



SOLID WASTE
MANAGEMENT
CONSULTANTS
R E C E I V E R

Gershman, Brickner & Bratton, Inc.
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Disbursement Procedures

for the
Citibank Trust Account

March 9, 2009



Submitted to the
District Court of Guam
Pursuant to its Order of January 2, 2009

Disbursement Procedures for the Trust Account

This document contains the procedures (“Disbursement Procedures”) for making disbursements from the account (“Trust Account”) holding monies in trust for the Government of Guam by Citibank, N.A. Guam (“Trustee” or “Citibank”) for use by Gershman, Brickner & Bratton, Inc. (“Receiver”) in its capacity as Receiver for the Solid Waste Management Division of the Department of Public Works of the Government of Guam. The Trust Account is entitled “GBB the Receiver for Government of Guam DPW SWMD.” These Disbursement Procedures have been approved by the District Court of Guam (“Court”) and may be modified or amended only with the approval of the Court.

1.0 Background

The Government of Guam and the United States Environmental Protection Agency entered into a Consent Decree on February 11, 2004, to correct years of non-compliance with the Clean Water Act by the Government of Guam’s solid waste disposal facility known as the Ordot Dump. As a result of the Government of Guam’s failure to implement the Consent Decree, the Court placed the Solid Waste Management Division (“SWMD”) into Receivership, appointing GBB as Receiver.

In order to begin implementation of the Consent Decree projects necessary for compliance with the Consent Decree, the Receiver recommended to the Court a schedule for construction and estimates of the capital funding needed to achieve compliance. The Receiver recommended an initial payment by the Government of Guam of \$20 million to pay for the Consent Decree projects outlined in the October 22, 2008 Quarterly Report of the Receiver.

The Court adopted the Receiver’s recommendations and ordered the Government of Guam to deposit the \$20 million into a Trust Account to be designated by the Receiver and approved by the Court. The Trust Account would also be able to accept any additional deposits ordered by the Court.

Pursuant to a Request for Proposal (RFP) issued by the Receiver, Citibank, N.A., Guam was selected as the Trustee and approved by the Court. The RFP and the agreement for Trust services require that procedures to govern the disbursement of funds from the Trust Account be developed by the Receiver and approved by the Court. The Disbursement Procedures are set forth in this document.

These Disbursement Procedures will not result in Citibank having any discretionary or subjective decision-making responsibility. In addition, Citibank shall have no involvement in the selection of contractors, vendors, suppliers, etc. Citibank's duties and responsibilities under the Disbursement Procedures shall be limited to the payment of invoices in accordance with the arrangement and conditions as set out in Sections 3.4, 3.5 and 4.0 herein only. It is further acknowledged by the Receiver that the performance of such duties by Citibank and any obligations or liabilities between the Receiver and Citibank shall be governed by the Financial Service Agreement entered between them on the 2nd day of January, 2009.

Receiver Representative will provide to the Trustee a list of all approved contracts (certified) to fulfill its role in the Disbursement Procedures. The Receiver Representative shall complete the following Trustee forms for every contractor/vendor:

- Fax/Email Indemnity Agreement (Attachment 4)
- Manual Initiated Funds Transfer Form (Attachment 5)

1.1 Court Ordered Payments

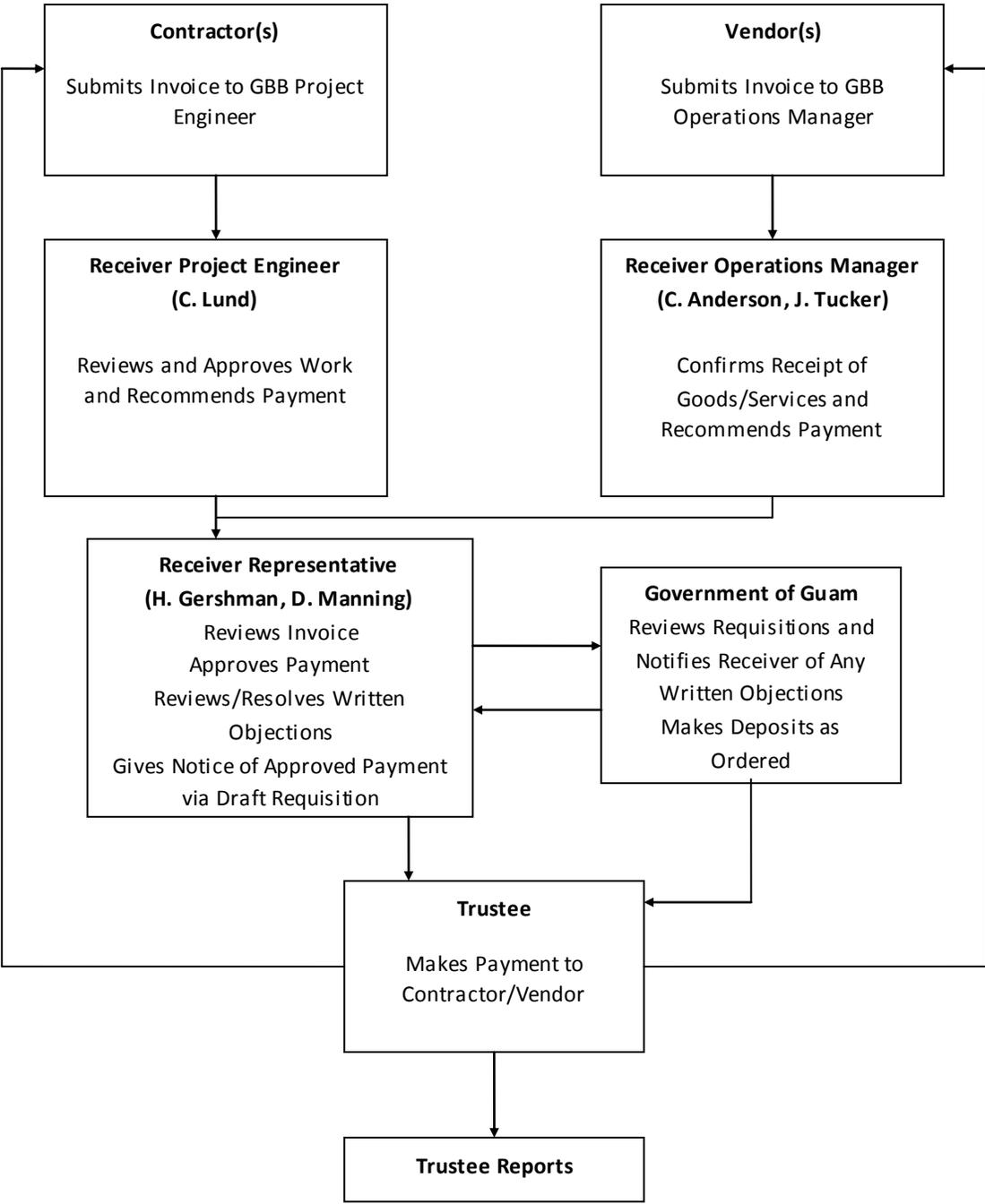
From time to time the Court will issue Orders directing the Trustee to issue payments necessary to facilitate compliance with the Consent Decree. On such event the Trustee **must abide and follow the Court Order** without the approval of the Receiver or any other party. The Trustee will be guided by Section 3.5 herein when processing payments directed by court Order. The Trustee shall not issue any payment to the Receiver except pursuant to a Court Order.

2.0 Flow of Activities and Funds for Disbursements

As outlined in Figure 1, the process for making disbursements from the Trust Account has four steps:

1. Submittal of Invoices
2. Review of Invoices and Recommendation for Payment
3. Approval of Invoices and Requisition of Payment
4. Payment of Invoices

Figure 1 – Flow of Activities and Funds for Disbursements



Because the implementation of the Consent Decree projects entails both construction activities and capital equipment purchases, the submittal and review steps have two tracks, one for construction-related contracts and purchases, and one for capital equipment purchases. After review and recommendation for payment, the steps are the same for both tracks. If it is unclear which track the payment request should follow, the Receiver Representative will decide the appropriate track.

After an invoice has been submitted by a contractor or vendor in accordance with the requirements of its contract or purchase order, the appropriate Receiver Manager reviews it and, if approved, forwards it to the Receiver Representative for payment processing. If the payment request involves both equipment and construction, the Receiver Project Engineer and Receiver Operations Manager will coordinate their respective reviews regardless of which one has review authority. Pursuant to Section 3.3 of these Disbursement Procedures, the Receiver Representative then prepares a payment requisition and forwards the approved invoice and requisition to the Government of Guam to review the documentation and file with the Receiver any written objection it may have to the payment. If the Government makes no written objection, the Receiver forwards the approved invoice and requisition to the Trustee to make payment in accordance with the financial services agreement and the instructions in the requisition.

If the Government makes a written objection, the Receiver works expeditiously to resolve the issue to the Government's satisfaction, using the steps outlined in Section 3.3, and then forwards the approved invoice and requisition to the Trustee for payment after resolution of the written objection.

Each of the steps for authorizing a payment is further detailed in Section 3.0 of this document.

3.0 Steps in Payment Process

3.1 Submittal of Invoices

3.1.1 Construction-Related Invoices

Invoices for construction activities, construction management or construction-related professional services (design, engineering, surveying, testing, consulting, etc.) must be submitted in accordance with the contract governing the work. In addition, the invoice must have the following:

1. A narrative of the work performed;
2. The total amount due, including back-up for time charges and direct expenses;
3. The amount of retention;
4. The net amount due;
5. Physical percentage complete;
6. Financial percentage complete;
7. Progress photographs (if applicable); and
8. Evidence of payment of subcontractors (if applicable).

Much of the information required above will be entered in a Schedule of Values cover sheet in the format of Attachment 2, a version of the American Institute of Architects (AIA) form. The form lists a breakdown of the work into line items with a description of each, the total budget for each line item (the scheduled value), and then, for each line item:

1. The work completed for the period which is being invoiced (dollar amount and percentage of scheduled value); cumulative dollar amount of the work completed to date
2. Dollar amount of materials currently stored (and not included in the work completed)
3. Total for work completed and materials stored
4. Financial percentage complete
5. Physical percentage complete
6. Retainage

If any of the information required above is in conflict with the requirements of the contract, the contract will govern the submittal requirements.

The submitted invoice will include all of the information required above, including the Schedule of Values cover sheet, with a space for the approval signature of the Receiver Project Engineer

and the approval date. Two copies of each invoice package must be submitted to the Receiver Project Engineer.

3.1.2 Capital Equipment Purchase Invoices

Invoices for capital equipment purchases must be submitted in accordance with the contract and/or purchase order governing the purchase. In addition the invoice must have the following:

1. Identification of the purchase order governing the purchase;
2. A description of the equipment purchased;
3. The total amount due;
4. Photographs (if applicable); and
5. Inspection report and certification, signed by the Receiver Operations Manager, identifying the date of receipt of the order, and describing the condition of the equipment and any discrepancies between the order and the equipment actually received.

If any of the information required above is in conflict with the requirements of the contract or purchase order, the contract or purchase order will govern the submittal requirements.

The submitted invoice will include all of the information required above, with space for the approval signature of the Receiver Operations Manager and the approval date.

3.2 Review of Invoices

Upon receipt of the invoice package from the contractor or equipment vendor, the Receiver Project Engineer or Receiver Operations Manager, as applicable, will review it for completeness and compliance with the information requirements in Section 3.1. For construction-related invoices, the Receiver Project Engineer will coordinate the review with the project's design and construction management teams. If any information is incorrect, missing or questioned by the Receiver Project Engineer or Receiver Operations Manager, as applicable, the package will be returned to the contractor/vendor for appropriate adjustment. If the Receiver Project Engineer/Receiver Operations Manager and contractor/vendor cannot agree on the adjustment to be made, the issue will be put before the Receiver Representative for resolution. Should the contractor/vendor disagree with the Receiver Representative's decision, the contractor/vendor may pursue the matter through the dispute resolution provisions of its contract.

When the Receiver Project Engineer/Operations Manager has been presented with a complete and accurate invoice package and has reviewed it, he will approve it and recommend payment by signing and dating the invoice package on its cover sheet. In approving the invoice and recommending payment, the Receiver Project Engineer/Operations Manager must certify that:

1. All charges are accurate and reasonable;
2. Quality of all the work completed is consistent with the quality standards of the contract/purchase order; and
3. All payments requested are in compliance with the terms and conditions of the contract/purchase order.

The Receiver Project Engineer/Operations Manager will then forward both copies of the approved invoice to the Receiver Representative for payment processing.

The Receiver's Project Engineer will be Chris Lund. With notification to the Court, the Receiver can replace the Receiver Project Engineer if necessary. At a minimum, the Receiver Project Engineer shall be a professional engineer registered to practice in Guam.

The Receiver Operations Manager will be either Chace Anderson or Jack Tucker. With notification to the Court, the Receiver can replace the Receiver Operations Manager if necessary.

3.3 Approval of Invoices/Requisition for Payment

Upon receipt of the invoice approved by the Receiver Project Engineer or Receiver Operations Manager, as appropriate, the Receiver Representative will log the invoice using a form similar to that in Attachment 3.

The Receiver Representative will then review the invoice, approve it for payment and prepare a Draft Requisition for Payment in the form of Attachment 1. Only one of the two authorized Receiver Representatives' signature is required to approve the payment. Electronic copies of the invoices and Draft Requisition will be sent to the following for their review:

1. The Director of the Department of Administration or the Director's designee;
2. The Director of the Bureau of Budget and Management Research or the Director's designee;
3. The Director of the Department of Public Works or the Director's designee; and
4. The Office of the Public Auditor.

The Government of Guam entities will coordinate their review and communicate any written objections to specific payments to the Receiver Representative. The Director of the Department of Administration shall be the official responsible for communicating any written objections to the Receiver Representative. The Government of Guam entities shall have seven (7) calendar days to review the Draft Requisition and file with the Receiver Representative any written objections it has to making the payment. If the Receiver Representative has not received a written objection within seven (7) calendar days, the Receiver Representative will deem that there are no objections to making the payment. If any of these Government of Guam entities makes a written objection, the Receiver Representative will work expeditiously to resolve the issue to the entity's satisfaction. If the entity's written objection is not resolved within ten (10) calendar days after receipt, the Receiver Representative will:

1. Authorize the Trustee to make the full payment notwithstanding the Government's written objection, if the Receiver determines that making the payment is essential to maintaining the construction schedule;
1. Authorize the Trustee to make a partial payment, withholding that portion of the payment to which the Government objects and continuing its effort to resolve the written objection; or
2. Place the payment on indefinite hold pending resolution of the Government's written objection.

Should the Receiver Representative be unable to resolve the Government's written objection, the written objection will be submitted to the Court for resolution.

When the review period has expired, or when any Government of Guam written objections are resolved, the Receiver Representative will make two originals of the Final Requisition, incorporating any agreed-upon changes from the Draft Requisition. The Receiver Representative will file one of the originals and forward the other original set to the Trustee by mail. The Receiver Representative will also send a copy of the Final Requisition with attachments to the Trustee by electronic means or courier/messenger, which the Trustee will use as instruction to pay the invoice. If the Final Requisition is sent through electronic means, the Receiver Representative will ensure the following:

1. The scanned copy is encrypted using Winzip 9.0 (128 bit) before sending the same to Trustee
2. The password for the encrypted file will be sent as a separate communication to the Trustee

Additional copies of the Final Requisition will be sent to the following:

1. The Court
2. Solid Waste Management Division offices on Guam
3. The Director of the Department of Administration or the Director's designee (if it is different than shown in the Draft Requisition)
4. The Director of the Bureau of Budget and Management Research or the Director's designee (if it is different than shown in the Draft Requisition)
5. The Director of the Department of Public Works or the Director's designee (if it is different than shown in the Draft Requisition)
6. The Office of the Public Auditor (if it is different than shown in the Draft Requisition)

The Receiver Representative will then complete the invoice's entry in the log (see Attachment 3) by adding the following dates:

1. The Approval Date: the date that the invoice was recommended for payment by the Receiver Project Engineer/Operations Manager
2. The Requisition Date: The date of the Final Requisition
3. The Payment Date (when confirmed by the Trustee): The date that the invoice was paid by the Trustee

The Receiver Representative will use the following format for consecutively numbering the Final Requisitions for payment:

[C/E] 20dd-nn

where:

- C/E will indicate either a construction-related (C) or equipment-related (E) invoice
- 20dd is the year in which the requisition was made
- nn is a consecutive number, starting with 1, regardless of type or year of requisition

The two Receiver Representatives are Harvey W. Gershman and David L. Manning. The Receiver Representatives may be replaced by order of the Court and amendment of the Financial Services Agreement with the Trustee.

3.4 Payment of Invoices

The Receiver Representative shall provide to the Trustee a Requisition of Payment form for every disbursement request (see Attachment 1). A copy of the invoice evidencing review sign-off by the Receiver Representative must accompany Requisition of Payment form to deem the submission as complete. The Trustee is neither liable nor obligated to ensure the accuracy or correctness of the invoice presented.

Upon receipt of the Requisition of Payment Form (with accompanying attachments) via electronic means or courier/messenger from the Receiver Representative, the Trustee will process and pay the amount in the requisition to the payee listed in the Requisition using the instructions contained therein and these Disbursement Procedures.

The cut-off time for the Trustee to process payments on the same day are as follows:

- 12:00 pm (Monday – Thursday)
- 3:00 pm (Friday)

Instructions received after the cut-off time shall be processed on the following business day. The Trustee will not process payments during weekends and holidays observed by the Trustee.

The Trustee will follow its “Call Back” procedures prior to processing each requisition of payment. The Trustee will confirm payment instructions with the authorized individuals on the account. If the Trustee is unable to make payment due to non-sufficient funds, incomplete submission, incorrect information provided (by Receiver Representative), or is unable to complete its “Call Back” procedures, the Trustee will immediately contact the Receiver Representative and apprise the Receiver Representative of its findings and request the information required to complete the payment instructions. **The Trustee shall not process any incomplete payment requests.** The Trust Account may not go into overdraft. Neither the Trustee nor any of its respective officers, employees or agents shall be required to make any disbursements to the extent that the Trust Account balance is deemed insufficient and shall incur no liability whatsoever from any non-disbursement in such circumstances.

Trustee operates as a financial institution governed by applicable local/federal laws and regulations in regards to the Bank Secrecy and the U.S. Patriot Acts. Trustee’s adherence to such regulations covers disbursements, remittances and Fund Transfers procedures to sanctioned individuals, businesses and/or nationals. The Trustee will escalate to the Receiver Representative of any such discrepancies in the processing of Requisition of Payment requests.

The Trustee reserves the right to put the request on hold if it finds itself in direct violation of the regulations and its internal policies.

It is the intention of the Receiver to have all invoices paid from the Trust Account within 45 days from the date that the invoice was recommended for payment by the Receiver Project Engineer or Operations Manager, as appropriate, barring any delays due to Government of Guam written objections.

If the Receiver Representative informs the Trustee that it wishes to recall, cancel or amend an instruction, the request must be made in writing duly signed by the authorized signatories. Trustee is not obliged but will use its reasonable efforts to comply to the extent it is practicable to do so before the release or transfer of all or any portion of the requisition amount pursuant to such instructions.

3.5 Payment Order Issued Directly from the District Court

In the event the Court directs payment from the Trust Account, the Court will deliver a true certified copy of the court Order to the Trustee. The court Order shall clearly indicate the payee, the total amount to be paid (including applicable bank fees), and the method for transmitting payment(s). The court Order will be originally stamped "Certified" attested to by the Clerk of Court of the District Court of Guam or her designee. Copies of the invoice and specific remittance instructions shall accompany the certified court Order.

The Trustee will follow its security "Call Back" procedures for all payments directed by court Order. The following individuals will be the primary and designee contact of the Trustee to confirm the transaction.

Primary Contact

Name: Shirlene A. Ishizu

Title: Financial Administrator

Official Contact Number(s): (671) 473-9123

Designee Contact

Name: Gabriel T. Pereda

Title: Financial Specialist

Official Contact Number(s): (671) 473-9144

The cut-off time for the Trustee to process payments on the same day are as follows:

- 12:00 pm (Monday – Thursday)
- 3:00 pm (Friday)

Instructions received after the cut-off time shall be processed on the following business day. The Trustee will not process payments during weekends and holidays observed by the Trustee. The Trustee shall rely upon any direct court Order, judgment, decree, certification, demand, notice, instruction, or other written instrument delivered directly from the Court without being required to determine the authenticity of correctness of any fact stated therein or validity of service thereof. The Trustee may act in reliance upon such instruments and will act upon the instruction without Receiver Representative authorization.

4.0 Account Reconciliation and Reports

The Trustee will provide a Payment Activity Report (Attachment 6), as and when the transaction reflects on the Trust Account, to the Receiver, the Court, the Government of Guam Department of Administration, the Government of Guam Bureau of Budget and Management Research, the Office of the Public Auditor and the Speaker of the Guam Legislature.

The Trustee will provide a monthly account statement to the Receiver, the Court, the Government of Guam Department of Administration, the Government of Guam Bureau of Budget and Management Research, and the Speaker of the Guam Legislature and the Office of the Public Auditor. The Receiver will provide a monthly summary of all payments made during the month within 30 days of the close of each month. Each month, the Receiver will reconcile the Trust Account statement and provide the reconciliation, together with a summary of Trust Account activity, to the Court, the Department of Administration, the Bureau of Budget and Management Research the Speaker of the Guam Legislature, and the Office of the Public Auditor.

The tax identification number of vendors will be provided to the Trustee if 1099 vendor reporting will be requested.

The Trustee shall provide Payment Activity Reports and monthly account statements to the following entities at the addresses provided below:

- Gershman, Brickner & Bratton, Inc.
Attention: Mr. Jim Plutino
Mailing Address: 8550 Arlington Boulevard, Suite 304
Fairfax, VA 22032
Means of Distribution: Postal and Electronic Mail

- Gershman, Brickner & Bratton, Inc.
Attention: Mr. David L. Manning
Mailing Address: 5528 Saddlewood Lane
Brentwood, TN 37027
Means of Distribution: Postal and Electronic Mail

- U.S. District Court of Guam
Attention: Ms. Shirlene Ishizu
Physical Address: 520 West Soledad Avenue
Hagatna, Guam 96910
Means of Distribution: Hand Delivery

- Government of Guam Department of Administration
Attention: Ms. Lourdes M. Perez
Physical Address: 212 Aspinall Avenue
Hagatna, Guam 96910
Means of Distribution: Hand Delivery

- Government of Guam Bureau of Budget and Management Research
Attention: Ms. Bertha M. Duenas
Physical Address: Office of the Governor
Means of Distribution: Hand Delivery

- Government of Guam Office of the Public Auditor
Attention: Ms. Doris Flores Brooks, CPA, CGFM
Physical Address: Suite 401 DNA Building
238 Archbishop Flores Street
Hagatna, Guam 96910
Means of Distribution: Hand Delivery

- Speaker of the Guam Legislature
Attention: Speaker Judith T. Won Pat, Ed.D.
Physical Address: 155 Hesler Place
Hagatna, Guam 96910
Means of Distribution: Hand Delivery

WIRING INSTRUCTIONS:

Beneficiary (Receiver) Information (Name Address and Account Number):

Beneficiary Bank Name:

Beneficiary Bank Address:

Account #:

ABA No.:

Other Terms and Conditions:

Cut-off time for executing your funds transfer order. If your funds transfer order is received by Citibank at or after its established cut-off hour for receipt of funds transfer orders as communicated by the bank, your funds transfer order will not be executed until the next banking day.

Monday to Thursday Cut-off time: Noon

Friday: 3pm

Rejection of an order. We reserve the right to reject your transfer order. We may reject your funds transfer if you have insufficient available funds in your account, if your order is incomplete or we are unable to fulfill your order for any other reason.

Debit Authorization. Citibank is authorized to debit your account for the amount in your funds transfer order. You further authorize Citibank to charge your account a service fee for each funds transfer order you place in accordance with our fee schedule.

Attachment 2 – Typical Schedule of Values Form

Project Title:
Contractor Name:

Period:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		E This Period	F Materials Currently Stored (Not in D or E)	G Total Completed and Stored To Date (D+E+F)		H Balance to Finish (C-G)	I Physical % Complete	J Retainage (If Variable Rate)
			Percentage This Period	From Previous Application (D+E)			Financial % Complete (G/C)				
DIRECT COSTS											
	Development Costs	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Legal Costs	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Water & Sewer Permitting	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Engineering	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Project Management	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
OTHER											
	N/A	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	N/A	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
DIVISION 1 GENERAL BUILDING CONSTRUCTION											
	General Conditions	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
DIVISION 4-14 GENERAL BUILDING CONSTRUCTION											
Div. 02	Sitework	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
Div. 02	Excavation & Backfill	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
Div. 02	Landscaping	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
DIVISION 15 MECHANICAL											
Div. 15	Equipment	-----	-----	-----	-----	-----	-----	-----	-----		
Div. 15	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
Div. 15	Equipment Hookups	-----	-----	-----	-----	-----	-----	-----	-----		
Div. 15	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
DIVISION 16 ELECTRICAL											
Div. 16	Lighting	-----	-----	-----	-----	-----	-----	-----	-----		
Div. 16	Etc.	\$ -	0.0000%	\$ -	\$ -	\$ -	\$ -	N/A	\$ -		
TOTALS											
Column Totals		\$ -		\$ -	\$ -	\$ -	\$ -	N/A	\$ -		

Attachment 3 – Requisition Log



**SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER**

**GBB the Receiver
for Government of Guam DPW SWMD**

**Summary of Payment Requisitions
Submitted to Citibank**

Tracking Number	Payee	Purpose	Amount	Approval Date	Requisition Date	Payment Date
C2009-01						
P2009-02						
etc.						

Attachment 4 – Fax Indemnity Agreement

AUTHORIZATION TO ACT ON INSTRUCTIONS SENT BY FACSIMILE TERMS AND CONDITIONS

This agreement provides for the terms and conditions under which Citibank, N.A., Guam Branch ("the Bank") will act on instructions that the customer transmits to the Bank by facsimile ("Faxed Instructions") with respect to account(s) named in the original letter of authorization.

1. **Nature of the Account.** The Customer states that the Account is primarily for business or commercial purposes and that the Account HAS NOT been established primarily for personal, family or household purposes. The Customer understands that the Bank is relying on these statements in agreeing to act on the Customer's Faxed Instructions regarding the Account.

2. **Customer's Authorization to Act on Faxed Instructions.** The customer authorizes the Bank to act upon the Customer's Faxed Instructions to transfer funds from the Account(s) named on the letter of instructions and to pay the beneficiary or beneficiaries as designated. The maximum amount that the Customer authorizes the Bank to transfer from the Account per each set of Faxed Instructions is as designated in the letter of instructions.

3. **Authorized Faxed Instructions Signatories.** Only authorized signatories of the account(s) may authorize the Bank to act upon facsimile instructions.

4. **Customer's Assumption of Risk; Indemnification of Citibank.** The Customer acknowledges and agrees to the following:

- a. Faxed instructions are not a safe means of authorizing transfers from bank accounts and payments to beneficiaries.
- b. It is very easy to forge faxed instructions, including by duplicating the signature of an authorized party and using that signature in unauthorized faxed instructions. As a result, a faxed instruction that appears to contain an authorized signature may, in fact, be fraudulent.
- c. The Bank shall have met its responsibility to verify the authenticity of Faxed Instructions and shall satisfy its obligation to exercise ordinary care by comparing the signatures on the Faxed Instructions to those on the Bank's signature cards for the Account. Under no circumstances shall the Bank be required to take any other action to verify or authenticate any faxed instructions concerning the Account.
- d. The Bank's willingness to act on the Faxed Instructions is solely for the convenience of the Customer. Whenever the Bank shall take action pursuant to the Faxed Instructions, the Bank shall be presumed to have met whatever obligations of good faith, diligence, reasonableness and care that the Bank shall be deemed to have with respect to the Customer, the beneficiary of the Faxed Instruction or any other party.
- e. In acting upon the Faxed Instructions, the Bank may send any message in explicit language, code, or cipher and may use any correspondent, agent or subagent. The Bank shall not be liable for any acts, omissions, error, negligence or default of any correspondent, subagent, or other agency.
- f. The Bank, its employees, correspondents, agents and subagents shall have no liability for any mutilations, interruptions, omissions, errors, non-transmission or delays occurring in the mails, or on the part of any telegraph cable, or wireless company.
- g. The Customer assumes all risks related to the Bank receiving and acting upon any Faxed Instructions in any way related to the Customer, including those arising from the Bank acting upon forged, altered, incomplete, ambiguous, or unauthorized instructions or the Bank failing to clarify, correct or complete any inconsistent, ambiguous or incomplete instructions received by Facsimile.
- h. To the fullest extent possible, the Customer waives any claims which may arise in the future against the Bank or its employees in any way related to or arising from any Faxed Instructions concerning the Customer, including the Bank acting or failing to act, its dishonor or payments of any item, its payment or non payment upon forged or altered instructions or any other action or inaction by the Bank related to any faxed Instructions. The Customer waives the benefit of Guam Civil Code Section 1542.
- i. The Customer agrees to indemnify and hold harmless on a full indemnity basis, the Bank, its employees, correspondents, agents or subagents from and against any and all claims, actions, defenses, costs and expenses resulting from any act or omission of the Bank, including but not limited to acting in good faith, or omitting to act in good faith on Faxed Instructions given or purportedly to be given by the Customer.
- j. **Rider.** Neither the Bank, nor any of its employees, correspondents, agents or subagents shall be liable as a result of acting or failing to act in relation or pursuant to the Customer's Faxed Instructions given to the Bank.

5. **Conditions for Fund Transfers**

- a. The Bank may, at its discretion, convert into foreign values any funds received from the Customer at the Bank's selling rate on the day such funds are received. The Bank's written statement that it has effected such conversion shall be conclusive.
- b. If the Faxed Instruction requests that the Bank pay the beneficiary in currency other than that of the country in which the remittance is made, such payment shall be made at the Bank's correspondent's or agency's buying rate for such currency, unless, by prior arrangement with the Bank's paying correspondent or agency, the beneficiary obtains payment in some other currency upon paying all charges of our correspondent or agency in connection therewith.
- c. The Customer may request for refunds from the Bank only on the following conditions: (1) The Bank shall have received valid confirmation that the requested payment instructions have been effectively cancelled; (2) Any and all drafts issued pursuant to the Faxed Instructions shall have been returned to the Bank; and (3) In the case of funds already paid, any refund shall be at the Bank's buying rate on the day of the refund minus all expenses of the Bank, its correspondents, agents and subagents.
- d. If pursuant to the Faxed Instructions, the Bank pays the beneficiary by cashier's check, certified check, teller's check or similar instrument, and such check or instrument is lost, stolen, or destroyed, the Bank shall issue a replacement check or make a refund to the Customer only if the Bank shall have received an indemnity bond, upon terms and conditions acceptable to the Bank, indemnifying the Bank from and against any and all liability with respect to the lost, stolen or destroyed check.

6. **Other provisions.**

- a. The Parties intend that this Agreement shall vary any provisions of applicable law, which may be varied by agreement.
- b. The Terms and Conditions for the Account are incorporated by reference into this Agreement. With the Terms and Conditions, this agreement constitutes the entire agreement between the Parties.
- c. This Agreement is executed pursuant to and shall be construed under the laws of the Territory of Guam.
- d. The Customer hereby expressly and knowingly waives any right that it may have to a trial by jury as to any action claim or defense arising out of or in any way related to this Agreement or to transactions occurring pursuant to the Faxed Instructions.

Authorized Signer (Initials): _____
Authorized Signer (Initials): _____
Authorized Signer (Initials): _____

Date: _____
Date: _____
Date: _____

Attachment 5 – Manually Initiated Funds Transfer Form

Authorization to Act on Faxed Instructions For Business Accounts



We hereby authorize Citibank, N.A., Guam Branch ("the Bank") to act on all instructions received by fax and to pay only the beneficiary(s) listed below.

Account Information	<input type="checkbox"/> New <input type="checkbox"/> Update
Account Name	Account Number

Pre-Designated Beneficiary List

We provide the following list of all pre-designated beneficiaries that will be paid through faxed instructions to the Bank. We agree that any faxed instructions received by the Bank paying a non-designated beneficiary will not be processed **without an additional verbal confirmation done with the authorized individuals**. We hereby authorize the Bank to pay only the beneficiary(s) listed below.

Beneficiary Name & Address	Beneficiary Bank Name & Address	Bank Account Number
1		Maximum Amount of Transfer
2		Maximum Amount of Transfer
3		Maximum Amount of Transfer
4		Maximum Amount of Transfer
5		Maximum Amount of Transfer

Call-Bank Authorization

We acknowledge the Bank's policy requiring faxed instructions transacting over certain amounts **or fax instructions payable to non-designated beneficiaries** to be verbally confirmed with us prior to processing. We hereby designate the following authorized individuals to confirm, prior to processing, any and all faxed instructions as mentioned herein. **This is in addition to any other authorized signatories of the account.**

Authorized Representative	Position	Mother's Maiden Name	Date of Birth	SSN	Contact Number
1					
2					
3					

We hereby confirm that we have read and understood the terms and conditions stated overleaf, and hereby agree thereto and confirm that the undersigned is/are authorized to execute this Agreement. Fully cognizant of the risks associated with sending of facsimile instructions, we hereby authorize the Bank to act on the following facsimile instructions as specified herein.

- 1.) We understand that the faxed instructions will be acted upon by the Bank only if our account has sufficient available funds.
- 2.) Faxed instructions will be signed by signatories authorized to operate our account according to signature cards executed by us for the accounts we have with the Bank.
- 3.) This authorization will remain in full force and effect until we inform the Bank otherwise in writing.

Acknowledged by:

Authorized Signature			
By:	Title:	Date:	
Authorized Signature			
By:	Title:	Date:	

