



**Office of the Attorney General**  
**Leevin Taitano Camacho**  
Attorney General of Guam  
**Solicitor Division**  
590 S. Marine Corps Drive  
ITC Bldg., Ste. 802  
Tamuning, Guam 96913 • USA  
Tel. (671) 475-3324 Fax. (671) 472-2493  
*Attorneys for Guam Solid Waste Authority*  
www.oagguam.org  
smiller@oagguam.org

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF:	)	GSWA Docket No. 22- <u>01</u>
	)	
The Application of the Guam Solid	)	<b>PETITION FOR CONTRACT</b>
Waste Authority for Review and	)	<b>REVIEW AND APPROVAL</b>
Approval of Amendments to the	)	
Layon Landfill Operator Contract	)	
	)	

**INTRODUCTION**

COMES NOW the **GUAM SOLID WASTE AUTHORITY (GSWA)** and respectfully petitions the **GUAM PUBLIC UTILITIES COMMISSION (PUC)** to review and approve contractual amendments negotiated between GSWA and the operators of the Layon Landfill, namely GGH Guam, LLC and Green Group Holdings, LLC (collectively GGH Guam).



## BACKGROUND

On April 15, 2011, Gershman Brickner & Bratton Inc. (GBB), in its capacity as Receiver for GSWA, entered into a written contract with Herzog Environmental, Inc. under RFP No. SWD001-10 for the operation of the Layon Landfill. The initial term of the contract was for seven (7) years, with two (2) options to renew for an additional five-year period (or 17 years total).

With the written consent of GBB, on February 27, 2013, Herzog Environmental assigned the Layon Landfill contract to GGH Guam, LLC and Green Group Holdings, LLC.

In 2018, and prior to the expiration of the contract's initial seven-year term, GSWA and GGH Guam agreed to exercise the first of the two available five-year renewal options. This first renewal option is due to expire in September 2023.

GSWA and GGH Guam, LLC have now agreed to exercise the second five-year renewal option and to amend certain sections of the Layon Landfill contract. The exercise of the second renewal option and the amendments to the contract were approved by the GSWA Board of Directors in its Resolution No. 2022-011 on July 27, 2022.<sup>1</sup>

---

<sup>1</sup> A true and correct copy of the Board's Resolution No. 2022-11 adopting the draft amendment is attached to this Petition as "***Exhibit 1***" and incorporated in full herein by this reference.



The amendments modify the following sections of the Layon Landfill operator's contract as follows:

a. **Section 2.02 Renewal Term** is amended to now reflect a minimum continuous contract period through September 2026 with a potential renewal period extending through September 2027. The terms of the renewal period shall be agreed upon before January 31, 2026 before or by 11:59pm.

b. **Section 3.01 (B) The Base Operating Fee** is amended to now read Green Group is agreeable to immediately roll back the current Base Operating Fee by 7.323% (one-half of the most recent CPI adjustment) for the remaining unbilled months for the current contract year and cap any future adjustment thereafter during the extension term to no more than 5%.

The following formula shall be used to determine if an additional annual CPI adjustment over the 5% maximum would be warranted:

- 0% to 5% annual CPI increase – the annual CPI rate increase would be according to the contract terms.
- 5% to 10% annual CPI increase – the annual CPI rate increase would be capped at 5%.
- 10% and higher annual CPI increase – the annual CPI rate increase would be 50% of the calculated rate increase according to the contract terms.



The index is weighted with equipment, labor, and fuel. The percentages that determine the annual CPI rate increase according to the contract is illustrated in the table below:

Base Operating Fee:

Fixed Component (no adjustment applied) 18%

Construction Machinery & Equipment 30%

Employment Cost Index 37%

Diesel Fuel 15%

c. **Section 3.01 (C) Excess Operating Fee** is amended to now read Green Group is agreeable to accept 100,000 tons per contract year under the Base Operating Fee and be entitled to receive additional compensation of \$25.00 for tonnages exceeding this level. This per ton rate would not be applicable to future pricing adjustments.

d. **Section 4.01 Onsite Excavation Areas and Stockpiles** is amended to now include Additional Cover Soil Placement on Cell 3. At no additional cost to GSWA, Green Group agrees to putting an additional twenty-four (24) inches of final cover material on the exterior slopes of Cell 3 as the cell is constructed.

e. **Section 4.03 Final Cover Construction** is amended to include that Green Group agrees that the placement of final cover (Cell 1 and Cell 2) other than cell 3 should be at a maximum of \$5.00 per cubic yard. The exact costs are to be determined later in the contract upon further evaluation by both parties.



f. Section 13.04 Convenience Termination Election in Certain Circumstances is amended to now include that this section of the contract shall not be effective until September 2026.

### DISCUSSION

The PUC has jurisdiction and authority to hear this Petition pursuant to 12 GCA §12105 and the Order establishing a *Contract Review Protocol for GSWA*. See, GSWA DOCKET 19-02 & ADMINISTRATIVE DOCKET dated July 25, 2019.

The renewal term and the amendments to the Layon Landfill contract were mutually negotiated and made between GSWA and GGH Guam, with both parties at all times acting in good faith and at arm's length. The amendments are reasonable and in the best interest of the Territory, GSWA, and the Guam ratepayers because they allow for immediate and significant financial savings.

To illustrate, the table below is excerpted from ***"Exhibit 2."*** The table shows the amounts payable by GSWA to GGH Guam for FY2022 through FY2026 under the terms of the unamended contract (*"Current Contract Terms"*), together with the amounts payable after the contract is amended (*"Extension Negotiation"*):



**Layon Landfill Operating Contract  
Contract Extension Review**

The following schedule summarizes the difference in projected contract billings between; 1) No change in Contract Terms vs. 2) Negotiated Changes in Contract Terms. See detailed projections for assumptions

Fiscal Year		Current Contract	Extension	Contract Billing	Contract Billing
From	To	Terms	Negotiation	Difference \$	Difference %
10/1/2021	9/30/2022	4,353,767	3,782,518	(571,249)	-13.1%
10/1/2022	9/30/2023	5,224,504	3,869,212	(1,355,292)	-25.9%
10/1/2023	9/30/2024	5,490,979	4,062,672	(1,428,307)	-26.0%
10/1/2024	9/30/2025	5,765,528	4,265,806	(1,499,722)	-26.0%
10/1/2025	8/31/2026	5,542,640	4,032,212	(1,510,428)	-27.3%
Totals		26,377,417	20,012,419	(6,364,998)	-24.1%

*Excerpted from Exhibit 2.*

The price difference between the unamended and the amended contract for each fiscal year is depicted in the fourth column identified as “*Contract Billing Difference\$.*” As shown in the bottom row of the table, when the billing differences for each fiscal year are added up, the estimated savings to be realized by the Territory between now and August 31, 2026, is over \$6.3 million or 24.1%.

Finally, in addition to the financial savings, the amendments also provide for additional contractual obligations such the placement of extra cover soil and materials on the landfill cells and for increased tonnage acceptance, all of which serve to directly support the continued life and successful operation of the Layon Landfill.



## **CONCLUSION**

For all the foregoing reasons, GSWA submits that the instant Petition for PUC review and approval of the negotiated amendments to the Layon Landfill operator contract with GGH Guam should be GRANTED.

GSWA further petitions and requests that the PUC order that GSWA be permitted to proceed with the contract as amended.

Respectfully submitted this 12th day of August, 2022.

**OFFICE OF THE ATTORNEY GENERAL**  
**Leevin Taitano Camacho, Attorney General**

By:



**SANDRA C. MILLER**

Assistant Attorney General  
smiller@oagguam.org



# **EXHIBIT 1**

**GSWA Board Resolution No. 2022-11 and  
Draft Second Amendment to Assignment  
Agreement to Operate Layon Landfill**





# GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO  
Governor of Guam

JOSHUA F. TENORIO  
Lt. Governor of Guam

IRVIN L. SLIKE  
General Manager



GSWA BOARD RESOLUTION NO. 2022-011

## GSWA Board Resolution No. 2022-011

### AUTHORIZING GSWA MANAGEMENT TO EXERCISE ITS RENEWAL OPTION AND NEGOTIATE NEW TERMS OF THE AGREEMENT TO OPERATE THE LAYON LANDFILL

**WHEREAS**, Gershman, Brickner & Bratton Inc. (GBB), in its capacity as Receiver for GSWA, entered into a contract with GGH Guam, LLC under SWD 001-10 for the Operation of the Layon Landfill; and

**WHEREAS**, the Assignment Agreement was entered between GBB and GSWA and took effect upon termination of the Receivership; and

**WHEREAS**, GSWA's contract with GGH was awarded in 2011 with a term of seven (7) years with two (2) options to renew for an additional five (5) year period; and

**WHEREAS**, current Layon Operator contract's first renewal term is set to expire in September 2023; and

**WHEREAS**, GSWA has until September 2022 to inform GGH in writing if GSWA will exercise its second renewal option; and

**WHEREAS**, recent inflation has drastically impacted pricing under the current contract terms beginning FY2022; and

**WHEREAS**, GSWA General Manager has begun discussions with GGH to negotiate contract terms should GSWA enter into the second renewal term; and

**WHEREAS**, GSWA is seeking Board Approval to renew and amend the current contract to allow significant savings and to include additional necessary requirements for a successful operation of the Layon Landfill; and

**WHEREAS**, the parties have agreed to the following amendments:

- a. **SECTION 2.02 Renewal Term** is amended to now reflect a minimum continuous contract period through September 2026 with a potential renewal period extending through September 2027. The terms of the renewal period shall be agreed upon before January 31, 2026 before or by 11:59pm.
- b. **SECTION 3.01 (B) The Base Operating Fee** is amended to now read Green Group is agreeable to immediately roll back the current Base Operating Fee by 7.323% (one-half of the most recent CPI adjustment) for the remaining unbilled months for the current contract year and cap any future adjustment thereafter during the extension term to no more than 5%.





# GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO  
Governor of Guam

JOSHUA F. TENORIO  
Lt. Governor of Guam

IRVIN L. SLIKE  
General Manager



## GSWA BOARD RESOLUTION NO 2022-011

The following formula shall be used to determine if an additional annual CPI adjustment over the 5% maximum would be warranted:

- 0% to 5% annual CPI increase - the annual CPI rate increase would be according to the contract terms.
- 5% to 10% annual CPI increase - the annual CPI rate increase would be capped at 5%.
- 10% and higher annual CPI increase - the annual CPI rate increase would be 50% of the calculated rate increase according to the contract terms.

The index is weighted with equipment, labor, and fuel. The percentages that determine the annual CPI rate increase according to the contract is illustrated in the table below:

### Base Operating Fee:

Fixed Component (no adjustment applied) 18%

Construction Machinery & Equipment 30%

Employment Cost Index 37%

Diesel Fuel 15%

- c. SECTION 3.01 (C) Excess Operating fee is amended to now read Green Group is agreeable to accept 100,000 tons per contract year under the Base Operating Fee and be entitled to receive additional compensation of \$25.00 for tonnages exceeding this level. This per ton rate would not be applicable to future pricing adjustments.
- d. SECTION 4.01 Onsite Excavation Areas and Stockpiles is amended to now include *Additional Cover Soil Placement on Cell 3*. At no additional cost to GSWA, Green Group agrees to putting an additional twenty-four (24) inches of final cover material on the exterior slopes of Cell 3 as the cell is constructed.
- e. SECTION 4.03 Final Cover Construction is amended to include that Green Group agrees that the placement of final cover (Cell 1 and Cell 2) other than cell 3 should be at a maximum of \$5.00 per cubic yard. The exact costs are to be determined later in the contract upon further evaluation by both parties.
- f. SECTION 13.04 Convenience Termination Election in Certain Circumstances is amended to now include that this section of the contract shall not be effective until September 2026.

**WHEREAS**, the amount required for the renewal term is estimated at \$11.7 million dollars; and

**WHEREAS**, the funding for the renewal term will derive from GSWA's Operating Fund; and





# GUAM SOLID WASTE AUTHORITY

LOURDES A. LEON GUERRERO  
Governor of Guam

JOSHUA F. TENORIO  
Lt. Governor of Guam

IRVIN L. SLIKE  
General Manager



GSWA BOARD RESOLUTION NO 2022-011

**THEREFORE, BE IT HEREBY RESOLVED** by the Board of Directors as the Governing Body of the Guam Solid Waste Authority approves GSWA's management team's request, subject to the approval of the Guam Public Utilities Commission, as follows:

1. The GSWA management team is authorized to negotiate, accept, and amend the terms of the contract with the current vendor on behalf of the Authority.

**BE IT FURTHER RESOLVED** that the Board of Guam Solid Waste Authority does hereby authorize the management team to submit the renewal contract to the Public Utilities Commission, as required.

Ayes: 5

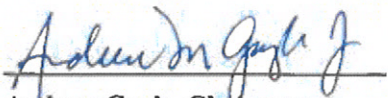
Nays: 0

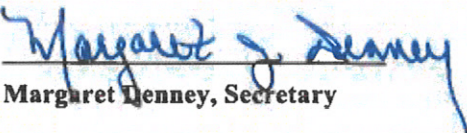
Absent: 0

Abstain: 0

Upon said roll call, the text of the foregoing was duly enacted as a Resolution of the Board of Guam Solid Waste Authority, Guam, on the 27<sup>nd</sup> day of July 2022.

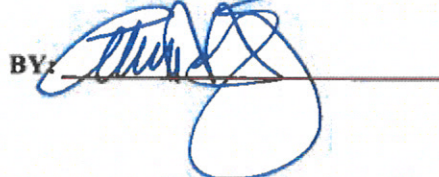
**GUAM SOLID WASTE AUTHORITY  
BOARD OF DIRECTORS**

  
Andrew Gayle, Chairman

  
Margaret Denney, Secretary

**ATTEST:**

**ALICIA FEJERAN, CLERK**

BY: 





# GUAM SOLID WASTE AUTHORITY

**LOURDES A. LEON GUERRERO**  
Governor of Guam

**JOSHUA F. TENORIO**  
Lt. Governor of Guam

**IRVIN L. SLIKE**  
General Manager



## SECOND AMENDMENT TO ASSIGNMENT AGREEMENT TO OPERATE THE LAYON LANDFILL BY AND BETWEEN GUAM SOLID WASTE AUTHORITY, AS OWNER, AND GREEN GROUP HOLDINGS, LLC., AS OPERATOR, DATED APRIL 15, 2011

This Second Amendment (this "Second Amendment") to the Agreement to Operate the Layon Landfill by and between Guam Solid Waste Authority, as owner, and Green Group Holdings, LLC., as Operator ("Operator"), dated April 15, 2011 (the "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Guam Solid Waste Authority (GSWA), and Operator. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

### WITNESSETH:

**WHEREAS**, Gershman, Brickner & Bratton Inc. (GBB), in its capacity as Receiver for GSWA, entered into a contract with GGH Guam, LLC under SWD 001-10 for the Operation of the Layon Landfill; and

**WHEREAS**, the Assignment Agreement was entered between GBB and GSWA and took effect upon termination of the Receivership; and

**WHEREAS**, GSWA's contract with GGH was awarded in 2011 with a term of seven (7) years with two (2) options to renew for an additional five (5) year period; and

**WHEREAS**, current Layon Operator contract's first renewal term is set to expire in September 2023; and

**WHEREAS**, GSWA and the Operator desire to exercise its second renewal option; and

**WHEREAS**, GSWA and the Operator desire to amend the Agreement and have agreed to the following amendments;

**NOW, THEREFORE**, for good and valuable consideration and the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby amend the Agreement as follows;

- a. SECTION 2.02 Renewal Term, is amended to now reflect a minimum continuous contract period through September 2026 with a potential renewal period extending through September 2027. The terms of the renewal period shall be agreed upon before January 31, 2026 before or by 11:59pm.
- b. SECTION 3.01 (B) The Base Operating Fee is amended to now read Green Group is agreeable to immediately roll back the current Base Operating Fee by 7.323% (one-half of the most recent CPI adjustment) for the remaining unbilled months for the current contract year and cap any future





# GUAM SOLID WASTE AUTHORITY

**LOURDES A. LEON GUERRERO**  
Governor of Guam

**JOSHUA F. TENORIO**  
Lt. Governor of Guam

**IRVIN L. SLIKE**  
General Manager



adjustment thereafter during the extension term to no more than 5%.

The following formula shall be used to determine if an additional annual CPI adjustment over the 5% maximum would be warranted:

- 0% to 5% annual CPI increase – the annual CPI rate increase would be according to the contract terms.
- 5% to 10% annual CPI increase – the annual CPI rate increase would be capped at 5%.
- 10% and higher annual CPI increase – the annual CPI rate increase would be 50% of the calculated rate increase according to the contract terms.

The index is weighted with equipment, labor, and fuel. The percentages that determine the annual CPI rate increase according to the contract is illustrated in the table below:

Base Operating Fee:

Fixed Component (no adjustment applied) 18%

Construction Machinery & Equipment 30%

Employment Cost Index 37%

Diesel Fuel 15%

- c. SECTION 3.01 (C) Excess Operating fee is amended to now read Green Group is agreeable to accept 100,000 tons per contract year under the Base Operating Fee and be entitled to receive additional compensation of \$25.00 for tonnages exceeding this level. This per ton rate would not be applicable to future pricing adjustments.
- d. SECTION 4.01 Onsite Excavation Areas and Stockpiles is amended to now include Additional Cover Soil Placement on Cell 3. At no additional cost to GSWA, Green Group agrees to putting an additional twenty-four (24) inches of final cover material on the exterior slopes of Cell 3 as the cell is constructed.
- e. SECTION 4.03 Final Cover Construction is amended to include that Green Group agrees that the placement of final cover (Cell 1 and Cell 2) other than cell 3 should be at a maximum of \$5.00 per cubic yard. The exact costs are to be determined later in the contract upon further evaluation by both parties.
- f. SECTION 13.04 Convenience Termination Election in Certain Circumstances is amended to now include that this section of the contract shall not be effective until September 2026.





# GUAM SOLID WASTE AUTHORITY

**LOURDES A. LEON GUERRERO**  
Governor of Guam

**JOSHUA F. TENORIO**  
Lt. Governor of Guam

**IRVIN L. SLIKE**  
General Manager



**IN WITNESS WHEREOF**, GSWA and Operator, have caused this Second Amendment to the Agreement to Operate the Layon Landfill to be duly executed on their behalf and attested as of the date first above written.

GREEN GROUP HOLDINGS, LLC.

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

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

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

Attest: \_\_\_\_\_

GUAM SOLID WASTE AUTHORITY

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

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

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

Attest: \_\_\_\_\_



# **EXHIBIT 2**

## **GSWA Financial Impact Analysis of Layon Landfill Contract Amendments**



**Layon Landfill Operating Contract  
Contract Extension Review**

The following schedule summarizes the difference in projected contract billings between; 1) No change in Contract Terms vs. 2) Negotiated Changes in Contract Terms. See detailed projections for assumptions

Fiscal Year		Current Contract Terms	Extension Negotiation	Contract Billing Difference \$	Contract Billing Difference %
From	To				
10/1/21	9/30/22	4,353,767	3,782,518	(571,249)	-13.1%
10/1/22	9/30/23	5,224,504	3,869,212	(1,355,292)	-25.9%
10/1/23	9/30/24	5,490,979	4,062,672	(1,428,307)	-26.0%
10/1/24	9/30/25	5,765,528	4,265,806	(1,499,722)	-26.0%
10/1/25	8/31/26	5,542,640	4,032,212	(1,510,428)	-27.3%
Totals		26,377,417	20,012,419	(6,364,998)	-24.1%