.

(a) The Company, in cooperation with the Operator, will prepare regulations for the delivery of Solid Waste to the Facility, which are consistent with this Agreement and Applicable Law. The Company shall submit such regulations to the Government for review, and they shall not be implemented unless and until they are approved by the Government, which approval shall not be unreasonably withheld. Such regulations shall provide for operational safety and, to the extent practical, the identification and elimination of Hazardous Waste and other Unacceptable Waste from such deliveries. The regulations shall not restrict vehicles from delivering Acceptable Waste except as consistent with the Company rejection rights under Section 8.10(a) and shall accommodate both mechanical and manual unloading of vehicles.

Self-powered mechanical vehicles may load directly into the Facility pit. Such regulations may require operators of vehicles delivering Solid Waste to the Facility to certify that, to their knowledge, the Solid Waste does not contain Hazardous Waste. The tipping hall will serve for manual unloading of vehicles with provisions, if necessary, to readily push Acceptable Waste from the tipping hall to the Facility pit. A turn-around concrete pad will be provided for dropping and positioning roll on/roll off containers. The Operator may deny admission to the Facility to any vehicle carrying Hazardous Waste or more than nominal amounts of Unacceptable Waste and to any vehicle which may leak or spill waste or allow waste to be blown or scattered.

(b) The Company will weigh each vehicle on entering and leaving the Facility. Each vehicle delivering Solid Waste to the Facility shall be identified in a manner satisfactory to the Government and the Company. The Company shall control all traffic flow into and out of the Facility Site and the receiving areas. Each vehicle shall be weighed before entering and leaving the Facility, with time, truck identification, route number, gross and tare weight, and other information to be entered into permanent records. Those vehicles which routinely use the Facility and whose truck weight is reasonably constant shall be weighed only on entering the Facility. The scale records shall be used as a basis for calculating fees, charges and credits, Performance Guarantees under this Agreement, and for the Government's billing of the users of the Facility. The Company shall provide the Government with a semi-annual certificate from a qualified scale maintenance contractor, attesting to the accuracy of the scale(s) and related equipment. Should the Government require certificates on a more frequent basis, then the Company shall provide such certificates and the Government shall pay the Company's Direct Costs, with profit. Vehicles delivering waste may be weighed either at the Facility scales

or at any other scales designated by the Government with the consent of the Company whenever the Facility is not operating.

(c) The Company shall provide, within ready access, a restroom for the users of the Facility consisting of a sink, water closet and urinal in the men's room, a sink and water closet in the ladies' room, and a common drinking fountain.

(d) The Company shall (i) permit the Operator to store Solid Waste (other than Hazardous Waste and other Unacceptable Waste posing a threat to health, safety or property under applicable Applicable Law) only in the Facility pit or on the roll-on, roll-off container referred to in Section 8.11(b), or (ii) if required by the nature of Solid Waste accepted by the Facility pursuant to Section 8.11(b) and Section 8.11(d). provide for special handling, storage, removal and disposal. Hazardous Waste and Unacceptable Waste accepted pursuant to Section 8.11(b) and Section 8.11(d) requiring special handling, storage, removal or disposal shall not be stored in the Facility Pit and shall only be stored as authorized by the Guam Environmental Protection Agency and other Applicable Law. Unacceptable Waste posing a threat to health, safety or property under Applicable Law shall, to the extent practical, be stored in such places and manner as will reduce such threat. The Government shall reimburse the Company (without duplication) for its Direct Costs of removal, storage, special handling, transport and disposal of such Hazardous Waste or Unacceptable Waste accepted pursuant to Section 8.11(b),Section 8.11(d) and Section 8.13.

Section 8.13 Hazardous Waste.

(a) The Government shall not deliver Hazardous Waste to the Facility and shall, at all times, use reasonable efforts to prevent the intentional or unintentional delivery of Hazardous Waste by the users of the Facility. The Company shall not permit the Operator to

Process any Hazardous Waste and shall cause the Operator to use reasonable efforts to prevent any Hazardous Waste from being inadvertently delivered and from being Processed. If, despite the reasonable efforts of both Parties, any Hazardous Waste is delivered to or Processed by the Facility, the Government shall pay the costs associated therewith including any personal injury, property damage, clean-up cost, disposal cost, and fines, penalties or other sanctions for violations of Applicable Law or Permits; provided, however, that the Company and/or the Operator shall contribute to the payment of such costs in accordance with the degree to which such party's breach of its obligations or negligence or willful misconduct contributed to the damages, injuries, costs, penalties, fines or sanctions.

(b) The Parties shall at all times cooperate and use their best efforts to ensure that the Facility is not classified as a Hazardous Waste or toxic waste storage or processing facility and to correct any such classification.

(c) The Company shall cause the Operator to promptly notify the Government upon becoming aware of any delivery of Hazardous Waste and shall promptly assist the Government in removing and, consistent with Government Rules, providing for the disposal of any such Hazardous Waste. The Government shall pay all of the Company's Direct Costs, incurred in removing or disposing of Hazardous Waste or in the declassification of the Facility unless, or to the extent that, any such Direct Costs were incurred as a result of Company Fault. The Company and the Operator shall use their reasonable efforts to identify, and shall assist the Government is identifying, the source of and any Person responsible for the delivery of Hazardous Waste to the Facility.

(d) Except to the extent the Company is required to pay for costs pursuant to this Section 8.13 or is otherwise obligated hereunder with respect to Hazardous Wastes and to

the extent permitted by law, the Government shall indemnify and save harmless the Company, the Operator and their subcontractors from any and all loss, cost, damages or expenses, including fees and assessments by any Governmental Authority, which arise from or relate to the delivery, Processing or disposal of Hazardous Waste delivered to the Facility by the users thereof, including the containment, discharge, removal or release of any hazardous substance into the environment to the extent such containment, discharge, removal, release or threat of release arises from the presence at the Facility or Facility Site of Hazardous Waste (including Residue determined to be Hazardous Waste) or the removal, transportation or disposal of such Hazardous Waste except to the extent any such loss, cost, damage or expense is caused by the negligence or willful misconduct of, or a breach of this Agreement or the Operation and Maintenance Agreement by, the Company, the Operator or their subcontractors (excluding subcontractors engaged with the Government's consent to transport or dispose of Hazardous Waste) and except to the extent such loss, cost, damage or expense is caused by the failure of the Company or the Operator (i) to operate the Facility within Performance Guarantees or (ii) to otherwise perform its obligations pursuant to this Section 8.13 (unless such failure is due to an Uncontrollable Circumstance or Government Fault).

Section 8.14 Regulation of Haulers.

(a) The Government shall issue permits to all Persons hauling Solid Waste on Guam. These permits shall require such Persons to deliver Acceptable Waste to the Facility consistent with the provisions of Section 8.14(c) as provided in the waste flow control legislation adopted by the Government and to comply with the provisions of this Agreement and the rules and regulations of the Company and the Government, including the rules and regulations established pursuant to Section 8.12(a). If any such Person violates a permit condition, the

Government shall diligently enforce its remedies under the permit to either recover civil penalties, compel performance by the permittee or to cancel the permit.

(b) The Government shall require that all commercial users of the Facility obtain motor vehicle and liability insurance in reasonable amounts.

(c) The Government shall not authorize or enter into any agreement providing for the delivery of Acceptable Waste (other than the Bypassed Waste Amount) in any Year to any facility other than the Facility, unless, during the immediately preceding full Year, the aggregate amount of Acceptable Waste made available by the Government for Processing at the Facility during the Receiving Time and in compliance with the Processing schedules established hereunder was at least 110% of the Delivered Tonnage.

Section 8.15 Composition of Acceptable Waste. Nothing in this Agreement shall be construed to mean that the Government guarantees the composition of any Acceptable Waste as it pertains to the proportion of any material contained therein, the energy value thereof, or any other physical or chemical property of Acceptable Waste within the Territory of Guam. Without limiting the generality of the foregoing, the Government shall, to the extent permitted under Section 8.14(c), have the right to remove recyclable or compostible materials from the Solid Waste which might otherwise be delivered to the Facility and process and/or dispose of them elsewhere. For the purpose of establishing the Company's Performance Guarantees, the composition of Acceptable Waste shall be assumed equal to the composition of Reference Waste as more fully described in Schedule 17. Notwithstanding the first two sentences of this Section 8.15, the Company's Performance Guarantees shall be adjusted from time to time during Acceptance Testing or Performance Testing as set forth in Section 7.12(b) and Schedule 8 to

account for any deviation of Acceptable Waste from Acceptable Waste Range pursuant to Schedule 17.

Section 8.16 Energy Generation.

(a) The Company shall produce electricity from Acceptable Waste and shall deliver all such net energy (exclusive of in-plant use) to the Government as part of the consideration to the Government for payment of the Service Fee. The Government shall then sell such energy to the GPA pursuant to the Power Purchase Agreement. The gross proceeds from the sale of Energy Products derived from the operation of the Facility pursuant to the Power Purchase Agreement shall be for the account of the Government and, to the extent paid to the Company or the Operator, shall be promptly paid over to the Government (less any amounts then owing by the Government hereunder); provided, however, that the Company shall be entitled to receive and retain, and the Government shall pay over to the Company upon receipt, fifty percent (50%) of the sum of (1) all revenues from the sale of Energy Products derived from the operation of the Facility in excess of the initial Guam Public Utilities Commission (the "GPUC") base rate, to the extent payment of such excess is the result of any rate appeal by the Company or the Operator (in either case, acting on its own behalf or on behalf of the Government as the seller of Energy Products under the Power Purchase Agreement) before the GPUC, and (2) all revenues from the sale of Energy Products derived from the operation of the Facility at an energy conversion rate in excess of 400 KWH per Ton of Reference Waste. The Government hereby authorizes each of the Company and the Operator to institute any such action or proceeding before the GPUC or in a court of competent jurisdiction in its stead and on the Government's behalf to recover revenues from Energy Products in excess of the existing base rate.

Notwithstanding the foregoing, nothing contained in this (a) shall relieve the Government of its obligation to pay the Additional Fee component of the Service Fee.

The Company shall use reasonable efforts, consistent with Good Engineering and Operating Practice, to cause the Facility to be operated so as to maximize the production of electricity consistent with the Performance Guarantees, notwithstanding the fact that the Facility shall only receive Acceptable Waste during the Receiving Time.

(b) The Company shall provide and maintain equipment, including the Transmission Line to the extent located on the Facility Site, necessary to connect its electrical generation system to the GPA's electrical distribution system in accordance with Schedule 21.

Section 8.17 Representatives and Office Space.

(a) Following the Contract Date, the Government's representative in the administration of this Agreement shall be the General Manager of GSWA. The Company's representative in the administration of this Agreement shall be the General Manager of the Facility. Either party may change its representative upon five (5) Days notice. Each representative shall be based in the Territory of Guam and be available and have authority to make normal operating decisions on behalf of the Government or the Company, as the case may be.

(b) At all times during the term of this Agreement, the Company shall provide and keep available at the site an office for the Government representatives. The size of the office shall be at least one thousand (1,000) square feet consisting of:

(i) reception area - - two hundred (200) square feet;

(ii) five offices - - one hundred (100) square feet each;

(iii) one conference room - - two hundred (200) square feet; and

(iv) unisex restroom, including sink, water closet - - one hundred (100) square feet.

The Company, at its expense as a Pass Through Cost, shall provide such office with electricity, water and sewage disposal and furnishing similar to that provided by the Company to its most senior representative at the Facility Site.

Section 8.18 Books, Records and Reports.

(a) The Company shall cause the Operator to maintain books and records in which complete and correct entries shall be made of the expenses of the Operator and of the following items:

(i) the amount of Acceptable Waste delivered each Day to the Facility, itemized by time of delivery, truck identification and weight as required by Section 8.12(b), and such other information as the Government may reasonably require in order to enable the Government to prepare invoices or assessments for users of the Facility;

(ii) the amount, if any, and source of any Acceptable Waste which was rejected by the Facility pursuant to Section 8.10(a) and the reasons for such rejection;

(iii) the amount of energy produced each Day and delivered to the GPA on behalf of the Government;

(iv) the amount of Residue produced each Day;

(v) the amount of water, electricity, fuel oil and other reimbursable materials such as lime used each Day; and

(vi) the amount and disposition of any Hazardous Waste delivered to or created at the Facility.

The Company or the Operator shall retain all books and records for two (2) years from the date of preparation.

(b) Within fifteen (15) days after the end of each Billing Month, the Company or the Operator shall submit a summary operations report to the Government covering the operations and performance of the Facility for each Day during such Billing Month in sufficient detail to verify that the Facility is operating in compliance with this Agreement and all Performance Guarantees, to allow for the calculation and verification of the fees, charges and costs in this Agreement and to allow the Government to assert a tip fee, which it shall determine, to the users of the Facility. Such report shall include a summary for such Billing Month of (i) the Tons of Acceptable Processed, (ii) the Tons of Acceptable Waste which were not Processed, separately showing the number of Tons subject to Section 8.10(b)(i) and the number of Tons subject to Section 8.10(b)(ii), (iii) the amount of energy produced, (iv) the Tons of Residue produced and disposed of, and (v) the amount of scheduled and unscheduled maintenance, including a description of the maintenance.

(c) The Government may examine such books and records of the Operator, as are relevant to administering this Agreement, at any time during their respective normal business hours on five (5) days prior written notice.

(d) The Government shall be responsible for the preparation and mailing of all invoices or assessments for users of the Facility and for the collection of all charges and revenues from such users for the use of the Facility or the disposal of Solid Waste. Any such amounts collected by the Company, whether inadvertently or otherwise, shall be Government property and shall be immediately turned over to the Government.

Section 8.19 **Operation and Equipment**. The Company shall provide and maintain sufficient instrumentation to monitor and control the operation of the Facility and all equipment installed in order to determine compliance with the Performance Guarantees. The Company shall perform or cause to be performed such monitoring and any laboratory analyses as may be required to insure operation of the Facility in conformance with Governmental Rules. At its own expense, the Government shall have online computer access to all of the Company's meters, recorders or other control devices for such monitoring or control.

Section 8.20 **Final Closure. In the event the Company has not transferred operation of the Facility to the Government at the time of final closure of the Facility, the Company shall be responsible for ensuring the facility is closed in accordance with all applicable law.**

ARTICLE IX
COMPANY GUARANTEES OF FACILITY PERFORMANCE

Section 9.01 **Capacity Guarantee**. The Company hereby guarantees, subject only to an Uncontrollable Circumstance or Government Fault, that the Facility shall be operated and maintained in such a manner as to Process Acceptable Waste at a rate at least equal to the Guaranteed Capacity; provided, however, that the Delivered Tonnage is delivered as provided in Section 8.01(c).

Section 9.02 **Energy Efficiency Guarantee**.

(a) The Company hereby guarantees, subject only to Uncontrollable Circumstance or Government Fault, that the Facility shall be operated and maintained so as to generate during each Billing Year an aggregate of 400 KWH of net saleable electric energy times the number of Tons of Reference Waste Processed during such Billing Year (subject to

adjustment pursuant to Section 7.12(b) and Schedule 8); provided, however, that the Delivered Tonnage is delivered as provided in Section 8.01(c).

(b) if for any Billing Year the Energy Efficiency Guarantee per Ton of Reference Waste is not met by the Facility for any reason other than Uncontrollable Circumstance or Government Fault, then an energy inefficiency shall exist with respect to Such Billing Year. For each such Billing Year, the Company shall be obligated to pay damages pursuant to Section 10.05.

Section 9.03 Environmental Guarantee. The Company hereby guarantees, subject only to Uncontrollable Circumstance and Government Fault, that it shall operate and maintain the Facility so as to meet the Environmental Guarantee (subject to adjustment pursuant to Section 7.12(b), Section 9.06 and Schedule 8). The Company shall be obligated to pay any fine or penalty imposed on the Government by any regulatory entity having jurisdiction over operation of the Facility, or shall indemnify and reimburse the Government for any such fine or penalty to the extent the Government pays such fine or penalty subject to a final unappealable order, which results from the Company's failure to meet the Environmental Guarantee except to the extent such failure is due to an Uncontrollable Circumstance or Government Fault.

Section 9.04 Lime Consumption Guarantee. The Company hereby guarantees, subject only to Uncontrollable Circumstance and Government Fault, that it will operate and maintain the Facility so that the consumption of lime will not exceed the Lime Consumption Guarantee as set forth in Schedule 3 (subject to adjustment pursuant to Section 7.12(b) and Schedule 8). Lime consumed in excess of the Lime Consumption Guarantee for reasons other than Uncontrollable Circumstance or Government Fault shall not be included in the Service Fee, but shall be paid for by the Company.

Section 9.05 Residue Quality Guarantee. The Company hereby guarantees, subject only to Uncontrollable Circumstance and Government Fault, that the Facility shall be operated and maintained so that the Residue shall meet the Residue Quality Guarantee as set forth in Schedule 3 (subject to adjustment pursuant to Section 7.12(b) and Schedule 8). If the Facility fails to meet the Residue Quality Guarantee, the Company shall pay the amounts specified in Section 10.06.

Section 9.06 Maximum Utility utilization Guarantee. The Company hereby guarantees, subject only to Uncontrollable Circumstance and Government Fault, that the Facility shall be operated and maintained so that consumption of purchased (i.e. not generated by the Facility) electricity, municipal water and fuel oil will not exceed the Maximum Utility Utilization Guarantee as set forth in Schedule 3 (subject to adjustment pursuant to Section 7.12(b) and Schedule 8). Purchased electricity, municipal water and fuel oil consumed in excess of the Maximum Utility Utilization Guarantee for reasons other than Uncontrollable circumstance or Government Fault shall be paid for by the Company, and the Company shall reimburse the Government for the Government's Direct Costs, excluding profit, incurred for such excess consumption. In the case of the Performance Guarantees under Schedule 3 for municipal water usage, if excess use is caused by water quality adversely different from that specified in Schedule 3, the Government and the Company shall mutually agree on a modification of the Maximum Utility Utilization Guarantee and, if applicable, the Environmental Guarantee (with respect to effluent characteristics) and/or reimbursement for water treatment cost or chemical cost associated with water treatment.

Section 9.07 Guarantee of Chances. The Company hereby guarantees that all Changes shall be accomplished by the Company in accordance with Good Engineering and

Operating Practice, the applicable standards and specifications for such Changes set forth in the construction and operation manuals and such other standards and specifications as may be agreed to by the Company and the Government in writing with respect to any Change; provided, however, that if as a result of any Government Change, the Company believes that such Change will or has adversely affected its ability to meet any Performance Guarantee or to perform its remaining obligations in accordance with this Agreement, the Company may submit the matter to Dispute Resolution (whether before or after completion of such Change), and if so proved, the Performance Guarantees and such other obligations shall thereupon be subject to modification in accordance with any arbitral award pursuant to ARTICLE XVIII.

Section 9.08 Testing After Acceptance.

(a) The Government may, at such intervals as it may deem necessary and at its sole option upon twenty-one (21) Days' prior written notice to the Company, require that the Facility be tested in accordance with the appropriate provisions of Schedule 8 (a "Performance Test"); provided, however, that, except for Performance Tests requested as a result of any failure or lack of performance, failure to meet Performance Guarantees or to comply with Governmental Rules, breach of this Agreement, the Government shall not request more than one (1) Performance Test in any Billing Year with respect to each Performance Guarantee. The Performance Tests shall contain adjustments to account for deviations of the Acceptable Waste from the Acceptable Waste Range pursuant to Schedule 17. The testing shall take place within thirty (30) Days of the Government's notice.

(b) If any Performance Test conducted after the Acceptance Date demonstrates that the Facility fails to meet the lesser of (i) the level of performance of the most recent Performance Test or, if none, the Acceptance Test certified to by the Parties or determined

by Dispute Resolution, or (ii) all Performance Guarantees, then the Company shall pay the Government's Direct Costs incurred with respect to such Performance Test, excluding profit.

(c) If any Performance Test performed after the Acceptance Date at the request of the Government demonstrates that the Facility meets the lesser of (i) the level of performance of the most recent Performance Test, or, if none, the Acceptance Test, certified to by the Parties or determined by Dispute Resolution or (ii) all Performance Guarantees, then the Government shall pay the Company for the Direct Costs incurred by the Company for the performance of such Performance Test, excluding profit.

(d) The Company may, with reasonable notice to the Government, at any time during the term of this Agreement, cause the Facility to be tested at the Company's cost and expense, and the Company shall pay the Government for its out-of-pocket costs incurred as a result of such testing. Such testing shall not relieve the Company of its obligation to Process Acceptable Waste at a rate at least equal to the Guaranteed Capacity as provided in Section 9.01.

Section 9.09 Exclusion of Other Warranties. EXCEPT FOR THE GUARANTEES AND STANDARDS EXPRESSLY SET FORTE IN THIS AGREEMENT, INCLUDING THOSE GUARANTEES SET FORTE IN THIS ARTICLE IX, THE COMPANY DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR ANY IMPLIED WARRANTIES WITH RESPECT TO TEE FACILITY OR ANY PART THEREOF, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

ARTICLE X
SERVICE FEE PAYMENTS

Section 10.01 Service Fee.

(a) Commencing with the first Billing Month after the Acceptance Date (or such earlier date provided for in Section 7.12(f)(ii), Section 7.15, Section 7.16, or Section 7.18) and for each Billing Month thereafter, the Company shall be paid a Service Fee by the Government for causing (i) the Facility to be operated and maintained to Process Acceptable Waste and (ii) all electricity produced by the Facility to be delivered to, or at the direction of, the Government, pursuant to the terms of this Agreement, in accordance with the following formula:

$$SF = OM + PT + AF + CC + AM$$

Where:

SF = Service Fee
OM = Operation and Maintenance Charge
PT = Pass Through Costs
AF = Additional Fee
CC = Capital Charge
AM = Administration Fee

(b) Not less than ninety (90) Days before the first day of each Year, the Company shall furnish the Government with a statement setting forth the amount and computation of the Service Fee to be in effect for the Billing Months in such Year. For the first Year or the earlier commencement of the Service Fee pursuant to Section 7.12(f)(ii) or Section 7.18, the statement shall be furnished as soon as possible after the Acceptance Date or the date such Service Fee shall become payable pursuant to Section 7.12(f)(ii), Section 7.15, Section 7.16 or Section 7.18 as the case may be, and the Government shall pay the Service Fee for the first Billing Month after receipt of the statement.

(c) If the actual amount of any item taken into account in calculating the Service Fee cannot be determined at the time of the delivery of the statement referred to in Section 10.01(b), then the Service Fee shall be based on the Company's good faith estimate of such item, subject to the Dispute Resolution procedures of Section 10.01(d). Annually, through the procedure set forth at Section 10.03, the Service Fee paid during the previous Billing Year

shall be adjusted to reflect the difference between any estimated item, such as certain Pass Through Costs, and the actual amount of that component of the Service Fee.

(d) If the Government disputes any amount set forth in the statement furnished by the Company pursuant to Section 10.01(b), including any estimated item, it may challenge the amount by written notice to the Company within thirty (30) Days of receipt of the statement and if agreement is not reached, the Government shall pay the amount requested and the matter shall be submitted to Dispute Resolution. Upon resolution of the dispute, the Company shall return the amount of any overpayment, with interest at the Default Rate.

(e) For the period of time, if any, following the earlier of the Acceptance Date and the date the Service Fee shall become payable pursuant to Section 7.12(f)(ii), Section 7.15, Section 7.16 or Section 7.18, the Company shall be paid an amount equal to the sum of (i) the Operation and Maintenance Charge times a fraction, the numerator of which is the number of days from the Acceptance Date (or such earlier date as is provided for in Section 7.12(f)(ii), Section 7.15, Section 7.16 or Section 7.18) to the first Day of the first Billing Month, and the denominator of which is the number of Days in such calendar month, plus (ii) the Pass Through Costs incurred for such period of time from the Acceptance Date or such earlier date as is provided in Section 7.12(f)(ii), Section 7.15, Section 7.16 or Section 7.18 until the first Day of the first Billing Month; plus (iii) the Capital Charge for the period of time from the Acceptance Date or such earlier date as is provided in Section 7.12(f)(ii), Section 7.15, Section 7.16 or Section 7.18 until the first Day of the first Billing Month; provided, however, that any such payment pursuant to Section 7.12(f)(ii), Section 7.14, Section 7.15, Section 7.16, Section 7.17 and Section 7.18 shall be reduced as provided in such Section.

Section 10.02 Operation and Maintenance Charge.

(a) For any Billing Month, the Operation and Maintenance Charge shall be one-twelfth (1/12) of the Initial Operation and Maintenance Charge, as adjusted by Section 10.02(b) and Section 10.02(d).

(b) The Operation and Maintenance Charge for the Year "n" after Acceptance shall be determined by escalating the Initial Operation and Maintenance Charge from the Base Date as follows:

(i) Fifty percent (50%) of the Initial Operation and Maintenance Charge times the Labor Index for Year "n" divided by the Labor Index for the Base Date, which result shall not be less than one (1.0), plus,

(ii) Forty-five percent (45%) of the Initial Operation and Maintenance Charge times the Capital Index for Year "n" divided by the Index for the Base Date, which result shall not be less than one (1.0), plus,

(iii) Five percent (5%) of the Initial Operation and Maintenance Charge tines the Chemical Index for Year "n" divided by the Chemical Index for the Base Date, which result shall not be less than one (1.0).

(c) The Operation and Maintenance Charge shall be adjusted by the amount of any cost savings or increases resulting from (i) a twenty percent (20%) or greater change in any component or characteristic of Acceptable Waste from Reference Waste, and (ii) Acceptable Waste having a Higher Heating Value of less than three thousand eight hundred (3,800) or more than six thousand (6,000) BTUs per pound of Acceptable Waste.

(d) The Operation and Maintenance Charge shall also be adjusted pursuant to:

(i) the provisions of Section 11.01(b)(iii) or Section 11.01(b)(v) concerning the Uncontrollable Circumstances;

(ii) the provisions of Section 7.07, Section 7.08or Section 7.10 concerning Changes in the Facility before the Acceptance Date;

(iii) the provisions of Section 7.14, Section 7.15, and Section 7.18 concerning certain special circumstances relating to Acceptance of the Facility; and

(iv) the provisions of ARTICLE XII concerning Changes to the Facility after the Acceptance Date.

Section 10.03 Annual Adjustment and Bypassed Waste.

(a) Within forty-five (45) Days after the end of each Year, the Company shall furnish the Government with a statement setting forth the amount and computation of the Service Fee for the past Year based on the actual amount of each item set forth at Section 10.01(a). adjusted as provided in this Agreement through the end of such Year.

(b) Within ninety (90) Days after the end of each Year, the Parties shall make additional payments as follows:

(i) If the amount of the Service Fee determined under Section 10.03(a) exceeds the aggregate amount paid to the Company under Section 10.01(a), then the Government shall pay the Company the amount of such excess.

(ii) If the aggregate amount paid to the Company under Section 10.01(a) exceeds the amount of the Service Fee determined under Section 10.03(a), the Company shall repay the Government the amount of such excess.

(iii) The Company shall pay to the Government an amount equal to seventy percent (70%) of the Bypassed Waste Amount multiplied by the Landfill Charge, to take account of the excess Landfill utilization occasioned by the failure to Process at the Guaranteed Capacity.

(iv) The Company shall pay to the Government any payments required by Section 10.05 and Section 10.06.

(v) Each Party shall pay to the other any other payments, costs, charges or fees required to be paid under the provisions of this Agreement.

Section 10.04 Billing and Payment.

(a) No later than the tenth Day of each Billing Month, the Government shall pay into the appropriate account established pursuant to the Indenture an amount equal to the Capital Charge plus the Operation and Maintenance Charge, adjusted as provided in Section 10.02(a), for such Billing Month plus the Administration Fee. The Company shall be entitled to withdraw and retain such amounts, subject only to the terms and conditions of the Indenture.

(b) Within thirty (30) Days after the end of each Billing Month, the Company shall deliver a statement to the Government setting forth the amount due the Company for the Pass Through Costs and any Additional Fee for the Billing Month just ended. Within thirty (30) Days after delivery of such statement, the Government shall pay the amount due to the Company for Pass Through Costs and any Additional Fee.

Section 10.05 Energy Inefficiency Damages. If the Company fails to satisfy the Energy Efficiency Guaranty with respect to any Year, the Company shall pay the Government within ninety (90) Days after the end of such Billing Year an amount equal to the product of: (i) the difference between (A) the Energy Efficiency Guarantee with respect to such Billing Year and (B) the actual number of KWHs generated by the Facility during such Year; multiplied by (ii) the average net price per KWH received by the Government pursuant to the Power Purchase Agreement during such Billing Year; provided, however. that if the Power Purchase Agreement is terminated due to the Company's failure to satisfy the Energy Efficiency Guaranty, such

average net price per KWH shall be deemed to be the average net price for the last full Billing Year during which the Power Purchase Agreement was in force, escalated in accordance with the Guam Escalation Adjustment.

Section 10.06 Residue Adjustment. If the Facility does not meet the Residue Quality Guarantee during any Billing Year, the Company shall pay the product of the Landfill Charge multiplied by the difference between the number of Tons of Residue produced by the Facility during such Year and the number of Tons of Residue which would have been produced if the Facility had met the Residue Quality Guarantee. To the extent that the Company does not pay such costs on a current basis, all unpaid amounts payable under this Section 10.06 shall be paid by the Company to the Government as part of the annual settlement pursuant to Section 10.03.

Section 10.07 Payment of Fines and Penalties. The Government shall pay all fines, penalties and other charges assessed for violation of any Applicable Law if such violation is due to an Uncontrollable Circumstance or Government Fault. The Company shall pay all fines, penalties and other charges resulting from a violation of any Governmental Rule if such violation is due to Company Fault. The Company's obligation to reimburse the Government pursuant to Section 9.03 or this Section 10.07 shall be subject to the provisions of Section 13.03, including without limitation the contest rights provided for therein.

Section 10.08 No Set-off. The obligations of the Government to make payments of the Service Fee pursuant to this Agreement shall not be subject to any right of set-off, recoupment and counterclaim which the Government shall otherwise have against the Company or the Operator except to the extent that it has been finally determined (whether through Dispute Resolution or otherwise) that the amounts which the Government sets off are owed by the Company, the Contractor or the Operator; provided, however, the Government shall retain the

right to assert by separate action any rights that it may have against the Company or the Operator under this Agreement or any Applicable Law, including the institution of separate legal proceedings for specific performance or recovery of damages.

ARTICLE XI
UNCONTROLLABLE CIRCUMSTANCE

Section 11.01 Uncontrollable Circumstance and Performance.

(a) If either Party fails to perform any of its obligations under this Agreement, and if such failure to perform was caused by an Uncontrollable circumstance, then the Parties shall cooperate to remove, reduce or eliminate the adverse effect of such Uncontrollable Circumstance.

(b) (i) In the event that the Uncontrollable Circumstance shall occur after the Acceptance Date then: (1) the Government shall deliver, or cause to be delivered, Acceptable Waste, to the extent of its ability to cause such delivery; (2) the Government shall pay the Company the Service Fee, and shall provide for the disposal of Acceptable Waste not Processed at the Facility as a result of the Uncontrollable Circumstance at no cost to the Company; and (3) the Company shall use all reasonable efforts to continue to Process Acceptable Waste and, consistent with its contractual and long-term operating and maintenance requirements, Applicable Law and Good Engineering and Operating Practice, use all reasonable efforts to reduce its operating costs, in which case, the Operation and Maintenance Charge shall be reduced pursuant to Section 11.01(b)(iii).

(ii) If the Government is unable to deliver Acceptable Waste to the Facility or the Company is unable to process Acceptable Waste at the Facility, in either case, due to the occurrence of an Uncontrollable Circumstance, the Government shall nevertheless pay the

Service Fee, subject to the Company's obligation to reduce its operating costs required by Section 11.01(b)(i) and Section 11.01(b)(iii).

(iii) During the continuance of an Uncontrollable Circumstance which reduces the capacity of the Facility to process Acceptable Waste or the ability of the Government to deliver Acceptable Waste to the Facility, the Company shall, consistent with its contractual and long-term operating and maintenance requirements, Applicable Law and Good Engineering and Operating Practice, in good faith, reduce its costs of operation to the minimal level possible, taking into account the remaining Processing capacity of the Facility and the need to maintain the Facility in preparation for full operation. Appropriate measures may include reduced hours for the Receiving Time, reduction of staffing, and reduction of Pass Through Costs. The Operation and Maintenance Agreement and, to the extent reasonably possible, all long-term operation and maintenance contracts, shall provide for the reduction of costs of operation contemplated by this Section 11.01. The amount of such reductions in costs of operation shall be deducted from the Operation and Maintenance Charge, to the extent that payment of the Operation and Maintenance Charge is not covered by insurance proceeds. Any dispute as to the extent of available operating cost reductions, or the amount of any reductions in cost resulting from the Company's efforts, shall be resolved by Dispute Resolution.

(iv) The Parties agree that if any Acceptable Waste is not Processed due to the occurrence of an Uncontrollable Circumstance, then the Government shall not be entitled to recover lost electric revenues from the Company. If any business interruption insurance proceeds (under policies paid for as part of Pass Through Costs) are paid as a result of the occurrence of an Uncontrollable Circumstance, and the amount of such insurance proceeds exceeds the amount necessary to pay the Service Fee, as reduced, such excess proceeds shall be

paid over to and retained by the Government; provided, however, that the Company shall be entitled to retain such portion of the proceeds from any business interruption insurance maintained by the Company or the Operator pursuant to Section 16.02(f) as represents lost Energy Product revenues, to the extent such revenues, if produced by operation of the Facility, would otherwise have been payable to the Company pursuant to Section 8.16(a).

(v) If due to one or more Uncontrollable Circumstances, the cost to the Company of operating and maintaining the Facility shall increase, the Operation and Maintenance Charge shall be increased by an amount equal to the Direct Costs of the Company and limited to the period of time that the effect of the Uncontrollable Circumstance causes such increase.

(vi) Subject to compliance with Section 11.02, the occurrence of an Uncontrollable Circumstance which interferes with a Party's ability to perform an obligation or exercise a right hereunder shall be deemed to extend the deadline or period of time for such performance or exercise for a period of time reasonably necessary to perform an obligation or exercise a right.

Section 11.02 Required Notification. Within ten (10) Days of the occurrence of the Uncontrollable Circumstance or of the affected Party's actual knowledge of such occurrence, whichever is later, the affected Party shall give notice of the Uncontrollable Circumstance to the other; provided, however, the failure to give such notice within such ten (10) day period shall not prevent the later assertion of such Uncontrollable Circumstance if the Party asserting the Uncontrollable Circumstance demonstrates that such delay did not result in prejudice or damage to the other Party. If such delay did result in prejudice or damage to the other Party, such delay shall relieve the other Party of responsibility for the costs resulting from such Uncontrollable

Circumstance to the extent of actual prejudice or damages shown to have resulted from such delay. The notice shall include, or within thirty (30) Days be supplemented to include, the following to the extent then known: (a) the cause of the Uncontrollable Circumstance, (b) its effect to date, (c) its probable future effect, (d) the portions of the Facility or the Party's performance affected, (e) the expected duration and (f) to the extent then determinable, the nature and amount of any decrease or increase on any cost, fee or payment. The notice shall be in sufficient detail and shall be supported by available documentation.

ARTICLE XII
CHANGES TO THE FACILITY AFTER ACCEPTANCE

Section 12.01 Uncontrollable Circumstance Changes and Government Changes.

(a) Except as provided in Section 12.01(d), the Company shall be responsible for the prompt design, construction and, if applicable, the Acceptance Testing of any Uncontrollable Circumstance Change or Government Change after Acceptance. If the Company receives a request for a Government Change or a notice that an Uncontrollable Circumstance requires a Change, then within ten (10) days of such request the Company shall provide a written estimate of the cost to prepare a firm proposal and the information contemplated by this Section 12.01(a) resulting from the Change. If the Government does not agree with the estimated cost to prepare a firm proposal, then it may direct the Company to prepare the proposal at the Company's Direct Cost of preparing the firm proposal. The Company shall furnish a detailed proposal within thirty (30) days after the receipt of the Government's written approval of the Company's cost estimate or direction to the proposal on a Direct Cost basis, which firm proposal shall describe in reasonable detail: (i) the proposed cost of completing the Change, which cost shall consist of the Direct Cost of such Change, (ii) the necessary revisions to the Operation and Maintenance Agreement or other documents, (iii) the total expected effect of the Change on the

Facility, including any increase or decrease in the Operation and Maintenance Charge, the Pass Through Costs, the Performance Guarantees and any other appropriate modification to any obligation of either Party under this Agreement, and (iv) any anticipated effect of the Change on the operation of the Facility and the Processing of Acceptable Waste while the Work on such Change is being completed. If the Government notifies the Company in writing within thirty (30) days of the receipt of the proposal that the Government wishes to proceed with such Change on the terms of the proposal or on the terms of the proposal other than price, the Government may direct the Company to proceed with the Change at the price set forth in the proposal or on a Direct Cost basis, the items described in clauses (i) through (iv) above shall be as set forth in the Company's proposal (except that all cost items shall be adjusted to reflect proceeding on a Direct Cost basis, if applicable), and the Company shall undertake and expeditiously complete such Change.

(b) If there is a dispute as to the design of any Government or Uncontrollable Circumstance Change, such dispute shall be decided pursuant to Section 18.02 by the Independent Engineer and the Company shall not be obligated to commence Work on the Change prior to the conclusion of such Dispute Resolution; provided, further, that any delay attributable to the Company's failure to design the Change in accordance with Good Engineering and Operating Practice shall not extend any times for the Company's performance hereunder, and any costs attributable to such delays shall be the Company's responsibility.

(c) If the Government elects to direct the Company to proceed with a Government or Uncontrollable Circumstance Change pursuant to Section 12.01(a), the total cost of such Change shall consist of the amount set forth in the Company's firm proposal pursuant to such Section or, if not agreed to by the Government, the amount of the Direct Cost of such

Change. The Company shall not be required to expend its own funds to commence or continue Work on such Change, except, in the case of an Uncontrollable Circumstance Change, upon the Government's request for Company financing as provided in Section 12.03; provided, however, that the Government shall be entitled to receive and apply to such purpose the proceeds of insurance payable to the Government pursuant to ARTICLE XVI.

(d) If the Government and the Company cannot agree on the impact, if any, of an Uncontrollable Circumstance Change on the Operation and Maintenance Charge, the Pass Through Costs, the Guaranteed Capacity or any Performance Guarantee, the Government shall have the right to require the Company to complete such Change and the dispute shall be resolved by Dispute Resolution; provided, however. that either Party may thereafter seek an equitable adjustment to the Operation and Maintenance Charge, the Pass Through Costs, the Guaranteed Capacity or any Performance Guarantee based upon actual operating experience of the Facility after completion of the Change.

(e) In the event that the Parties are unable to agree upon the impact, if any, on the Operation and Maintenance Charge, Pass Through Costs, the Delivered Tonnage or on any Performance Guarantees of a Government Change which is not necessary for the Government to perform any of its material obligations under this Agreement, then the dispute shall be resolved by Dispute Resolution before the Company shall be required to perform such Government Change.

(f) If an Uncontrollable Circumstance creates an emergency situation in which the notice and other procedures set forth in this Section 12.01 for making Uncontrollable Circumstance Changes cannot be adhered to without endangering persons, property or public health or safety, the Company shall give the Government as much notice as is reasonably

possible under the circumstances and shall have the authority to make emergency Uncontrollable Circumstance Changes costing not more than One million dollars ($1,000,000.00) for any one Change and Two million dollars ($2,000,000.00) in the aggregate for any Year. The Company shall be compensated for the Direct Cost of such emergency Uncontrollable Circumstance Changes, unless the Company and the Government agree to other compensation.

Section 12.02 Company Requested Changes.

(a) The Company may, at any time on sixty (60) days prior written notice to the Government, at its sole expense, make any Change to the Facility after Acceptance which will improve the efficiency of the Facility, so long as such Change does not have the effect of (i) increasing the Service Fee, (ii) adversely affecting the Performance Guarantees, or (iii) adversely affecting the ability of the Government to perform its obligations or exercise any of its rights under this Agreement.

(b) Within thirty (30) days of its receipt of the notice referred to in Section 12.02(a) the Government may object to the proposed Change based on a dispute as to any of the matters referred to in clauses (i) through (iii) of Section 12.02(a). Any dispute under this section shall be resolved by Dispute Resolution before the Company shall make the Change.

(c) Financing of Changes After Acceptance. To finance Changes under Section 12.01 occurring after Acceptance, the Government and the Company shall use their reasonable efforts to obtain financing for Changes which is acceptable to the Parties, including the sale of Additional Bonds, if despite such efforts such financing cannot be arranged, the Government shall have the option to obtain debt financing for any Uncontrollable Circumstance Change from the Company upon reasonable advance notice at an interest rate which is five hundred (500) basis points above the Prime Rate, for a term of not more than five (5) years,

amortized in equal monthly installments, or such other terms and conditions as shall be agreed upon by the Parties. In the event the Change is financed by a third party or by the Company, then the Capital Charge component of the Service Fee shall be increased. The Company's total obligation under this Section 12.03 and Section 7.10 to finance Changes shall be limited in aggregate amount to two percent (2%) of the Facility Price as of the Contract Date.

Section 12.03 Payments for Changes after Acceptance.

Funds for Changes initiated after Acceptance shall be disbursed to the Company according to a milestone schedule agreed to between the Parties in the same manner as set forth in Section 6.05 unless the Parties shall otherwise agree.

ARTICLE XIII
INDEMNIFICATION AND WAIVER

Section 13.01 Company Indemnity. The Company agrees that it shall protect, indemnify and hold harmless the Government, the Credit Enhancer and their respective officers, commissioners, employees and agents, the Independent Engineer and any arbitrators, including the Consulting Engineer (the "Government Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, and shall defend the Government Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons or for loss or damage to property arising out of the acts or omissions, negligence or willful misconduct of the Company or any of its agents, employees, officers, contractors or subcontractors (excluding subcontractors engaged to transport or dispose of Hazardous Waste) in the performance (or nonperformance) of its obligations under this Agreement or the Related Documents. The Company is not, however, required to protect, indemnify or hold harmless any Government Indemnified Party for loss or claim resulting from performance (or nonperformance) of the Government's obligations under this Agreement or the

negligence or willful misconduct of any Government Indemnified Party. The Company's aforesaid indemnity is for the exclusive benefit of the Government Indemnified Parties and in no event shall such indemnity inure to the benefit of any third Person.

Section 13.02 Government Indemnity. Subject to the provisions of Section 8.13(d) which alone shall govern indemnification with respect to Hazardous Waste and subject further to the limitations of the Government Claims Act, the Government agrees that it shall protect, indemnify, and hold harmless the Company, its general and limited partners, any Affiliates, the Contractor, the Operator, subcontractors, the Credit Enhancer, and their respective officers, members, employees and agents, any arbitrator, and any Independent Engineer (the "Company Indemnified Parties") from and against all, and pay or reimburse the Company Indemnified Parties for, liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, and shall defend the Company Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damages to property whether or not resulting from third party claims arising out of the acts or omissions, negligence or willful misconduct of the Government, including its officials, directors, employees, agents and Consulting Engineer in the performance (or nonperformance) of the Government's obligations under this Agreement or the Related Documents or arising from operation of the Facility by or on behalf of the Government after termination of this Agreement. The Government is not, however, required to protect, indemnify or hold harmless any Company Indemnified Party for loss or claim resulting from performance (or nonperformance) of the Company's obligations under this Agreement or the negligence or willful misconduct of any Company Indemnified Party. The Government's aforesaid indemnity is for the exclusive benefit of the Company Indemnified Parties, and in no event shall such indemnity inure to the benefit of any third Person.

Section 13.03 Additional Indemnity Matters. (a) Upon obtaining knowledge of any claim, demand or facts which has given rise to, or could reasonably be anticipated to give rise to a claim for indemnification under this Agreement, the Indemnified Party will, if a claim in respect thereof is to be made under this Agreement, notify the indemnitor in writing thereof, but the delay or omission to so notify the indemnitor will not relieve it from any liability that it may have to the Indemnified Party otherwise than under this Agreement, except to the extent such delay or omission prejudices the ability of the indemnitor to mitigate or defend against such liability. The Indemnified Party shall furnish to the indemnitor in reasonable detail such information as it may have with respect to such claim.

(b) With respect to any action, suit or proceeding as to which the Indemnified Party notifies the indemnitor of the commencement thereof:

(i) The indemnitor will be entitled to participate therein at its own expense.

(ii) Except as otherwise provided in this Section 8.13(b)(ii), to the extent that it may wish, the indemnitor shall be entitled to assume the defense or settlement thereof, with counsel reasonably satisfactory to the Indemnified Party. After notice from the indemnitor to the Indemnified Party of its election to so assume the defense thereof, the indemnitor shall not be liable to the Indemnified Party under this Agreement for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. The Indemnified Party shall have the right to employ its own counsel in such action, suit or proceeding, but the fees and expenses of such counsel incurred after notice from the indemnitor of its assumption of the defense thereof shall be at the expense of the Indemnified Party unless

(A) the employment of counsel by the Indemnified Party has been authorized by the indemnitor, (B) counsel for the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnitor and the Indemnified Party in the conduct of the defense of such action or (C) the indemnitor shall not in fact have employed counsel to assume the defense of the action, in each of which cases the fees and expenses of counsel of the Indemnified Party shall be at the expense of the indemnitor. The indemnitor shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the indemnitor or as to which counsel for the Indemnified Party shall have made the conclusion provided for in clause (B) above, but may settle any such action, suit or proceeding at no expense to the Indemnified Party.

(iii) The indemnitor shall not be liable to indemnify any Indemnified Party under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent.

Section 13.04 Waiver. The Company and the Government hereby waive, to the extent permitted by the relevant insurance policy, any and every claim arising pursuant to the terms of this Agreement or damage to each other resulting from the performance of this Agreement, which loss or damage is covered by collected insurance policy proceeds. If, however, the deductible or risk-retained amount of such insurance coverages is governed by the provisions of Section 16.04, then to the extent of such deductible or retention amount neither Party shall be deemed to have waived its right to recover such loss or damage under the terms of this Agreement from the Party causing such loss or damage, and the provisions of Section 13.01, Section 13.02 and Section 13.03 shall be applicable to such loss or event.

Section 13.05 Exclusion of Consequential Damages.

(a) The Parties acknowledge and agree that because of the unique nature of the undertakings contemplated in this Agreement it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by either Party as a result of a breach of this Agreement by the other Party. Accordingly, each Party agrees that the other Party shall be liable and obligated to pay only those payments, damages, fees and credits expressly provided for in this Agreement, or such amounts as may be determined pursuant to Dispute Resolution, and that such amounts that may become due pursuant to the terms of this Agreement shall constitute such Party's sole damages recoverable from the other Party.

(b) In no event, whether because of a breach of any provision contained in this Agreement or any other cause, whether based upon contract, tort (including negligence or strict liability), warranty, delay or otherwise, arising out of the performance or nonperformance by a Party of its obligations under this Agreement, including suits by third Persons, shall such party be liable for or obligated in any manner to pay incidental, special, punitive, consequential or indirect damages of any nature incurred by the other Party whether occurring during or subsequent to the performance of this Agreement.

Section 13.06 Survival. This Article XIII shall survive termination of this Agreement.

Section 13.07 Limitation of Liability. Notwithstanding anything herein to the contrary, the maximum liability of the Company to the Government upon breach of this Agreement for damages, fees, credits or payments shall be limited to the sum of (1) the amounts required to defease the Bonds pursuant to the Indenture, (2) the forfeiture of any Equity theretofore contributed by the Company, and (3) any payments required to be made pursuant to a lease entered into by the Company and the Government pursuant to Section 15.02(b).

Notwithstanding anything herein to the contrary, the maximum liability of the Government to the Company upon breach of this Agreement for damages, fees, credits or payments shall be limited to the sum of payments under Section 15.03.

Section 13.08 Personal Liability of Government Officials. No officer or employee of the Government shall incur personal liability to the Company, nor shall any Partner, Affiliate nor employee of the Company, the Contractor or the Operator incur personal liability to the Government for reasonable actions taken in good faith in connection with this Agreement.

ARTICLE XIV
EVENTS OF DEFAULT

Section 14.01 Remedies. The Parties agree that in the event of the breach by either Party of an obligation under this Agreement, that neither Party shall have the right to terminate this Agreement except for and as a result of an Event of Default as described in Section 14.02 and Section 14.03, and then only pursuant to Section 15.02 and Section 15.03.

Section 14.02 Events of Default by the Company. Each of the following shall constitute an Event of Default on the part of the Company:

(a) The persistent or repeated failure or refusal by the Company (or the Guarantor on behalf of the Company) to fulfill all or any of its material obligations under this Agreement, unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or by Government Fault; provided, however, that no such default shall constitute an Event of Default giving, the Government the right to terminate this Agreement unless and until:

(i) the Government shall have given prior written notice to the Company and the Guarantor specifying that a particular default or defaults exist(s) which will, unless corrected, constitute a material breach of this Agreement; and

(ii) the Company (or the Guarantor on behalf of the Company) has not corrected such default or has not taken reasonable steps to commence the correction of same within thirty (30) Days from the date of receipt of the notice given pursuant to clause (a)(i) of this Section 14.02 or thereafter does not continue to take such reasonable steps as are necessary to diligently correct such default.

(b) The Company or the Guarantor (i) shall have become insolvent or ceased to pay its debts as they mature or shall have made an arrangement with or for the benefit of its creditors or consented to or acquiesced in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) shall have filed or had filed against it a petition seeking bankruptcy, winding up, reorganization, insolvency, arrangement or similar relief under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been stayed or dismissed within sixty (60) Days, or (iii) shall have taken any action approving of, consenting to, or acquiescing in, any such proceeding, or (iv) shall have become a party to the levy of any distress, execution or attachment upon the property of the Company or the Guarantor which shall substantially interfere with the Company's performance hereunder. In the event of the Company or of the Guarantor being or becoming insolvent or becoming a debtor in a bankruptcy case, the Company or the Guarantor, as applicable, shall (i) assume or reject this Agreement or the Guaranty, as applicable, within sixty (60) days after the order for relief; (ii) if this Agreement or the Guaranty, as applicable, is assumed, then the Company or the Guarantor, as applicable shall (A) promptly cure any failure to perform its obligations or any Event of Default arising under this Agreement for reasons other than the event set forth in this Section 14.02(b); (B) compensate or provide adequate assurance that it will promptly compensate the Government for any amounts due the Company pursuant to Article X; and (C) provide adequate assurance of future

performance under this Agreement under 11 USC Section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code, which adequate assurance shall include the posting of a letter of credit or other security by the Company or the Guarantor, as applicable, in an amount sufficient to defease the Bonds pursuant to the terms of this Agreement. The foregoing provisions shall not prevent the Government from requesting such other conditions to assumption of this Agreement or the Guaranty, as applicable, as it deems reasonable and necessary.

(c) Failure by the Company after Acceptance, for two consecutive Billing Years of at least twelve months each to Process Acceptable Waste at a rate equal to or in excess of the eighty percent (80%) of the Guaranteed Capacity unless such failure is due to Uncontrollable Circumstance or Government Fault or the Government's failure to make available the Delivered Tonnage during each such Billing Year; provided, however, that no such default shall constitute an Event of Default giving the Government, in its sole discretion, the right to terminate this Agreement unless and until either:

(i) the Company is not attempting to repair or modify the Facility to the extent required to allow it to Process at a rate equal to at least eighty percent (80%) of the Guaranteed Capacity; or

(ii) the Company fails to Process Acceptable Waste at a rate at least equal to eighty percent (80%) of the Guaranteed Capacity during the Billing Year following the first two Billing Years (of at least twelve months each) during which the Facility failed to Process Acceptable Waste at a rate at least equal to eighty percent (80%) of the Guaranteed Capacity unless such failure is due to Uncontrollable Circumstance or Government Fault or the Government's failure to make available the Delivered Tonnage during such Billing Year.

(d) Failure on the part of the Company (or the Guarantor on behalf of the Company) to pay any amount required to be paid to the Government, to the Trustee or other Person to which payments are required to be made under this Agreement or under any Financing Document, when such amount becomes due and payable or within any applicable grace period, unless (i) the same is paid within sixty (60) Days after written demand on the Company and the Guarantor by the Government accompanied by notice that unless the same is not so paid, such failure to pay will constitute an Event of Default, or (ii) a dispute with respect to any such amount is being pursued under the provisions of Dispute Resolution.

(e) The failure of the Company to timely comply with the final unappealable determination and order of the Government under Section 18.05 or the Independent Engineer or a court of competent jurisdiction; provided, however, that the Government shall have given prior written notice of the noncompliance and the Company and the Guarantor have failed to take reasonable steps to diligently comply with such order.

(f) The failure of the Company to promptly act to remedy any stoppage in the progress of the Work which continues for a period in excess of sixty (60) Days, unless caused by Uncontrollable Circumstance or Government Fault; provided, however, that no such default shall constitute an Event of Default giving the Government the right to terminate this Agreement unless and until:

(i) the Government shall have given written notice to the Company and the Guarantor following such sixty (60) Day period stating that such stoppage in the progress of Work will, unless corrected, constitute an Event of Default under this Section 14.02(f); and

(ii) the Company or the Guarantor has not caused the Work to begin again and to proceed in substantial fashion within sixty (60) Days from the date of receipt of the notice given pursuant to clause(f)(1) of this Section 14.02.

(g) The failure of the Facility to be Accepted on or before the expiration of the Extension Period unless such failure is due to Uncontrollable Circumstances or Government Fault; provided, that the Government has given the Company and the Guarantor at least thirty (30) Days' written notice of the date on which the Extension Period shall expire.

(h) The Guaranty ceasing to be in full force and effect other than as a result of an Event of Default on the part of the Government.

Section 14.03 Events of Default by the Government. Each of the following shall constitute an Event of Default on the part of the Government:

(a) The persistent or repeated failure or refusal by the Government to fulfill all or any of its material obligations (including the delivery of Acceptable Waste (other than Acceptable Waste rejected by the Company pursuant to Section 8.10) to any facility other than the Facility) other than as a result of Company Fault under this Agreement, unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or Company Fault; provided, however, that no such default shall constitute an Event of Default giving the Company the right to terminate this Agreement, unless and until:

(i) the Company shall have given the Government prior written notice specifying that a particular default exists, which will, unless corrected, constitute a material breach of this Agreement on the part of the Government; and

(ii) the Government shall not have corrected such default or shall not have taken reasonable steps to commence to correct the same within thirty (30) Days from the

date of the notice given pursuant to clause(a)(i) of this Section 14.03 or thereafter not continued to take reasonable steps to correct such default.

(b) The failure of the Government to pay when due (i) any component of the Service Fee; provided, however, that written demand for payment, accompanied by notice that unless the same is paid an Event of Default will occur, shall have been delivered to the Government and remain unpaid (i) in the case of any component of the Service Fee other than the Capital Charge component of the Service Fee, for at least thirty (30) Days after delivery of such notice, (ii) in the case of the Capital Charge component of the Service Fee, until the first to occur of (A) fifteen (15) Days after its due date, and (B) the due date under the Indenture of the related Debt Service included in the Capital Charge component of the Service Fee or (iii) in the case of any interest penalty payable by the Government hereunder, within the period for payment prescribed in the Prompt Payment Act.

(c) Failure on the part of Government to pay all or any amount, except for the Service Fee, required to be paid to the Company under this Agreement or any Financing Document when such amount shall have become due and payable, if the same is not paid within sixty (60) Days after written demand therefore by the Company accompanied by notice that unless the same is not so paid, such failure to pay will constitute an Event of Default; provided, however, that any such amount shall not be considered due for purposes of this Section 14.03(c) if and so long as (i) a dispute with respect to any such amount is being pursued under the provisions of Dispute Resolution or (ii) payment of such amount would violate the Prompt Payment Act.

(d) The Government (i) shall be or shall have become insolvent or ceased to pay its debts as they mature or making an arrangement with, or for the benefit of, its creditors or

consented to, or acquiesced in, the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) shall have filed or had filed against it a petition seeking a bankruptcy, winding up, reorganization, insolvency, arrangement or similar relief against the Government, which proceeding, if involuntary in nature, is brought under the laws of Guam and has not been stayed or dismissed within sixty (60) Days, or (iii) shall have taken any action approving of, consenting to, or acquiescing in, any such proceeding, or (iv) being a party to the levy of any distress, execution or attachment upon the property of the Government which shall substantially interfere with its performance hereunder.

(e) The Government shall have failed to timely comply with the final unappealable determination and order of the Government or the Independent Engineer or a court of competent jurisdiction; provided, however, that the Company shall have given prior written notice of the non-compliance and the Government shall have failed to take reasonable steps to diligently comply with such order.

ARTICLE XV
TERMINATION AND OTHER REMEDIES

Section 15.01 Mitigation. The Company and the Government agree that a Party injured by an Event of Default shall, to the extent not detrimental to its interests and within any applicable provisions of law, mitigate the damages, costs and expenses incurred by reason of such Event of Default and to credit the savings therefrom to any damages, costs and expenses resulting therefrom.

Section 15.02 Termination by Government for Company Event of Default. Should at any time there exist an Event of Default by the Company pursuant to Section 14.02, then the Government shall have, unless the Parties are in Dispute Resolution, an absolute right to

terminate this Agreement under this Section 15.02. If this Agreement is terminated under this Section 15.02, then:

(a) The Company shall within thirty (30) Days pay the Trustee an amount sufficient to defease the outstanding aggregate principal amount of the Bonds, and Additional Bonds issued from time to time for Changes except, to the extent Bond proceeds were used to acquire the Facility Site, an amount of Bonds equal to the acquisition cost of the Facility Site multiplied by a fraction, the numerator of which is the total amount of Bonds outstanding on such defeasance date and the denominator of which is the total amount of Bonds originally issued. In any event, such amount shall be net of funds from Bond proceeds, reserve funds and insurance proceeds which are available under terms of the Indenture for the redemption of such portion of the Bonds.

(b) If the Company is required to pay the Trustee the amount calculated pursuant to Section 15.02(a), then the Company at its sole option may elect, upon the payment of such amount, to continue to operate the Facility for a period equal to the remaining stated term of this Agreement, during which period of time the Government may, but shall have no obligation to, continue to deliver or cause to be delivered Acceptable Waste to the Facility on terms to be agreed to between the Government and the Company. At or before the conclusion of the period specified in the preceding sentence, the Company shall, if so requested by the Government, deliver the Facility and all the Company's right, title and interest to the Facility Site to the Government in compliance with the requirements of Section 15.06 against payment by the Government to the Company of the Facility Termination Value; provided that the Government shall have assumed (to the extent permitted under the applicable Financing Documents) or shall otherwise have paid or defeased such Bonds (if any) relating to the acquisition cost of the

Facility Site which were not required to be defeased as provided in Section 15.02(a). For so long as the Company continues to operate the Facility, the Company shall, insofar as the Facility Site has been leased from the Government, continue to be subject to and pay rent due under the applicable ground lease.

(c) Each Party shall pay the other all amounts due through the date of termination and the Government's obligation to pay the Service Fee shall end.

Section 15.03 Remedies by Company for Government Event of Default.

(a) Following the occurrence and during the existence of an Event of Default on the part of the Government pursuant to Section 14.03, the Company shall have, unless the Parties are in Dispute Resolution, the absolute right to terminate this Agreement as provided in Section 15.03(b).

(b) Subject to the limitations of Section 4.04(d), if the Company elects to terminate this Agreement, the Government shall pay to the Company an amount equal to: (i) the Service Fee payable up to the effective date of termination, plus (ii) all accrued but unpaid portions of the Development Fee, plus (iii) all Phase I Development Costs, plus (iv) all accrued but unpaid Phase II Development Costs, plus (v) all Direct Costs, excluding profit to the Company, incurred by the Company as a direct result of such termination, including cancellation charges, if any, from contractors, subcontractors or suppliers, excluding profit, plus (vi) the Defeasance Cost, plus (vii) the License Defeasance Cost, minus (viii) any amount owed by the Company to the Government under this Agreement; provided, however, that the Government shall not be required the pay the Defeasance Cost pursuant to the foregoing clause (vi) unless the Company shall agree, upon, receipt of payment of such cost, to transfer ownership of the Facility to the Government in accordance with Section 15.06. The Company, may, at its election, assign

its right to payment of some or all of the foregoing amount to the Guarantor. Upon such termination and payment, the Government's obligation to make further payments of the Service Fee shall terminate.

(c) Nothing contained in this Section 15.03 shall compel the Company to terminate this Agreement upon the occurrence of an Event of Default on the part of the Government and the Company may, in its sole discretion, elect instead to enforce this Agreement against the Government in accordance with its terms, including, without limitation, the obligation of the Government to make payment of the Service Fee as and when due hereunder.

Section 15.04 Termination Due to an Uncontrollable Circumstance.

(a) Either Party, at its sole option, may terminate this Agreement on forty-five (45) Days notice to the other Party if (i) the Parties have been or would be prevented from substantially performing their obligations hereunder for more than three hundred sixty (360) Days due to an Uncontrollable circumstance, (ii) neither Party is pursuing Dispute Resolution arising from or related to the Uncontrollable Circumstance, and (iii) the Uncontrollable Circumstance is not curable.

(b) Upon termination pursuant to this Section 15.04 (except as limited by section 4.04(d)), each Party shall pay, to the extent permitted under the Financing Documents, to the other all amounts due through the date of termination and the Government shall pay to the Company the Development Fee, all Phase I Development Costs, plus all accrued but unpaid Phase II Development Costs, and the Defeasance Cost; provided, however, that in lieu of paying that portion of the Defeasance Cost associated with the defeasance and discharge of the outstanding Bonds, the Government may, to the extent permitted under the Financing Documents, discharge the Company and the Guarantor from all of their respective obligations

under the Financing Documents, and assume the obligation to pay the Bonds in accordance with their terms. The Guaranty shall thereupon terminate, and the Company shall thereupon transfer ownership of the Facility to the Government pursuant to Section 15.06, free and clear of any claims or interest of the Company; provided, however, that the Company may condition any such transfer upon the reinstatement of the Amended License in accordance with its terms as of the date hereof, in which event the Amended License shall remain in effect for the stated term thereof.

(c) In the event the Government has not exercised its option under Section 15.04(a) to terminate this Agreement, the Government shall continue to pay the Service Fee as provided in Section 7.18 or Section 11.01, as the case may be.

Section 15.05 Termination on Government Request. At any time after the Contract Date, both before or after the Acceptance Date, the Government shall have the absolute right to terminate this Agreement without cause in accordance with this Section 15.05. It may exercise its right to terminate by giving to the Company ninety (90) days written notice of its intent, indicating the date on which the termination shall be final and possession and ownership of the Facility shall transfer to the Government. On that date, and as a condition to such termination, each Party shall pay the other all amounts earned or accrued but unpaid through the date of termination, including without limitation the Service Fee, Landfill Charges and similar amounts, and the Government shall pay to the Company (without duplication of the foregoing amounts, and subject to the limitation of section 4.04(d)) (a) all unpaid Phase I Development Costs and accrued but unpaid Phase II Development Costs; plus (b) all unpaid portions of the Development Fee; plus (c) the Defeasance Cost; plus (d) all Direct Costs incurred by the Company in connection with such termination, including cancellation charges, if any, from contractors,

subcontractors or suppliers, including employee termination and relocation costs; plus (e) amounts expended by the Company (and not reimbursed) in connection with Changes, if any, to the extent not otherwise recovered by the Company under this Agreement; plus (f) the License Defeasance Cost. The Company shall thereupon complete the transfer of ownership of the Facility to the Government pursuant to Section 15.06. After the payment of all monies due and the completion of such transfer, the Company shall have no interest in the Facility or any claim against the Government arising from or relating to this Agreement, the Related Documents or the Facility.

Section 15.06 Transfer of Facility Ownership; Assignment of Contracts on Termination. In the event this Agreement is terminated pursuant to Section 15.03, Section 15.04 or Section 15.05 and the Government is required to pay, and in fact pays, the Defeasance Cost, then, subject to the Government's fulfillment of its remaining obligations hereunder (including the payment of such other amount as may be required under Section 15.03, Section 15.04 or Section 15.05, as applicable), or in the event the Company elects to abandon the Facility upon an Event of Default by the Government pursuant to Section 15.03, all right, title and interest of the Company in or to the Facility and the Facility Site shall, subject to the provisions of this Section 15.06, Section 15.02(b) and Section 19.01(c), vest in the Government. Upon the Government's request, the Company, either directly or through contractors and/or subcontractors (including without limitation the Contractor and the Operator, as applicable), shall:

(a) Grant or transfer to the Government a nonexclusive license to use all patented, licensed or proprietary technology or information then held by the Company, the Contractor or the Operator or, to the extent applicable, such subcontractor and needed to complete and operate the Facility, for the sole purpose of completing and operating the Facility,

and to supply any proprietary components needed for the continuing operation and maintenance of the Facility at their Fair Market Value (or, if such Person is no longer manufacturing or supplying such proprietary components, to grant or transfer to the Government a non-exclusive license, without payment of royalties of any kind, to use all "shop rights," patents, licenses or other proprietary rights related thereto retained by such person, to the extent contractually permitted to do so).

(b) Assign and transfer, or cause to be assigned and transferred, for the benefit of the Government or any subsequent operator of the Facility, the Construction Contract, if applicable, the Operation and Maintenance Agreement, and, to the extent that they are assignable, any management contracts, all labor contracts, all maintenance contracts, all supply contracts and all other contracts relating to the Facility;

(c) Use its reasonable efforts to provide to the Government specifications and shop drawings for all proprietary components of the Facility which are no longer being manufactured or supplied by the original supplier thereof, in addition to the "shop rights", and other proprietary rights described in Section 15.06(a):

(d) To the extent they are assignable, or transferable, assign and transfer to Government all trade fixtures, fixtures, equipment, inventory, tools, machinery and other personal property owned by the Company and located at the Facility or the Facility Site and used in or related to the operation or completion of the Facility;

(e) To the extent they are assignable or transferable, assign and transfer to the Government any Permits, rights to insurance proceeds, third-party warranties, bonding or other guaranties of the performance held by or owing to the Company in respect of any equipment or technology which is incorporated into or part of the Facility; and

(f) Assign, transfer or convey all of the Company's right, title and interest in and to the Facility and the Facility Site to the Government, free and clear of all liens, easements, encumbrances and other matters and interests affecting title except those liens, easements, encumbrances and other matters existing on the date the Government or the Company acquired the Facility Site or created or agreed to by the Government or provided for in the Financing Documents.

ARTICLE XVI
INSURANCE

Section 16.01 Company's Obligation to Provide Insurance.

(a) Within thirty (30) Days following the Notice to Proceed Date and prior to the Company's and the Contractor's mobilization on the Facility Site, or such earlier date as the Credit Enhancer may require, the Company shall purchase and maintain in full force and effect the insurance required in Section 16.02, and such additional insurance as the Government may, from time to time, or the Credit Enhancer may, prior to the Financing Date, reasonably require, and shall deliver to the Government a certificate of the Company's insurance broker to the effect that the Company has, or has caused the Contractor to, obtain all policies of insurance required under this ARTICLE XVI or by the Credit Enhancer. All required insurance, to the extent available, shall be procured from insurance companies certified to do business within the Territory of Guam and which are rated "A-" or higher by Best's Insurance Guide or shall otherwise be approved in writing by the Government. The form, terms, conditions, coverages, limitations exclusions and other provisions of all policies of insurance required by Section 16.02 shall be reasonably acceptable to the Government.

(b) The Government shall be named an additional insured or loss payee, as applicable, on all policies and the sole loss payee (or, if the Government so agrees, as a joint loss

payee with the Credit Enhancer) on business interruption and extra expense insurance described in Section 16.02(f).

(c) The Government shall have the right to review the Company's pertinent insurance records to insure compliance with this ARTICLE XVI and Cost Substantiation. Upon request, the Company shall furnish the Government with a true copy of each policy of insurance which the Company is required to obtain under this ARTICLE XVI. Each policy shall provide a minimum of thirty (30) Days' prior written notice to the Government of cancellation, non-renewal or material change in coverage or rate, except in the case of a cancellation or non renewal because of nonpayment of premiums, in which case such policy shall provide for fifteen (15) Days prior written notice to the Government. The Company shall provide to the Government fifteen (15) Days prior to the anniversary date a certificate demonstrating that all insurance policies provided by the Company have been renewed without material change for an additional policy period.

(d) Prior to the start of any Work on the Facility, the Company shall require the Contractor and any subcontractor (other than Affiliates of the Contractor covered by the Contractor's policies) of the Contractor to purchase and maintain the insurance required by Section 16.02 to the extent applicable to the Contractor's or subcontractor's scope of work and contract value, and the Company shall cause the Contractor to be subject to and comply with the rights of the Government and the obligations of the Company set forth in this Section 16.01. Without limiting the generality of the foregoing, the Contractor and each subcontractor shall obtain a commercial general liability policy with coverage of not less than One million dollars ($1,000,000.00) combined single limit and a workman's compensation and employer's liability insurance policy with coverage of not less than One million dollars ($1,000,000.00), and such

additional coverages or insurance policies as may be reasonably required by the Government or the Credit Enhancer, prior to the start of any Work on the Facility. All such policies shall, except as approved by the Government, conform to the requirements (as to form, insurers, additional insured, loss payees and other matters) of this ARTICLE XVI.

(e) The Company shall have the right, at its sole expense and for its sole benefit, to obtain insurance in addition to that required at Section 16.02.

(f) The Company shall not, and the Company shall not permit the Contractor or its subcontractors to, commence Work until each has obtained or provided for all of the insurance required by Section 16.02 that is relevant to the Work to be commenced at that time and delivered certificates evidencing such insurance to the Government.

Section 16.02 Insurance Required of Company. Unless otherwise stated, effective prior to the mobilization of the Company and the Contractor on the Facility Site, the Company or the Contractor, as applicable, shall, at all times, maintain the following insurance until the termination of this Agreement:

(a) Builder's Risk. The Company or the Contractor shall secure and maintain installation/builder's risk insurance (through one or more policies) for all of the Work to be performed at the Facility Site, insuring against direct physical loss or damage to the Work as well as the cost of any necessary, additional architectural or engineering drawings, any and all services, and any other items material to the Facility should the Work be damaged. Such policies shall be written on the basis of the greater of (i) one hundred percent (100%) replacement cost or (ii) the outstanding amount (including principal and accrued but unpaid interest) of any Bonds or other non-Equity financing for the Facility, and shall insure against all risks of direct physical loss or damage to all materials, supplies, machinery, equipment, scaffolding, temporary

structures and other property of a similar nature, all of which are to be used in or incidental to the fabrication, erection, completion and Acceptance Testing of the Facility. Such policies shall also cover any of the above property while in off-site storage and shall insure any of the above property while in transit from the commencement of loading at the original point of shipment until completion of the unloading at the Facility at its full replacement value. Coverage under this policy shall continue until the Acceptance of the Facility by the Government or the termination of this Agreement, whichever occurs first. This insurance is not intended to cover the tools, equipment or other such personal property of the Contractor or its subcontractors used by them in performing the Work which are not incorporated into the Facility. The risk of loss of all such personal property shall be borne by the Contractor or subcontractors.

(b) Comprehensive Property Insurance. The Company shall, or shall cause the Contractor or Operator to, secure and maintain the policy of Comprehensive Property Insurance covering all real and personal property at the Facility in an amount equal to the greater of (i) one hundred percent (100%) of the replacement cost to the Facility (including any on-site interconnection facilities or transmission lines used by the Facility) or (ii) the outstanding amount (including principal and. accrued but unpaid interest) of any Bonds or other non-Equity financing for the Facility, insuring against all risks of direct physical loss or damage, including that caused by fire, lightning, explosion, typhoon, collapse, riot, riot attending strikes, civil commotions, aircraft, vehicles, smoke, vandalism, malicious mischief and flood. Such insurance shall also include transit and off-site coverage for the full replacement cost of any property not on the Facility Site, but in no event less than Three million dollars ($3,000,000.00) and coverage for on-site clean up of hazardous or toxic materials of no less than Two hundred fifty thousand dollars ($250,000.00). In the event any coverages under this Section 16.02(b) and under Section

16.02(e) are provided under more than one policy of insurance, the Company will also have included in all such policies a joint loss agreement acceptable to the Government.

(c) Comprehensive Automobile Liability. The Company shall, or shall cause the Contractor or Operator to, maintain Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles in the amount of One million dollars ($1,000,000.00) per occurrence and Two million dollars ($2,000,000.00) in the aggregate for bodily injury and property damage.

(d) Comprehensive/Commercial General Liability Insurance. Company shall procure and maintain Personal Injury and Property Damage Insurance, including coverage for products, completion operations, independent contractors, personal injury, broad-form property damage, contractual liability, explosion, collapse reasonably adequate to insure the Government and the Company against risk and liability arising from or related to the operation, construction, or capital improvement of the Facility. All such insurance shall be written on an occurrence basis and shall contain a separation of insured clause and a cross-liability endorsement. Such insurance shall be maintained with limits of not less than Twenty-five million dollars ($25,000,000.00) combined single limit. Each such liability insurance policy shall be endorsed to indicate that it is primary insurance with respect to the interest of the additional insured and that any other insurance maintained by any additional insured is excess and not contributory with this insurance. This coverage may be arranged with a lower limit primary policy and an excess umbrella policy so as to provide the required Twenty-five million dollars ($25,000,000.00) as an aggregate. In such event, all primary policies shall provide coverage of at least One million dollars ($1,000,000.00) per occurrence and Two million dollars ($2,000,000.00) in the aggregate. In the event any coverage required under this Section 16.01(d) is provided under a policy which

also applies to other locations, the insurer shall also provide a per location aggregate endorsement or shall agree to notify the Government immediately if the aggregate coverage under any such policy is reduced below Fifteen million dollars ($15,000,000.00).

(e) Boiler and Machinery Direct and Consequential Loss. The Company shall, or shall cause the Operator to, as a Pass Through Cost, maintain Boiler and Machinery coverage under a blanket comprehensive one hundred percent (100%) replacement cost basis protecting any sudden and accidental breakdown of boilers, fired and unfired pressure vessels and machinery, including mechanical and electrical breakdown coverage, including coverage for extra expense and expediting cost. In the event any coverages under this Section 16.02(e) and Section 16.02(d) are provided under more than one policy of insurance, the Company will also have included in all such policies a joint loss agreement acceptable to the Government.

(f) Business Interruption and Extra Expense Insurance. The Company shall, or shall cause the Operator to, procure and maintain Business Interruption and Extra Expense Insurance against loss due to total or partial interruption of operations as a result of any risks. Such coverage shall cover loss of revenues, the Capital Charge, the Operation and Maintenance Charge, Pass Through Costs, Landfill Charges and Administrative Fee. A deductible may be included which provides for a waiting period of up to thirty (30) Days after the occurrence of damage or loss prior to the payment of insurance benefits; provided, however, that benefits shall be paid immediately upon the conclusion of the thirty (30) Day waiting period, and shall continue for a minimum period of twenty-four (24) months. If such business interruption insurance is not reasonably available or is not obtainable at any time for any reason other than Company Fault, then the Company shall not be liable for any event which would have been covered by the insurance. If such business interruption insurance is not obtained due to

Company Fault, then the Company shall be liable for all loss caused by any event which would have been covered by such insurance.

(g) Workman's Compensation and Employer's Liability Insurance. The Company shall cause the Contractor and the Operator to provide workman's compensation and employer's liability insurance in accordance with all local statutes. Coverage shall include bodily injury by accident, Five hundred thousand dollars ($500,000.00) for each accident, bodily injury by disease, Five hundred thousand dollars ($500,000.00) for each employee, and One million dollars ($1,000,000.00) policy limit for employer's liability. There shall be no self-insured retention. Increases in the premium for workman's compensation which result from Company Fault shall not be Pass Through Costs but shall be paid by the Company.

(h) Project Liability, Errors and Omissions Insurance. The Company shall procure and maintain Project Liability, Errors and Omissions Insurance to insure against liability or claims arising from the acts or omissions of any architects, engineers, contractors and subcontractors involved in the design and construction of the Facility for limits of at least One million dollars ($1,000,000.00).

(i) Other Liability Coverages. In the event aircraft are used by any Person in connection with the construction or operation of the Facility, the Company shall also provide comprehensive liability insurance covering all owned, hired or non-owned aircraft used in connection with the construction or operation of the Facility with coverage of not less than Twenty-five million dollars ($25,000,000.00).

Section 16.03 Payment of Premiums. All insurance premiums required from the Contract Date to the Acceptance Date shall be paid by the Company, and all insurance premiums required after the Acceptance Date shall be Pass Through Costs, in each case, except as stated

herein. In the event that the Government and the Company fail to agree upon the nature or extent of any insurance coverage, the matter shall be resolved through Dispute Resolution.

Section 16.04 Deductible or Self-Insurance Retention Provisions.

(a) Self-insured retention or deductible amounts for any insurance required by Section 16.02 shall be in a maximum of Two hundred fifty thousand dollars ($250,000.00) per occurrence for each coverage, with the exception of a five percent (5%) per loss deductible for flood and earth movement and a thirty (30) day deductible for business interruption insurance, unless otherwise agreed in writing by the Parties.

(b) In the event of any loss or damage which is covered by insurance required by Section 16.02 for which the insurance coverage provides for deductible or self-insured retention amounts then: (i) the Government shall, subject to the limitation on wrongful death and tort damages payable by the Government under the Government Claims Act (7 GCA § 6500.30), be responsible for the payment of any losses equal to the deductibles or self-insured retention amounts, which result from the occurrence of an insured event caused by an Uncontrollable Circumstance or by Government Fault; and (ii) the Company shall be responsible for the payment of any losses equal to the amount of any deductible or self-insured retention amounts, which result from the occurrence of any insured event caused by Company Fault.

(c) Any amounts paid by the Company for losses described by clause (i) of Section 16.04(b) shall be Pass Through Costs.

Section 16.05 Uninsured Loss. The Parties shall use all reasonable efforts to assure that risk of loss, damage or liability from any cause or risk is covered by insurance; however, in the event that damage, loss or liability occurs from a risk for which insurance was not procured, was not available at reasonable expense, or was deemed inapplicable then:

(a) The Government shall be responsible for the payment of any losses which result from the occurrence of an uninsured against event caused by an Uncontrollable Circumstance or Government Fault, subject to the limitation on wrongful death and tort damages payable by the Government under the Government Claims Act (7 GCA § 6500.30).

(b) The Company shall be responsible for the payment of any losses which result from the occurrence of an uninsured against event caused by Company Fault.

(c) Should any insurance not be obtained as required or allowed to lapse or otherwise become unavailable as a result of Company Fault, the Company shall be responsible for the payment of any losses which result from the occurrence of such uninsured against event.

(d) Should any insurance not be obtained as required or allowed to lapse or otherwise become unavailable as a result of Government Fault, the Government shall be responsible for the payment of any losses with respect to the occurrence of such uninsured against event.

Section 16.06 Use of Insurance Proceeds. Proceeds of any insurance required to be maintained pursuant to this Article XVI shall, unless otherwise required by the Indenture or the Financing Documents, be applied by the Government or the Trustee as follows: (a) the proceeds from policies required by Section 16.02(a), Section 16.02(b), Section 16.02Section 16.02(e) and Section 16.02(h) shall be applied to repair or replace the damage for which the proceeds are awarded; (b) the proceeds from the policies required by Section 16.02(c), Section 16.02Section 16.02(d), Section 16.02Section 16.02(e) and Section 16.02(h) shall be applied to satisfy claims for which such proceeds are awarded; and (C) the proceeds from policies required by Section 16.02(f) shall be paid to the Government in reimbursement of Service Fees paid during a period covered by such insurance or to the Company in lieu of Service Fees not paid during the

applicable period; provided, however, that (if applicable) the portion thereof representing the Capital Charge component of the Service Fee shall be paid to the Trustee pursuant to the terms of the Indenture. In the event that insurance proceeds from any policy are recovered in excess of amounts required, such excess shall be paid to the Party responsible for the payment of the applicable policy premium pursuant to Section 16.03.

ARTICLE XVII
CONFIDENTIALITY

Section 17.01 Confidentiality.

(a) The Government acknowledges that the Company, the Partners, the Contractor and the Operator (directly or through their Affiliates) have or will have valuable and Confidential Information with respect to solid waste disposal and resource recovery, and that any disclosure of such Confidential Information to the Government or its representatives is or will be solely for the purpose of facilitating the transactions contemplated by this Agreement and is or will be made solely on the terms and conditions set forth herein.

(b) The Government shall treat in strict confidence all Confidential Information disclosed to it directly or indirectly by the Company, the Partners, the Contractor and the Operator or their respective Affiliates (the "Disclosing Party") and shall not use such Confidential Information for any purpose other than to monitor the performance by the Company and its subcontractors, including the Contractor and the Operator, of the Company's duties under this Agreement. The Government shall limit access to Confidential Information to those of its consultants, attorneys and employees who require such access in order to monitor performance by the Company and shall use best efforts to insure that the use of such Confidential Information by such consultants, attorneys and employees shall be limited to such purpose.

(c) The foregoing shall not preclude the Government from disclosing Confidential Information upon the lawful demand of any Governmental Authority having jurisdiction if: (i) prior to disclosing such Confidential Information, the Disclosing Party shall have the opportunity to review and comment upon the Confidential Information requested and to participate with the Government in discussions with such Governmental Authority concerning the scope and content of the requested Confidential Information; (ii) the Government shall take reasonable steps not to prejudice the Disclosing Party's proprietary right to its Confidential Information; and (iii) upon the Disclosing Party's request, the Government shall request that such Governmental Authority maintain the confidentiality of such Confidential Information.

(d) The Disclosing Party may respond to any demand for disclosure of Confidential Information pursuant to applicable law and require the Government to withhold disclosure to the extent permitted by applicable law, and may take any action deemed necessary by the Disclosing Party, including legal action, prior to release of such Confidential Information.

ARTICLE XVIII
DISPUTE RESOLUTION

Section 18.01 Dispute Resolution. (a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between them. In the event either Party shall determine that a dispute cannot be resolved pursuant to this Section 18.01(a), then that Party may at any time submit the dispute to non-binding mediation as set forth in Section 18.01(b) or to resolution as set forth in Section 18.02 or **Error! Reference source not found.**; provided; however, that if any Party submits such dispute to non-binding mediation as set forth in Section 18.01(b), no other Party shall, prior to thirty (30) Days after such submission, submit such dispute to resolution as set forth in Section 18.02 or **Error! Reference source not found.**.

(b) In the event that any dispute arises between or between the Parties to this Agreement, arising out of, relating to or in connection with this Agreement, and the Parties are unable to resolve such dispute within a reasonable time pursuant to Section 18.01(a), either Party may request that the matter be submitted to non-binding mediation by written notice to that effect. Within 10 Days after receipt of said notice, the other Party shall give written notice stating whether or not they consent to such mediation; provided, however, that no Party shall be required to submit to mediation unless it consents, which consent is in its sole discretion; and provided, further, that a request for mediation shall not in any way interfere, compromise, limit or restrict a party's right at any time at least thirty (30) Days after submission of such dispute to non-binding mediation, to seek resolution of such dispute pursuant to Section 18.02 or **Error! Reference source not found.**. If all Parties consent, mediation shall be initiated in accordance with the Center for Public Resources Model Procedure for Mediation of Business Disputes annexed as Exhibit B except (i) the site of such mediation be Agana, Guam, and (ii) the mediator shall be the Governor of Guam or such other person as may be agreed upon by the Parties. Any settlement agreement mutually reached in the course of the mediation shall be recorded in a definitive agreement, which shall be binding and conclusive upon such Parties only upon their execution thereof.

Section 18.02 Resolution By Independent Engineer.

(a) If the matter in dispute involves any matter(s) primarily requiring the exercise of engineering judgment (as opposed to determinations of legal issues), and involves an amount of Five million dollars ($5,000,000.00) or less, the dispute shall be brought to the Independent Engineer who shall assume exclusive jurisdiction thereof. Any questions as to whether a matter in dispute primarily requires the exercise of engineering judgment (as opposed

to determinations of legal issues) or an amount of less than Five million dollars ($5,000,000.00) shall be determined by the Independent Engineer within ten (10) Days of receipt of the responding Party's ("Respondent") response to the initial submission of the initiating Party ("Claimant") as set forth in Section 18.02(b); provided, however, that either Party shall have the right to appeal such determination to the Governor of Guamwho shall make a final and binding determination according to the procedures set forth in **Error! Reference source not found.**.

(b) The matter in dispute shall be submitted by the Claimant to the Independent Engineer in writing summarizing the dispute and the Claimant's position in it. It shall be supported by sufficient documents as necessary for the Independent Engineer to resolve the matter and shall be delivered to the Respondent simultaneously with its submission to the Independent Engineer. The Respondent shall have twenty (20) Days to respond to the initial submission by the Claimant, which response may be a request for the Independent Engineer to determine whether the Independent Engineer has jurisdiction to decide the dispute under Section 18.02(a). If the Independent Engineer or, if appealed by either Party, the Governor of Guam, determines that the Independent Engineer does have jurisdiction to decide the dispute, then the Respondent shall have an additional twenty (20) Days from the date of the Independent Engineer's or the Governor of Guam's decision, as the case may be, to respond to the initial submission of the Claimant. If the Independent Engineer or, if appealed by either Party, the Governor of Guam determines that the Independent Engineer does not have jurisdiction pursuant to Section 18.02(a), then the Parties will proceed with resolution of the dispute pursuant to **Error! Reference source not found.**. Within five (5) Days of receipt by the Independent Engineer and the Claimant of the responding Party's response, either Party may request that the Independent Engineer hold a hearing with respect to the issues in dispute. Such a hearing shall

take place in Hawaii within twenty (20) days of such request for a hearing on a date to be fixed by the Independent Engineer, or at such other place and time as to which the Parties may agree, within ten (10) Days of such request.

(c) Both the Government and the Company shall be bound by the terms of the Independent Engineer's final determination. The determination by the Independent Engineer shall be made in writing applying findings of fact to the governing law of this Agreement set forth in Section 19.14 and shall contain a statement of the Independent Engineer's reasoning in reaching its determination. The Independent Engineer shall have the power and authority to grant interim relief and mandatory relief (i.e., directing that certain things be done) and to appropriately adjust the time for performance of any Party's obligations under this Agreement as part of its resolution of any dispute. Judgment may be entered upon the decision rendered by the Independent Engineer, and such decision and judgment may be specifically enforceable, by any court having jurisdiction thereof.

(d) The Parties shall bear their own attorneys' fees and one-half of the Independent Engineer's fees and expenses, in each case, incurred in connection with the resolution of any dispute hereunder.

(e) All proceedings before and all documents and other information to the Independent Engineer shall be in the English language.

Section 18.03 Selection of the Independent Engineer. The Independent Engineer, and any successor Independent Engineer, shall be selected by the Parties in the manner set forth in this Section 18.03 from the list of qualified and approved Independent Engineers set forth in Schedule 19 to serve in such capacity pursuant to this Agreement. From time to time during the Term of this Agreement, the Parties shall by mutual agreement supplement Schedule 19 so that

at all times a list of three (3) Independent Engineers is available. Such Independent Engineers shall not otherwise be associated with the transactions contemplated by this Agreement or with either Party, the Contractor, the Operator, any subcontractor or Affiliate. Such Independent Engineers shall have knowledge with respect to the design, construction, start-up, Acceptance Testing, operation and maintenance of solid waste disposal and mass burn resource recovery facilities. The Parties shall select an Independent Engineer as follows: each Party shall select one (1) Independent Engineer from Schedule 19 with the Party initiating Dispute Resolution choosing first. The Independent Engineer not chosen by either party shall act as Independent Engineer for purposes of this ARTICLE XVIII until replaced pursuant to Section 18.04. If a second Dispute Resolution is initiated while a Dispute Resolution is still pending, the Parties may agree to have the Independent Engineer who is hearing the pending Dispute Resolution also hear the second Dispute Resolution. If they do not so agree, a second Independent Engineer will be chosen as provided in this Section 18.03; provided, however, that if there are not three (3) Independent Engineers remaining on Schedule 19, the Parties shall name such additional Independent Engineers as may be necessary to add to Schedule 19. After each Dispute Resolution proceeding, either Party may cause the Independent Engineer to be terminated and removed from the list set forth in Schedule 19 and in such case a new Independent Engineer shall be added to the list. If the Parties cannot agree on a new Independent Engineer to add to the list set forth as Schedule 19 within thirty (30) Days of the event requiring replacement of the Independent Engineer, a new Independent Engineer shall be selected by the Hawaii Regional Vice President of the AAA and added to the list.

Section 18.04 Replacement of the Independent Engineer. If the Independent Engineer resigns, if at a time when no Dispute Resolution Procedure is pending pursuant to Section 18.02

either Party decides to terminate the services of the Independent Engineer pursuant to Section 18.03, if the Parties mutually agree to terminate the services of the Independent Engineer, or if a Party demonstrates that the Independent Engineer is subject to a conflict of interest or malfeasance, then, once a new Independent Engineer has been added to the list set forth in Schedule 19, the Parties shall select a replacement as set forth in Section 18.03.

Section 18.05 Decision by Government; Appeal.

(a) If any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination, or validity hereof, other than a dispute, controversy or claim subject to resolution by the Independent Engineer pursuant to Section 18.02 (except as set forth in Section 18.02)is not resolved by mutual agreement under Section 18.01(a) or non-binding mediation under Section 18.01(b), then the dispute shall be decided by the Government in writing within sixty (60) days after Company shall request the Government in writing to issue a final decision. If the Government does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Company may proceed as though the Government had issued a decision adverse to the Company.

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

(c) The Government's decision shall be final and conclusive, unless fraudulent or unless the Company appeals the decision as follows:

(i) For disputes involving money owed by or to the Government under this Agreement, the Company appeals the decision in accordance with the Government Claims

Act by filing a government claim with the Government no later than eighteen months after the decision is rendered by the Government or from the date when a decision should have been rendered.

(ii) For all other disputes arising under this Contract, the Company files an appeal with the Office of the Public Accountability pursuant to 5 G.C.A. §§ 5706(a) and 5427(e) within sixty days of the Government's decision or from the date the decision should have been made.

(d) The Company shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

(e)

Section 18.06 Covenant to Continue Performance. During resolution of any dispute under this Article XVIII, the Company and the Government shall each continue to perform all of their respective obligations under this Agreement without interruption or slow-down, except as otherwise provided in this Agreement.

Section 18.07 Survival. This Article XVIII shall survive termination of this Agreement.

ARTICLE XIX
MISCELLANEOUS

Section 19.01 Term.

(a) This Agreement shall commence on the date of execution hereof by each of the Parties; provided, however, that prior to the occurrence of the Contract Date the sole obligation of each Party hereunder shall be to use its reasonable efforts to cause the Contract Date to occur. Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on the Contract Date and continue in effect until the twentieth (20th) anniversary of the Acceptance Date when it shall terminate.

(b) Three (3) years prior to the termination of this Agreement under Section 19.01, the Government and the Company may begin negotiations to develop a new service agreement for continued operation of the Facility beyond such termination date. If no agreement is reached prior to such termination date, then this Agreement shall terminate as provided for in Section 19.01(a) and the terms and conditions of this Agreement shall apply.

(c) Upon the termination of this Agreement at the conclusion of its scheduled term under Section 19.01(a), the Government shall have the right (*but not the obligation*) to acquire all of the Company's right, title and interest in and to the Facility and the Facility Site upon payment to the Company of the Facility Termination Value; provided that the Government shall have given irrevocable written notice of the exercise of such right no less than one hundred twenty (120) Days prior to such termination date. If the Government so exercises such right and makes such payment, except as otherwise expressly provided herein, and upon the performance by the Government of any remaining obligations under this Agreement, the Company shall (i) assign, transfer and convey, or cause to be assigned, transferred and conveyed, for no additional consideration and to the fullest extent allowed by law, all of its interest in the Facility, the Facility Site, the Permits (to the extent transferrable), trade fixtures, licenses, third-party warranties, rights to insurance proceeds, fidelity bonds and equipment located at or used in the Facility, such that the Company shall have no interest in or claim against the Facility, and (ii) take the action described in Section 15.06. If the Government elects not to exercise its right to acquire the Facility as heretofore provided, the Company shall have the right to continue to own and operate or to dispose of the Facility, in its sole discretion.

Section 19.02 [Reserved].

Section 19.03 Intellectual Property Rights. The Company shall pay all royalties and license fees relating to the design, construction, performance testing, operation and maintenance of the Facility. The Company hereby warrants that the design, construction and performance testing of the Facility, and the contemplated operation or maintenance of the Facility or the use of any component unit thereof or the use of any article, machine or process, or a combination of any or all of the foregoing, by the Government or any third Person shall not infringe any patent, trademark, copyright or other intellectual property right of any other third Person. The Company shall defend or settle any claim or lawsuit brought against any Government Indemnified Party, including any claim or lawsuit for infringement of any patent, trademark, copyright or other intellectual property right relating to the design, construction, operation or maintenance of the Facility, or for the unauthorized use of trade secrets by reason of the design, construction, operation or maintenance of the Facility, or the Company may, at its option, acquire the rights of use under infringed patents or other intellectual property rights, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe and the Company shall indemnify the Government Indemnified Parties and hold each and all harmless against all liability, judgments, decrees, damages, interest, costs and expenses (including reasonable attorneys' fees) recovered against the Government or any of its directors, officers, commissioners, employees or representatives sustained by any or all by reason of any such actual or alleged infringement of any patent, trademark, copyright or other intellectual property right or the unauthorized use of any trade secret.

Section 19.04 Interest on Payments. All payments to be made pursuant to this Agreement outstanding after the applicable due date, or specifically requiring the payment of interest, shall, except where otherwise expressly provided, bear interest at the Default Rate.

Section 19.05 Compliance with Laws. The Company shall comply with, and cause each Party with which it subcontracts its duties hereunder to comply with, all applicable Governmental Rules and Permits in connection with operation or maintenance of the Facility. In connection with the performance of work under this Agreement, the Company agrees, and shall cause the Contractor, the Operator and all subcontractors to agree, not to discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin or handicap. The Company and each of its subcontractors shall use all reasonable efforts to hire qualified workers and employees which are residents of the Guam.

Section 19.06 Assignment. Except as security to a Trustee or the Credit Enhancer in connection with the Bonds or to a financial institution in connection with the Financing Documents, this Agreement may not be assigned by either Party without the prior consent of the other Party, except that the Company may, without such consent, assign its interest hereunder to any Affiliate or Subsidiary owned exclusively by Guam Power, Inc., Wheelabrator, the Contractor, the Operator, or Guarantor or any third Party with a financial capability equal to Guam Power, Inc. and in which event the Assignee shall assume all the obligations and undertakings of the Company under this Agreement, whether arising before or after the date of such assignment, and the Guarantor shall guarantee such obligations and undertakings under this Agreement to the same extent as it has guaranteed the Company's obligations under the Guaranty. Upon such assignment and assumption and guarantee of the obligations and undertakings of such Assignee by the Guarantor as provided herein, the Company shall be

released from all further liability hereunder. The Government or the Company may, however, without such consent, assign its interest hereunder to: (a) the Trustee or a Credit Enhancer as collateral for, or otherwise in connection with, the Indenture in connection with the financing of the Facility, Bonds, Additional Bonds, if any, or make other arrangements of the financing or refinancing of all or part of the Facility or (b) to a permitted successor of the Government or an authority or agency of the Government; provided, however, that such assignment shall not relieve the assignor from its obligations hereunder. Notwithstanding the foregoing, Guam Power, Inc. may transfer its interest as a Partner in the Company to one of its Affiliates or an Affiliate of Wheelabrator and Wheelabrator Guam Inc. may transfer its interest as a Partner in the Company to one of its Affiliates or an Affiliate of Guam Power, Inc. or to Chevron.

Section 19.07 Subcontracts, Assignment and Default. The Company shall assure that the Construction Contract and the Operation and Maintenance Agreement, are assignable to the Trustee or a Credit Enhancer, and in the event of termination, to the Government.

Section 19.08 Notices. Except as otherwise specified herein, all notices, requests, demands, consents, instructions or other communications under this Agreement shall be duly given or made if sent in writing or by telecopy, and shall be deemed to have been duly given or made upon the transmittal thereof by telecopy, or upon the date received if delivered by courier or if deposited by mail, postage prepaid, or if delivery is rejected, on the date of such rejection, in each case addressed to the Party to which such notice is requested or permitted to be given or made at the respective address or telecopy number indicated below or at such other address or telecopy number of which such Party shall have notified in writing the Party giving such notice.

(a) If to the Government:

Guam Economic Development Authority
ITC Building, Suite 911

590 South Marine Drive
Tamuning, Guam 96911

(b) If to the Company:

Guam Resource Recovery Partners
c/o GMP Associates, Inc.
479 West O'Brien Drive, Suite 200
Agana, Guam 96910

with a copy to:

Wheelabrator Guam Inc.
c/o Wheelabrator Environmental Systems Inc.
Liberty Lane
Hampton, NH 03842
Attention: General Counsel

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.

Section 19.09 Relationship of the Parties. Neither Party shall have any responsibility to perform services for or to assume contractual obligations which are the obligation of the other Party; nothing herein shall constitute either Party as a partner, agent or representative of the other Party, or to create any fiduciary relationship between the Parties.

Section 19.10 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. Any such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other matter under this Agreement.

Section 19.11 Authorized Representative. For purposes of this Agreement, the Parties' initial authorized representatives are as follows:

For the Company:

Michael O'Freel	Wheelabrator
Wagdy A. Guirguis	Guam Power, Inc.

For the Government:

Henry J. Taitano

Either Party may change its authorized representative at any time by written notice to the other Party.

Section 19.12 Sharing of Abatements and Other Benefits. If the Facility or any part thereof becomes eligible for any exemptions from any taxes or to receive any grants, public or private, or other benefits after the Contract Date, the Parties, at no cost to the Company, shall take whatever reasonable steps required to assure that the exemptions, grants and benefits are provided to the Facility, and the Government shall be entitled to receive all benefits derived therefrom; provided, however, that nothing contained herein shall require the Company or any Partner to deliver to the Government any tax benefits derived by the Company or such Partner as the tax owner of the Facility, consistent with the Amended License.

Section 19.13 Benefit. This Agreement only benefits and binds the Company, the Government and their respective and permitted successors and assigns.

Section 19.14 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of Guam without reference to conflicts of law rules; provided, however, that (i) if at any time after the Contract Date any Governmental Rule affecting the Facility, the Company, the Contractor or the Operator and not of general application to and effect on other Persons or business enterprises in Guam shall be enacted or imposed by the

Government, such Governmental Rule shall not applyand (ii) if Guam shall no longer be subject to the appellate judicial jurisdiction of the Supreme Court of the United States, the law of Guam as in effect on the Day immediately preceding the Day on which such jurisdiction ceased. Consistent with the provisions of Article XVIII shall apply, the Parties submit to service of process in, and to the jurisdiction of the courts of Guam, including the United States District Court for the District of Guam, in connection with any claim or controversy arising out of the interpretation, application or enforcement of this Agreement; provided, however, that the provisions of Article XVIII shall provide the initial and, except as set forth in Article XVIII, final forum for resolving any such claim or controversy.

Section 19.15 Severability. (a) In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, then the other provisions of this Agreement shall remain in full force and effect, unaffected by such determination.

(b) It is the express intent of the Parties that this Agreement and its provisions be construed, severed, or rewritten as necessary to comply with Section 1423j of the Organic Act of Guam and Title 5 GCA §22401, as interpreted by *Pangelinan v. Gutierrez*, 2003 Guam 13. The Parties expressly agree that if a provision of this Agreement conflicts with Section 1423j of the Organic Act of Guam and Title 5 GCA §22401, as interpreted by *Pangelinan v. Gutierrez*, 2003 Guam 13, then such provision shall not form a material part of the Parties' Agreement and shall be severed or rewritten such that this Agreement complies with such laws.

(c) It is the express intent of the Parties that if any provision of this Agreement is found to conflict with the Organic Act of Guam or the Government Claims Act, except to the degree that federal law may preempt the Government Claims Act as to that provision, that such provision be

severed or rewritten to comply with the Organic Act of Guam or the Government Claims Act. The Parties expressly agree that if a provision of this Agreement conflicts with the Organic Act of Guam or the Government Claims Act (except to the degree federal law preempts the Government Claims Act), then such provision shall not form a material part of the Parties' Agreement and shall be severed or rewritten such that this Agreement complies with such laws.

Section 19.16 Amendment. No amendment, modification or change to this Agreement shall be effective unless same shall be in writing and duly executed by the Parties.

Section 19.17 No Other Agreements. All negotiations, proposals, and agreements prior to the date of this Agreement are superseded hereby. This Agreement and the Related Agreements constitute the entire agreement between the Government and the Company with respect to the design, financing, construction, start-up, Acceptance Testing, operation and maintenance of the Facility. Except as otherwise provided herein, the Amended License is merged herein and superseded hereby and is void and of no force and effect after the Contract Date, notwithstanding any subsequent termination of this Agreement.

Section 19.18 Execution of Documents. This Agreement shall be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.

Section 19.19 Condemnation.

(a) If all or any part of the Facility is condemned by the United States and such condemnation is of a nature which would allow the Facility to be repaired or reconstructed so as to become operational, the proceeds of any condemnation award shall be applied to the repair or reconstruction of the Facility.

(b) If all or any part of the Facility is condemned by the United States and such condemnation is of all or substantially all of the Facility, the proceeds of any condemnation award shall be applied to the Defeasance Cost.

(c) Neither the Government, nor any Affiliate thereof, may condemn all or any part of the Facility or the Facility Site following the Financing Date.

Section 19.20 Condition Precedent. It is an express condition precedent to this Agreement being binding upon the Parties that the Guam Legislature pass, and the Governor of Guam sign into law, a law expressly authorizing the entry into this Agreement by the Government of Guam.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

GUAM RESOURCE RECOVERY PARTNERS:
By: GUAM POWER, INC., General Partner

By: _____
WAGDY GUIRGUIS,
President

Date: _____

RECOMMENDED FOR EXECUTION:

GUAM ECONOMIC DEVELOPMENT AUTHORITY:

By: _____
EDWARD J. CALVO,
Chairman

Date: _____

By_____
HENRY J. TAITANO,
Administrator

Date: _____

APPROVED AS TO LEGALITY AND FORM:

OFFICE OF THE ATTORNEY GENERAL
LEONARDO RAPADAS,
ATTORNEY GENERAL OF GUAM

By: _____
LEONARDO RAPADAS
Attorney General of Guam

Date: _____

GOVERNMENT OF GUAM

_____
EDDIE BAZA CALVO
Governor of Guam

Date: _____

Exhibit 6

EDWARD J.B CALVO
I MAGA LAHEN GUAHAN
RAYMOND S TENORIO
I SECUNDO NA MAGA' LAHEN GUAHAN
HENRY J. TAITANO
ADMINASTRADOT

Aturidad I Adilånton Ikunumihan Guahan

March 18, 2014

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'Trentai Dos Na Liheslaturan Guahan
Ste. 201
155 Hesler Street
Hågatña, Guam 96910

Hafa Adai Speaker Won Pat:

I am writing in furtherance of my February 19, 2014 letter to Senator Thomas C. Ada, my subsequent discussions with him, and pursuant to *I Mina'Trentai Dos Na Liheslaturan Guåhan Otden Areklamento* (Standing Rules), Rule III, Section 3.01, relating to the delivery of communications to *I Liheslaturan Guahan*

The Guam Economic Development Authority was court-ordered to enter into mediation with Guam Resource Recovery Partners (GRRP), and the discussions that resulted in a mediated settlement were court-ordered. This resulted in a settlement that included our review of a waste-to-energy (WTE) proposal by GRRP. The GRRP proposal, which is to produce reliable and cost-effective renewable energy through solid waste management, is before the Legislature for consideration.

As you know, GRRP has alleged a breach of contract and has asked for 20 million dollars in damages. Consideration of GRRP's proposal may resolve that matter.

Following the mediation and pursuant to the settlement, the parties successfully negotiated a new WTE contract on terms more favorable to the Government than the 1996 Contract. Significant components of the new WTE contract and project include.

i. Chevron will partner with GRRP to finance and operate the WTE facility;

ii. Based on the project proposed by GRRP and Chevron, the life of the *Layon* landfill will be significantly extended thereby avoiding hundreds of millions of dollars in costs necessary to build additional cells at *Layon*;

iii. the new WTE contract does not obligate the Government to deliver a minimum guaranteed tonnage; and

iv. the new WTE contract does not contain a liquidated damages provision.

The most important part of the new WTE contract is that ***it is subject to the approval of the Legislature, as Guam's policy-making body***. Our position is that the Legislature has a duty to consider responsible means to improve the quality of life of Guamanians and, whenever possible, lower their cost of living. A decision on this matter is of islandwide importance, and thus ***requires legislative policy and direction***.

GEDA's work under the settlement is now complete. We leave this matter to you and your colleagues to make the best decision on behalf of the Guamanian people. Please call me at your convenience if you have questions or wish to discuss this matter further.

Sincerely,

HENRY J. TAITANO
GEDA Administrator

Enclosures

Exhibit 7

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE

GUAM ECONOMIC DEVELOPMENT AUTHORITY

June 19, 2014

Call to Order

§1. The regular meeting of the Board of Directors of the **Guam Economic Development Authority** (referred to as "GEDA" or the "Authority") was held on May 15, 2014 at the hour of 1:43 p.m. at the Guam Economic Development Authority conference room, Fifth Floor Suite 511, ITC Building, Tamuning, Guam. The meeting was called to order to consider several items on the agenda.

Attendance and Quorum

§2. Roll Call. As determined by the roll call, the following directors were present:

Directors:	***Offices or Positions:***
Edward J. Calvo	Chairman
Arlene P. Bordallo	Secretary
Monte Mesa	Director
George Chiu	Director
Absent and excused:	
David J. John	
Vera Wu	
Ernesto V. Espaldon, Jr.	
Also present were:	
GEDA Officials:	
John A. Rios	Acting Administrator
Mana Silva Taijeron	Deputy Administrator
Thomas J. Fisher	GEDA Legal Counsel

	Fisher & Associates
Larry Toves	Real Property Division Manager
Bernice Torres	Administration & Operations Division Manager
Christina D. Garcia	Business Development Division Manager
Lester Carlson, Jr.	Public Finance Division Manager
Claire L. Cruz	Compliance Division Manager
Mike Cruz	Project Director
Anisia Terlaje	Special Assistant Inter-Agency Support
Gloria Molo	Administrative Services Officer
Greg Sablan	Public Finance Assistant Manager
Arleen Evangelista	Public Finance Administrative Assistant
Therese Santos	Executive Assistant
Carl Quinata	Industry Development Specialist
Nicole Santos	Office of Senator Ben Pangelinan
Ken Quintanilla	KUAM
Dontana Keraskes	KUAM

Approval of Agenda

§3. The first item considered was approval of the agenda. On motion duly made by Director Mesa and seconded by Director Chiu, the agenda was unanimously approved

Communications

§4. The next item on the agenda was Communications. There was none.

Old Business

§5. The next item on the agenda was Old Business. The first item under Old Business was the HOT Bonds Update: RFP 12-026 – Professional Service for the San Vitores Flooding Mitigation Project – Gravity Bay Outlet Design.

Mr. Larry Toves presented that at the October 29, 2012 meeting, the Board approved the contract between GEDA and Stanley Consultants Inc. to provide Professional Services for the San Vitores Flooding Mitigation Project including

Design, Special Inspection, Construction Supervision and Monitoring. Phase I (Conceptual Design) of the contract has been completed and on February 20, 2014, the Board approved the implementation of the Gravity Bay Outlet option as the method for mitigating flooding within Tumon Bay.

Our PMO consultant has been working with Stanley Consultants to develop the scope of work and fee for the design of the Gravity Bay Outlet option based upon the Board's Feb. 20 decision. Stanley will prepare all documents necessary to allow GEDA to procure a construction contractor to include final design plans, construction specifications, permitting, necessary coordination with stakeholders and services during the bidding process. To perform these services, Stanley and our PMO have agreed to a fee of $605,473. GEDA staff has reviewed the scope and fee and has determined that they are consistent with the scope and rates contained in the master contract. The proposed fee is also within the budget reserved for design. Completion of design is scheduled for Fall 2015, after which GEDA can issue the invitation for bid. It should be noted that construction management services are not included in the scope and fee which will be taken up at a later time.

Under the discretionary authority provided by the Board via Resolution 13-043, the GEDA Administrator has the authority to approve this task order. However, given the amount of the task order, it was deemed necessary that the board be informed of this action.

As recommended by CHA, GEDA staff recommends that the Board of Directors approve the award of Task Order No. 2 in the amount of $605,473 to Stanley Consultants Inc. to provide Professional Services for the San Vitores Flooding Mitigation Project involving the design of the Gravity Bay Outlet option. Staff also recommends that the Board authorize the Administrator to execute the task order upon final review by Legal Counsel. Thereafter, BBMR, AG and Governor approvals will be required.

After further discussion, a motion duly made by Director Mesa and seconded by Director Chiu, to approve the recommendation. The motion was unanimously approved.

§6. The next item under Old Business was HOT Bonds Update: Proposed Change Order to RFP 12-027– Professional Architecture/Engineering Services for the Design of the Farmers' Cooperative Association Guam Facility and the Relocation of the Dededo Flea Market

Mr. Larry Toves presented that in October 2012, the GEDA Board of Directors approved the award of the design contract for the Guam Farmers' Cooperative Association facility to Architects Laguana LLC in the amount of $431,849.25 including reimbursable costs. Design was completed and a construction contract has been awarded with Board approval. A major issue that surfaced during design was the capacity of the public water system to handle Guam Fire Department requirements for fire flow. Although the design was completed without a definitive decision on fire flow requirements, every effort was undertaken to work with Guam Waterworks to increase the fire flow capacity of the public water system. It has now been determined that GWA will not be in a position to increase water service to the area for an additional five years. Clearly we cannot wait this long to build this important facility so efforts were undertaken to convince GFD to utilize rural area fire flow requirements in this area. GFD has finally agreed to this proposal which will reduce the amount of money required for both design and construction to meet fire flow requirements.

To satisfy fire flow requirements under a "worst case" scenario, GEDA was advised that upwards of $50K would be needed for design and over $400K would be needed for construction. Given the reduced fire flow requirements approved by GFD, Architects Laguana LLC requires $15,075 to complete the design. Construction is roughly estimated at $194K which is already included in the $3 Million construction contract.

As advised by CHA, GEDA staff recommends that the Board of Directors approve the award of a change order in the amount of $15,075 to the Architects Laguana LLC contract to provide additional design services for the Farmers' Cooperative Association of Guam Facility and the Relocation of the Dededo Flea Market. Staff also recommends that the Board authorize the Administrator to execute the change order upon final review by Legal Counsel. Thereafter, BBMR, AG and Governor approvals are probably required.

After some discussion, a motion duly made by Director Chiu and seconded by Director Bordallo, to approve the recommendation of the staff and to authorize the Administrator to execute the change order upon final review by Legal Counsel. The motion was unanimously approved.

§7. The next item under Old Business was the HOT Bonds Update: IFB 12-003 – Design and Construction of Village Sign Monuments and Scenic Informational Signs – Proposed Change Order.

Mr. Toves presented that in October 2012, the Board of Directors and the Governor of Guam approved the award of the subject project in the amount of $386,000 to Maeda Pacific to provide design and construction services for Village Sign Monuments and Scenic-Informational Signs. The project has undergone

extensive coordination with stakeholders and regulatory agencies and has experienced delays associated with three issues:

- A number of village signs were to be located in areas suspected to have significant archeological features;
- Village mayors requested an increase in the number of signs and changes to the design of the signs; and
- Highway encroachment permits for the signs and the issuance of the building permit were delayed.

To address the archaeological issue, the foundations of affected signs will be above ground so as not to disturb artifacts. This mitigation measure requires additional concrete and steel whose costs were not required by the IFB and thus, not included in the bid. In addition, stakeholders have requested to increase the number of signs and to change the design of signs. The increase in cost equates to $38,185.88 and the increase in construction time is 60 days.

The requested change order amount was originally within the budget allocated for this project so that the discretionary authority granted by the board to the Administrator could have been used to approve this change order. However, all remaining monies budgeted for this project were reprogrammed to cover the Legislature's directive to GEDA to immediately provide $2M in HOT bond funding to construct the Guam Fishermen's Cooperative Facility. Thus, we are requesting GEDA board approval of this change.

In addition, GEDA proposes that funding for this change order be obtained from the bank interest generated from investments of the principal. According to the trustee, Bank of Guam, just over $91K in interest has been generated. Of this amount, $17,481 has already been allocated to the Guam Fishermen's Coop project. Board approval is requested to allocate $38,185.88 from interest to fund this change order.

As advised by CHA, GEDA staff recommends that the Board of Directors approve a change order to Maeda Pacific to provide for additional design and construction services for Village Sign Monuments and Scenic-Informational Signs in the amount of $38,185.88, which amount will be obtained from the interest generated in the HOT bond account. Staff also recommends that the Board authorize the Administrator to execute the change order upon final review by Legal Counsel.

A motion duly made by Director Mesa and seconded by Director Bordallo, to approve the recommendation of the staff and to authorize the Administrator to execute the change order upon final review by Legal Counsel. The motion was unanimously approved.

§8. The next item under Old Business was the HOT Bonds Update: Task Order No. 6 – Archaeological Survey Investigation and Archaeological Monitoring Services for the Design and Construction of Scenic By-ways, Parks, Overlooks, and Historic Sites.

Mr. Toves presented as approved by the Board, GEDA and Southeastern Archaeological Research, Inc. (SEARCH) entered into a contract on September 10, 2012 to provide archaeological services for the HOT Bond projects. As a condition for issuing building permits for projects, the Guam State Historic Preservation Office ("SHPO") requires that Archaeological Survey Investigations be performed to identify the potential presence of archaeological assets at project sites. Further, the SHPO requires on-site monitoring of site preparation and construction activities that disturb the subsurface if the archaeological survey investigation identifies potential artifacts at the project site. (Task Orders 1 – 5 were for the GCEF, Plaza de Espana, Inarajan and Farmers Coop. projects)

The GEDA Board of Directors and the Governor of Guam have approved the contract for the Design and Construction of Scenic By-ways, Parks, Overlooks, and Historic Sites with Reliable Builders in the amount of $1,091,879 including options. Archaeological services are now required in order to satisfy historic preservation requirements.

For archaeological services, GEDA budgeted $31,500. However, all but $10K was transferred to the Guam Fishermen's Coop Facility as directed by the Guam Legislature. CHA and SEARCH have negotiated a lump sum fee not to exceed $50,000 to conduct the Archaeological Survey Investigation for all nine park sites including Nimitz Beach, Angel Santos, Fadian, East Agana, Fort Soledad, Cetti and Sella Bays, Tepungan (Fish Eye), and Piti's Santos Park. We propose that funding for archaeological services be obtained from the unencumbered balance of the project.

Some level of archaeological treatment ranging from a simple review of project planning documents coupled with a brief site visit, to archaeological monitoring of construction related excavations, and possibly data recovery are needed to satisfy historic preservation requirements. The level of archaeological treatment depends upon each site and the nature of work. All 9 park sites involve some degree of excavation for infiltration trenches, light poles, bollards, pavement repairs, swales, sidewalk repairs, area drainage, tree planting, light poles, installation of small utility vaults and installation of new gates. Archaeological services are particularly needed at historic sites such as Fort Soledad and at parks located near the shoreline.

As advised by CHA, GEDA staff recommends that the Board of Directors approve Task Order No. 6 for an amount not to exceed $50,000 for SEARCH, Inc. to provide archaeological survey investigation and on-call field monitoring services for the Design and Construction of Scenic By-ways, Parks, Overlooks,

and Historic Sites project. Staff also recommends that the Board authorize the Administrator to execute the Task Order upon final review by Legal Counsel. Thereafter, BBMR, AG and Governor approvals is required.

After further discussion, a motion duly made by Director Mesa and seconded by Director Bordallo, to approve Task Order No. 6 for an amount not to exceed $50,000 for SEARCH, Inc. to provide archaeological survey investigation and on-call field monitoring services for the Design and Construction of Scenic By-ways, Parks, Overlooks, and Historic Sites project. Staff also recommends that the Board authorize the Administrator to execute the Task Order upon final review by Legal Counsel. The motion was unanimously approved.

§9. The next item on the agenda was RFP 14-008 - for Professional Multi-Discipline Consulting Services for the Research, Planning and Implementation of Economic Development Initiatives and Opportunities.

Presented to the Board by Mr. Toves was at the May 2014 meeting, the Board approved the selection of Matrix Design Group to perform the services requested under RFP 14-008 for Professional Multi-Discipline Consulting Services for the Research, Planning and Implementation of Economic Development Initiatives and Opportunities. The intent of the RFP was to obtain proposals from consultants that were interested in providing a wide variety of services to GEDA and to update of the Hagåtña Restoration and Redevelopment Authority's (HRRA) Master Plan.

Since the last meeting, a negotiation team consisting of HRRA and GEDA staff has been negotiating the contractor's rates for performing services and the scope of work and fee for preparing the HRRA master plan update. Regarding the contractor's rates, we have determined that overhead, hourly, profit; GRT and escalation rates are similar to or lower than rates accepted by GEDA under previously awarded contracts.

Regarding the fee to prepare the HRRA master plan update, HRRA and GEDA staff is in the final stages of negotiating the scope of work and fee utilizing the draft contract prepared by legal counsel. The scope contains the following work tasks:

- Update the Research Report which contains detailed information regarding infrastructure serving Hagåtña;
- Update three alternative plans for presentation to the public and HRRA;
- Update the Land Use Plan;
- Establish a zoning code for Hagåtña
- Establish Design Guidelines for development in Hagåtña;
- Develop an implementation schedule;
- Implement the Hagåtña River Flood Management Plan; and

- Develop an organizational and sustainability plan for the HRRA.

Constant public, media and stakeholder involvement are key elements in the work to be performed by Matrix. Assuming a July 1, 2014 Notice to Proceed, the draft Land Use Plan completion date is mid-October, 2014. The entire project is expected to be completed by July 2015.

Thus far, the negotiating team has been able to shave off about $75K from the fee originally proposed by Matrix. At this time, we have not finalized the scope of work but based upon negotiations, we believe Matrix's fee will not exceed $845k to perform the final negotiated scope of work. The MOA between GEDA and HRRA allows reimbursement of this cost. While the master contract needs GEDA board approval, the final fee and scope have to be presented to the HRRA Board of Commissioners for its approval.

GEDA staff recommends that the Board of Directors authorize the Administrator to execute a master contract with Matrix Design Group Inc. to carry out the services under RFP 14-008 upon final review of the contract by legal counsel. Should additional task orders under the master contract be contemplated, prior approval by the GEDA Board of Directors will be necessary.

After some discussion, a motion duly made by Director Mesa and seconded by Director Bordallo, to authorize the Administrator to execute a master contract with Matrix Design Group Inc. to carry out the services under RFP 14-008 upon final review of the contract by legal counsel. The motion was unanimously approved.

§10. The next item on the agenda was GEDA Marketing Budget Update.

Mrs. Christina Garcia presented to the Board an Allocation Request for Business Development Projects. The Business Development Division would like to request an allocation of Three Hundred Fifty Thousand Dollars to the marketing budget in support of the following initiatives:

1. China Business Office
2. Guam Economic Symposium
3. Guam Economic Strategic Plan – "Imagine Guam"
4. Local Business Development Support
5. International Business Development Initiatives with the Philippines, Taiwan and Korea
6. Support of Governors Initiatives
7. Contingency/Sponsorship

A motion duly made by Director Chiu and seconded by Director Mesa, to approve the request to allocate Three Hundred Fifty Thousand Dollars to the marketing budget. The motion was unanimously approved.

1:11:58

New Business

§11. The next item on the agenda was New Business: Congresswoman Bordallo's Solicitation for Capitol Hill reception.

Chairman Calvo informed the Board that he received a letter from Congresswoman Bordallo in her capacity as the host of the events in Washington, DC that her office organizes at Arlington National Cemetery. She wrote that she is also the honorary host of the reception on Capitol Hill hosted by the Guam Society of America. This year marks the 70th anniversary of Guam's liberation, and the Guam Society hopes that GEDA will support this year's Capitol Hill reception. GEDA's support will be instrumental to the success of this event.

The Capitol Hill reception is scheduled to take place on Monday, July 14, 2014 at 5:00 p.m. in the Cannon Caucus Room, Cannon House Office Building. The Wreath Laying Ceremony coordinated by the Congresswoman's office will take place on Friday, July 11, 2014 at 8:00 a.m. at the Tomb of the Unknowns, Arlington National Cemetery.

No Board action was required with this item.

§12. The next item on the agenda was GPA Bond Resolution.

Mr. Lester Carlson, Jr. informed the Board that this is another request for GEDA Board approval of a borrowing authorization for the Guam Power Authority. Public Law 32-140 was already passed into law; this is a $94 Million dollar issuing to be able to provide for primarily CIPs (Capital Improvement Projects) associated with GPA continuing to update their facilities. Unlike the last resolution that was passed by the board, this is not a refunding, this is a new money issue and the timing for the sale of the bonds is probably in late August.

We look like we are on schedule for the GWA refunding or savings bond that will happen on the third or fourth week of July. That will be followed by presentation meetings to set the stage for the sale of the GPA Bond.

This resolution is also predicated on subsequent action from the CCU and PUC. Senator Ada introduced Bill No.32-356 yesterday afternoon, it has very minor technical amendments to PL 32-140. I have confirmed with Bond Counsel, the GEDA Board's approval of this resolution today, will not be affected by subsequent legislative action associated with the amendments.

After some discussion, a motion duly made by Director Bordallo and seconded by Director Chiu on the resolution approving the issuance and sale of Guam Power Authority revenue bonds and Guam Power Authority subordinate revenue bonds and approving and authorizing the execution of related documents, agreements and actions. The motion was unanimously approved.

RESOLUTION NO. 14-024

RESOLUTION APPROVING THE ISSUANCE AND SALE OF GUAM POWER AUTHORITY REVENUE BONDS AND GUAM POWER AUTHORITY SUBORDINATE REVENUE BONDS AND APPROVING AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS, AGREEMENTS AND ACTIONS

WHEREAS, Guam Power Authority ("GPA") has determined that there exists a need for certain additions and improvements (collectively, the "Projects") to the island wide power system of GPA (as described in §8203 of Title 12, Guam Code Annotated), and has determined that it is in the public interest for GPA to issue bonds (the "Bonds") pursuant to Chapter 8 of Title 12, Guam Code Annotated (§8101 et seq.), as amended (the "Act") to finance the Projects, and for such other lawful purposes under the Act; and

WHEREAS, the Bonds may be comprised of one or more series of Guam Power Authority Revenue Bonds 2014 Series A (the "Senior Bonds") and Guam Power Authority Subordinate Revenue Bonds 2014 Series A (the "Subordinate Bonds" and, together with the Senior Bonds, the "2014 Bonds"), issued on a federally tax-exempt or taxable basis; and

WHEREAS, pursuant to §50103(k), Title 12, Guam Code Annotated, public corporations of the Government of Guam shall issue bonds and other obligations only by means of and through the agency of the Guam Economic Development Authority ("GEDA"); and

WHEREAS, GPA has requested that GEDA approve the issuance and sale of the 2014 Bonds; and

WHEREAS, this Board of Directors has determined that it is in the public interest for GPA to sell the 2014 Bonds for the purpose of

financing the Projects and for such other lawful purposes under the Act; and

WHEREAS, this Board of Directors has previously approved a form of indenture pursuant to which bonds in one or more series (including the Senior Bonds) would be issued, and an indenture in such form, dated as of December 1, 1992, has been executed and delivered, and as amended from time to time, is now in effect; and

WHEREAS, this Board of Directors has previously approved a form of subordinate indenture pursuant to which bonds in one or more series (including the Subordinate Bonds) would be issued, and an indenture in such form, dated as of June 1, 2010, has been executed and delivered and is now in effect; and

WHEREAS, there have been presented to this Board of Directors a proposed substantially final form of a bond purchase agreement pursuant to which the 2014 Bonds will be sold (the "Bond Purchase Agreement") and a Preliminary Official Statement relating to the 2014 Bonds; and

WHEREAS, there have been presented to this Board of Directors proposed substantially final forms of a Sixth Supplemental Indenture pursuant to which the Senior Bonds are proposed to be issued by GPA (the "Sixth Supplemental Indenture"), a First Supplemental Subordinate Indenture pursuant to which the Subordinate Bonds are proposed to be issued by GPA (the "First Supplemental Subordinate Indenture"), a Supplemental Continuing Disclosure Agreement and a Subordinate Continuing Disclosure Agreement (collectively, the "Bond Documents");

WHEREAS, there have been presented to this Board of Directors proposed substantially final forms of a Sixth Supplemental Indenture pursuant to which the Senior Bonds are proposed to be issued by GPA (the "Sixth Supplemental Indenture"), a First Supplemental Subordinate Indenture pursuant to which the Subordinate Bonds are proposed to be issued by GPA (the "First Supplemental Subordinate Indenture"), a Supplemental Continuing Disclosure Agreement and a Subordinate Continuing Disclosure Agreement (collectively, the "Bond Documents");

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors (this "Board") of the Guam Economic Development Authority as follows:

Section 1. The issuance and sale of 2014 Bonds for the purposes herein described is hereby approved. The 2014 Bonds shall be issued in an aggregate principal amount not to exceed $94,000,000, and shall otherwise comply with Section 8243 of Title 12 of the Guam Code

Annotated.

Section 2. The form of Bond Purchase Agreement presented to this meeting, relating to the 2014 Bonds, is hereby approved for execution and delivery by GPA and GEDA in substantially such form, with such additions, changes and modifications as (i) the Consolidated Commission on Utilities, acting as Board of Directors of GPA (the "CCU"), may approve or may authorize the Chairman or Vice-Chairman of the CCU or the General Manager (collectively, the "Designated Officers of GPA") to approve upon consultation with the Administrator or Acting Administrator of GEDA (the "Administrator") and legal counsel, such approval to be conclusively evidenced by the adoption of one or more bond resolutions by said Board and by execution and delivery of the Bond Purchase Agreement by the Designated Officers of GPA, and (ii) are approved by the Administrator upon consultation with legal counsel, such approval to be conclusively evidenced by the execution and delivery of such Bond Purchase Agreement by the Administrator or the Public Finance Division Manager of GEDA, who are hereby each authorized to execute and deliver the Bond Purchase Agreement on behalf of GEDA.

Section 3. The forms of Bond Documents presented to this meeting relating to the 2014 Bonds are hereby approved for execution and delivery by GPA in substantially such forms, with such additions, changes and modifications as the CCU may approve or may authorize the Designated Officers of GPA to approve upon consultation with the Administrator and legal counsel, such approval to be conclusively evidenced by the adoption of one or more bond resolutions by said Board and by execution and delivery of such Bond Documents on behalf of GPA by one or more Designated Officers of GPA.

Section 4. The Preliminary Official Statement in the form presented to this meeting is hereby approved, and the distribution of the Preliminary Official Statement in connection with the offering and sale of the 2014 Bonds, with such changes, omissions and insertions as shall be approved by the Designated Officers of GPA, is hereby authorized and approved. GEDA hereby approves and acknowledges the review of the Preliminary Official Statement by the Designated Officers of GPA and their certification on behalf of GPA upon appropriate authorization and delegation by the CCU, that the Preliminary Official Statement is "deemed final" as of its date, except for the omission of certain terms and pricing information permitted to be omitted therefrom pursuant to Securities and Exchange Commission Rule 15c2- 12.

GEDA further hereby approves and acknowledges the preparation of a final version of the Official Statement by the Designated Officers of GPA (such final version of the Official Statement, in the form of the

Preliminary Official Statement, with such changes, insertions and omissions as shall be approved by the Designated Officers of GPA, upon consultation with the Administrator and legal counsel, being hereinafter referred to as the "Official Statement") upon appropriate authorization and delegation by the CCU, and their execution of the Official Statement and any amendment or supplement thereto, in the name of and on behalf of GPA, and their causing the Official Statement and any such amendment or supplement to be delivered to the purchasers and distributed in connection with the sale of the 2014 Bonds.

Section 5. The Designated Officers of GPA, upon appropriate authorization and delegation by the CCU, and the Administrator are hereby authorized and directed to determine, consistent with the Act, the aggregate principal amount of Senior Bonds and Subordinate Bonds to be issued, the number of series of such 2014 Bonds, the maturity or maturities, the interest rates (such that the requirements of Section 1 hereof are met with respect to the 2014 Bonds, and such that the interest rate on the 2014 Bonds shall not exceed the limitations set forth in Section 8243 of Title 12 of the Guam Code Annotated), interest payment dates, denominations, forms, registration privileges, terms and place or places of payment, terms of redemption and other terms of each series of the 2014 Bonds.

Said Designated Officers of GPA upon appropriate authorization and delegation by the CCU, and the Administrator are hereby also expressly authorized to arrange for such bond insurance, reserve fund surety bond or other supplemental security arrangements for all or such portion of the 2014 Bonds as they may deem in the public interest, and to enter into any other agreements deemed by them to be necessary or appropriate in connection therewith.

Notwithstanding any other provision of this resolution, the 2014 Bonds and any obligations of GPA under any reimbursement or other similar agreement shall be limited obligations payable solely from the revenues and other assets of GPA pledged for such purpose and shall not be a debt or liability of the Government of Guam.

Section 6. The Administrator and the Designated Officers of GPA, upon appropriate authorization and delegation by the CCU, are hereby authorized and directed to do any and all things and to execute and deliver any and all documents, certificates and other instruments, including tax certificates which they may deem necessary or advisable in order to consummate the sale of the 2014 Bonds and otherwise to

effectuate the purposes of this resolution. Such actions may include, but are not limited to, the distribution of other information and material relating to the 2014 Bonds and the holding of any appropriate information meetings concerning the 2014 Bonds.

Section 7. All actions heretofore taken by the officers, representatives or agents of GEDA in connection with the issuance and sale of the 2014 Bonds are hereby ratified, confirmed and approved.

Section 8. The 2014 Bonds shall not be issued without the approval of the CCU and the Public Utilities Commission of Guam in accordance with the Act and Chapter 12 of Title 12, Guam Code Annotated.

Section 9. This resolution shall take effect from and after its adoption.

Reports

§13. The next item on the agenda was Reports: GRRP

Chairman Calvo informed the Board that this would be an update on the informational hearing regarding GRRP.

Acting Administrator, John Rios presented to the Board that on June 9th, he and GEDA Legal Counsel attending an informational hearing conducted by Senator Dennis Rodriguez. One of the main concerns that the senators had was whether the Board was informed about the agreement that was forwarded to them previously by Mr. Taitano, which I didn't have an answer for. Although I know that part of the mediation the Board attended.

Chairman Calvo informed Acting Administrator Rios that the Board didn't see the need to issue a resolution, the Board went through mediation and therefore did their job and now it is at the legislature.

Attorney Tom Fisher, GEDA Legal Counsel, informed the Board that now that the Memorandum of Agreement has been released, the term is, if the contract that was transmitted to the legislature is also introduced as a writer to a bill, the legislature to approve the contract, which is necessary. On the one hundred twentieth day from introduction, it would go into third reading and this law suit would be dismissed. It doesn't require that the bill pass, just that it'll be introduced. If it is never introduced, the stay will eventually be left in the law suit.

No Board action was required with this item.

Public Comments

§14. The next item on the agenda was Public comments. There were none.

Adjournment

§15. Having no further items to discuss, on motion to adjourn duly made by Director Mesa and seconded by Director Chiu, at 3:10 p.m., the meeting was adjourned.

Dated this 17th day of July, 2014

David ~~J.~~ John
Vice Chairman

ATTEST:

George Chiu
~~Secretary~~ Director

Exhibit 8

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE

GUAM ECONOMIC DEVELOPMENT AUTHORITY

July 17, 2014

Call to Order

§1. The regular meeting of the Board of Directors of the **Guam Economic Development Authority** (referred to as "GEDA" or the "Authority") was held on July 17, 2014 at the hour of 1:34 p.m. at the Guam Economic Development Authority conference room, Fifth Floor Suite 511, ITC Building, Tamuning, Guam. The meeting was called to order by Vice Chairman David John to consider several items on the agenda.

Attendance and Quorum

§2. Roll Call. As determined by the roll call, the following directors were present:

Directors:	***Offices or Positions:***
David J. John	Chairman
Monte Mesa	Director
George Chiu	Director
Ernesto V. Espaldon, Jr.	Director

Absent and excused:

Edward J. Calvo

Vera Wu

Also present were:

GEDA Officials:

John A. Rios	Acting Administrator
Mana Silva Taijeron	Deputy Administrator
Thomas J. Fisher	GEDA Legal Counsel Fisher & Associates
Larry Toves	Real Property Division Manager
Bernice Torres	Administration & Operations Division Manager
Christina D. Garcia	Business Development Division Manager
Henry Cruz	Economist
John San Nicolas	Compliance Supervisor
Nico Fujikawa	Public Finance Officer
Diego Mendiola	Real Property Assistant Manager
Mike Cruz	Project Director
Therese Santos	Executive Assistant
Carl Quinata	Industry Development Specialist
Jha' Aunie Leon Guerrero	Real Property Administrative Assistant
Anthony Arriola	Program Coordinator
Jay R. Merrill	MR&D
Glenn Leon Guerrero	CHA
Dan Roth	CHA
Heather Wyld	CHA
John Camacho	GRRP
Ken Quintanilla	KUAM

Approval of Agenda

§3. The first item considered was approval of the agenda. On motion duly made by Director Mesa and seconded by Director Chiu, the agenda was unanimously approved

Approval of Minutes

§4. The next item on the agenda was the approval of the minutes for the Regular Board Meeting on May 15, 2014, Emergency Board Meeting on June 5, 2104, and Regular Board meeting on June 19, 2014.

Motion duly made to approve the minutes from the Regular Board Meeting on May 25, 2014, Emergency Board Meeting on June 5, 2104, and Regular Board meeting on June 19, 2014 by Director Mesa and seconded by Director Chiu, the agenda was unanimously approved.

Communications

§5. The next item on the agenda was Communications: Resignation of Director Arlene P. Bordallo.

Vice Chairman John informed the Board that Director Arlene Bordallo submitted her resignation from the GEDA Board of Directors which leaves an open position for the Secretary.

Motion duly made to nominate Director Vera Wu for the Secretary position as long as she accepts by Director Mesa and seconded by Director Espaldon. The motion was unanimously approved.

Old Business

§6. The next item on the agenda was Old Business. The item under Old Business was GRRP.

Administrator Rios informed the Board that a letter had been sent to Senator Rodriguez advising him that the GEDA Board of Directors were aware of the mediation and the agreement with GRRP. Administrator Rios informed the Board that a letter was received from Mr. Wagdy Guirguis from GRRP, requesting that a resolution be done confirming GEDA's position with respect on the GRRP Waste to Energy project; he also attached a draft resolution. Administrator Rios shared the letter with Legal Counsel Fisher who had not seen the letter.

Vice Chair John recommended that a request be sent to Senator Rodriguez to meet with Legal Counsel and Director Mesa and take care of this issue. Legal Counsel informed the Board that he will review the letter from GRRP and come back to the board with a recommendation.

Administrator Rios asked if there was a deadline in August and Legal Counsel informed him that GEDA's part had been done and it was now for the Legislature to act or not act. That the matter was still pending in the Superior Court of Guam, and that a further proceeding was scheduled in te Superior Court in late August.

Vice Chair John asked if there was any reason why the legislature thinks that GEDA hasn't fulfilled its duties. Legal Counsel mentioned that GEDA had done everything that was required. Attorney Fisher informed the Board he would review the letter that Administrator Rios received from GRRP and advise it.

New Business

§7. The next item on the agenda was New Business. There was none.

Reports

§8. The next item on the agenda was Reports: The first item under Reports was the Economic Symposium Update.

Mrs. Christina Garcia presented to the Board that GEDA has been working for the past few months on the Economic Symposium. "We have been working with a number of investors and trade missions of individual group visits. We felt the need to compile all the information into one event and invite them to join us in Guam to discuss the business opportunities. We have Mr. Jay Merrill who is our event coordinator to give us an update."

Mr. Jay Merrill presented to the Board that the Economic Symposium is going to be quite an event. This is probably going to be in the seminar economic development news and information conference of the year. The event will be the kickoff of what GEDA will be able to pursue as a multiyear venture in stimulating what we believe is the beginning of the most robust period of economic growth in Guam's history.

This conference is based on three specific premises. The first is that Guam's tourism is at the stage where it's now realistic to believe that by 2020, we can attain two million visitors a year. That represents a 40% growth over the existing visitor count, which also means we will need to construct new hotel rooms. Based on that demand, GVB believes that there will be eighteen to twenty hotels that will need to be constructed. Adding the revenue that will come from the additional passengers coming to Guam, with the investments acquired with the hotels, we are looking at more than a billion dollars in economic infusion. And finally, it's believed that the military buildup is going to proceed, it's hoped

that the decision will be issued next year. This year there was five hundred million dollars in investment identified and it's anticipated that we will continue at that pace for the next five to seven years. So we are now looking at over ten billion dollars investment over the next five to seven years that the island is going to enjoy. We never had that level of growth so quickly. That process also creates enormous opportunity to create jobs, bring new business ventures, and new income opportunities to our island and for our region.

So we have a tremendous story to tell, and to tell it we even brought in people from throughout the region of the United States to talk about each of those specific industries. So we have what is necessary for the community to clearly understand what the impact of the growth in tourism and the growth of military expansion.

Finally, we have the PMO from GPA who is assisting in putting together an explanation for the impact especially with infrastructure growth at GPA, GWA and the Port. Both the Port and the Airport have indicated their interest in participating. GVB has (not officially) has indicated that they will contribute $50,000; we've had positive indications from Guam Airport Authority the same amount. In the meantime there's been good response from the private sector and so we fully anticipate raising an estimate of $70,000 and sponsorships as well.

Cost of the registration stands at $1,000 because of the quality of the information that is being provided. We hope, because of recent discovery that our keynote speaker will be United States Secretary for the Treasurer, a Guamanian, Rosa Gumataotao Rios. There won't be promises but there is certainly an interest and I believe it may be possible to bring her out. We have another prominent journalist economist by the name of Joshua Ramo, who is speaking on his concept of the combination and interest of China and the United States in their effort to work together in a new dimension for the next generation.

The registration site will be up next week so we are planning to hold a press conference and early registration is available for $800 until the 31st of August. The new date for the conference is October 22, 23 & 24, 2014.

Vic Chair John informed Mr. Merrill that if there is anything from the Board that was needed, to let them know.

§9. The next item on the agenda was the China Development Office Update.

Mrs. Christina Garcia presented that in support of what's happening in China, the bulk of worldwide travelers seen in the past decade just in travel alone, they (China) has become the world's biggest source of foreign tours in 2012. At the last Board meeting it was discussed and approved to move forward

on opening a China office. Director George Chiu was appointed to lead in the efforts, and our decision was initially to partner up with the Guam Visitor's Bureau. We have met with GVB and they are in the process of issuing a new RFP, so we are working with them to put in a business side that GEDA will contribute representing the business side of the Guam office. We are looking at a number of locations. GVB has offices in Hong Kong, Beijing and Shanghai. We are looking at the three markets to see where GEDA would be placed. We are waiting for GVB representatives as they are currently off-island, and we will start working with them next week.

Vice Chair John asked if GEDA has a budget for this office. Mrs. Garcia informed him that there an allocated amount of at least $100,000 and that's from the annual budget and once we go through the RFP process with GVB we will come back and report to the Board.

§10. The next item on the agenda was QC Update:

Vice Chairman John informed the Board that the committee meeting is on hold until we get the study back from Horwath. He further reported that we are pretty much ready to go. We met with Senator Rodriguez, and he's asked us to put a couple more pieces together, but in theory, he's on board with what we have to offer. We just want to make sure that what we bring up publicly is in line with the Horwath study. We hope that by the next Board meeting we'll have something concrete of the first round of the QC.

§11. The next item on the agenda was Real Property Division: HOT Bonds Update:

Mr. Larry Toves informed the Board that he will be presenting an update and that no Board action will be needed. The HOT Bond Program Executive Dashboard was passed out to the Board members and made a note that present at the meeting were Heather Wyld, Project Manager, Dan Roth and Glenn Leon Guererro from CHA. We could just go through the Dashboard and discuss each project.

With respect to the Guam Museum (Guam and Chamorro Educational Facility); since January we've been having issues with the pilings, we are just about done with that. The recommendation to retest the piles were made, this will be at the cost of the contractor. Once the testing is done, shortly after that the contractor will begin the foundation of the facility.

There are three projects so far that have been completed, the Inarajan Community Center, the Plaza de Espana, and just recently we unveiled the first of nineteen Village Monuments. There are eighteen more monuments that need to be installed.

Our next project, we will have a Groundbreaking for the Farmers Coop on August 11th. We are looking forward to that groundbreaking. The contractors are on site, they have already cleared the road and the fence is up.

Shortly after that we will be issuing the Invitation for Bids on the Crosswalk Projects. Those are in Hagåtña, across from Chamorro Village and Tumon, across from the Galleria.

Then we have the Hagåtña Swimming Pool and Tennis Courts, we are still working on the Invitation for Bid to release for the Tennis Courts. That project is $150,000. The Hagåtña Pool, we will come back to the Board with a recommendation to conduct a study. This is so that we can get an overall picture and extent of damage and what we will be looking at as far as cost. The budget is set aside for $150,000.

The Malesso Bell Tower Monument is another project. We have a contractor preparing the design, and the scope of study to determine how extensive the damage is.

Vice Chairman John asked; Regards to the Museum, is there anything else that the Board needs to know about? At this time no, we are trying to keep on top it. We are trying, as much as possible to get the cost to stay within budget, but for certain unforeseen circumstance there is a probability we'll have some change orders. Obviously we will have to come to the Board if it comes to that point for approval.

Director Mesa inquired on the exhibit lighting that is behind schedule. Mr. Larry Toves informed the board that the actual contract is going through the process. Legal Counsel is preparing a procurement file that will be going to BBMR, the Attorney General's Office and then once it's signed by the Governor we can execute the contract.

Director Espaldon asked Mr. Toves to give an update on the Ypao Park Lighting Project. There are seven bidders who responded to the IFB and Inland Builders had the lowest bid. Because we had some issues with Inland Builders at the Guam Museum, we are still trying to make certain that the contractor is responsive. Director Espaldon asked if there was a time frame for this project to move forward. Mr. Toves referred the question to Legal Counsel. Attorney Fisher informed the Board that it's as soon as possible but its contingent upon satisfaction in GEDA's part that we have a responsible contractor.

§12. The next item on the agenda was Office Rental.

Mr. Larry Toves presented to the Board that GEDA currently leases 9,976 square feet of office space at the cost of $2.00/sf/month or $22,932.12 (excludes Guam Housing Corporation) including utilities and parking. Effective October 1,

2014, GEDA's landlord intends to increase rent to $2.37/sf/month or $3,568.56 more per month than currently being paid. Every three years, GEDA is faced with having to decide on the advantages and disadvantages of leasing space at ITC.

On or around the summer of 2010, GEDA Management contemplated moving GEDA offices from its current location at the ITC Building to the Former Tropical Color Center (TCC) property in order to reduce operating costs in terms of office space rental. At the time, GEDA estimated renovations of TCC to be in the neighborhood of $300K in order to accommodate a staff size of roughly 30 personnel along with equipment. However, with the change in administration at the conclusion of 2010, the decision was for GEDA to remain at ITC.

In 2014's recent months, along with a pending increase in office rental costs, the notion of GEDA relocating its offices has been revived. With this, RPD has been tasked to discuss the various options GEDA has at this juncture with regard to office space with the goal of lowering or minimizing operational costs now and for the long term.

With operational costs steadily increasing and revenues being hard challenged to keep up at the same pace, GEDA is faced with deciding how to maintain (or afford) current operational levels with increasing costs. In particular, due to pending 17% increase in rent here at ITC beginning October 1, 2014, various options might be discussed and considered by the Board, including:

1. Utilizing revenue from the Vacant Lot to offset pending office rental increase;
2. Renovate and occupy an existing building after GEDA lease expiration;
3. Issue an RFP for Office Space;
4. Build a new building on GEDA land where space is available.

The 1st option was attempted on several occasions, GEDA Administrator along with RPD staff met with ITC Management to discuss and negotiate ITC's use of the Vacant Lot to offset GEDA's increase in office rent. ITC has notified GEDA that its office rent, at least for the next 3 years, will be increasing by over $42K, per year or $3,500 per month. With its previous tenant, the Vacant Lot generated just over $40K per year or just over $3,300 per month. Although RPD staff estimated the Fair Market Value (FMV) of the Vacant Lot closer to roughly $65K per year $5,400 per month, which would have more than covered GEDA's increase in rent, ITC remains steadfast in having GEDA pay the additional $42K per year for office space despite continuing to utilize the Vacant Lot for additional parking space. While GEDA could RFP the Vacant Lot out for lease, current potential interest of the property is still uncertain.

The 2nd option would depend on the timing of a GEDA Tenant's Lease expiration along with the condition of any building at that time. Considering most of GEDA's tenants still have anywhere from 7 to 40 plus years left on their current leases along with the fact that a majority of the property improvements are warehouses, this option would not be reasonable given GEDA's desire to reduce operational costs within the next year. In addition to this, the potential condition of most of these warehouses would require substantial renovation costs.

Option 3 is standard practice for other Gov Guam agencies requiring office space however, GEDA would only be trading one landlord for another with no guarantee of keeping operational costs down in the long term as most commercial leases tend to trend ever upward.

Finally, option 4 only requires GEDA to build a new building. Right off the top, this would provide for a couple of positive things to consider: ownership of its own building which can be mortgaged in the future if needed, no more rental payments to another landlord, potential for additional revenue generation if desired, etc. Although it would cost GEDA to move its operations, this expense would be a one-time instance which could be recovered over time. When analyzing this very scenario late 2010 and early 2012, staff estimated a new building construction of a 2 story, 1,200 total square foot building to be at $4-5M. With interest rates being much lower now (approximately 4.2% - 5.5%) than they were then (approximately 7% - 9%), it seems that this option may be more feasible. With current interest rates, a loan for $5M would cost GEDA about $24,500 per month or $294K per year. Even though this may present an increase of periodic payments, it would be by a slight factor of roughly $1,500 per month when compared to GEDA's pending increase in rent from $2 to $2.37 per square foot. Considering rent at ITC will most likely continue to increase every 3 years, this option may be more desirable, especially in the long run since this cost will be towards a real asset rather than continue to be an ever increasing liability. With this alternative, GEDA would also have to consider maintenance costs of this asset moving forward.

It is the staff's recommendation that the Board consider the above alternatives and provide direction to staff at the next opportunity.

After further discussion, Vice Chairman John requested to find out what are GEDA's real needs and then we should look at an RFP and make sure we get the best deal and get back to the Board with a recommendation.

§13. The next item on the agenda was the GEDA Tamuning Property (Lot 1, Block 5, Tract 259).

Vice Chairman John requested GEDA staff to put out an IFB for the property and get back to the Board with a recommendation.

§14. The next item on the agenda was the Hagåtña Master Planning.

Mr. Larry Toves presented an update that at the last Board meeting we approved the overall contract with Matrix Design Group Inc. to carry out the services under RFP 14-008 upon final review of the contract by legal counsel, subject to the approval of HRRA. Should additional task orders under the master contract be contemplated, prior approval by the GEDA Board of Directors will be necessary.

§15. The next item on the agenda was Pending Real Estate Projects.

Mr. Larry Toves informed the Board that this is basically all the MOUs that GEDA has with the Guam Ancestral Lands Commission (GALC) and Chamorro Land Trust Commission (CLTC). We are in the process of trying to develop some properties for CLTC, this is located on Route 15, Fadian Point. We are still in the process of procurement on that.

§16. The next item on the agenda was Compliance Division Update.

Mr. John San Nicolas presented to the Board a quick update regarding five real estate properties in Saipan that GEDA has received in exchange for judgment against principals in this particular case. We are currently researching the properties; we have already received PTRs and will be visiting the site. We will update the Board upon completion of our research.

§17. The next item on the agenda was Public Finance Division – SSBCI Update.

Mr. Nico Fujikawa presented an overview on the State Small Business Credit Initiative. This program has been very successful since it was started in 2012. There are about thirty-three companies with this program, to date, we have $6.3M that financial institutes have lent out as our partners to start off these businesses and GEDA has guaranteed about $4.7M. The biggest highlight is the two hundred eighty-five jobs that have been created since 2012. This is by far the best job creation initiatives for the Government of Guam. The program continues to be active and financial institutes are showing interest and would like to get on board with the SSBCI program.

§18. Vice Chairman John mentioned that GEDA staff would need to prepare their proposed budget for next year.

Public Comments

§18. The next item on the agenda was Public comments. There were none.

Adjournment

§19. Having no further items to discuss, on motion to adjourn duly made by Director Chiu and seconded by Director Mesa, at 2:45 p.m., the meeting was adjourned.

Dated this 21 day of AUGUST, 2014

Edward J. Calvo
Chairman

ATTEST:

VERA WU
Director