

LETTER OF INTENT

This Letter of Intent is dated this 17th day of July, 2009, and is made by and between the **COMMANDER NAVY REGION MARIANAS (COMNAVREG), NAVAL FACILITIES ENGINEERING COMMAND MARIANAS (NAVFAC), the JOINT GUAM PROGRAM OFFICE (JGPO), GERSHMAN, BRICKNER & BRATTON, INC. FOR THE DISTRICT COURT OF GUAM, TERRITORY OF GUAM (Receiver) and the GOVERNMENT OF GUAM (GOVGUAM).**

RECITALS

WHEREAS, on March 17, 2008 Gershman, Brickner & Bratton, Inc. of Fairfax, Virginia was named Receiver by the federal District Court of Guam to achieve compliance with the Consent Decree entered February 11, 2004 between GovGuam and the United States; and

WHEREAS, compliance with the Consent Decree will require among other things the construction of a new municipal solid waste landfill unit (MSWLF) compliant with all applicable environmental standards, the closure, post-closure monitoring and post-closure care of the existing Ordot Dump; programs, facilities, and equipment to assure proper diversion and management of Household Hazardous Waste (HHW), recyclable materials, compostable materials and other solid waste subject to waste reduction and waste recycling that can be diverted from disposal in the future MSWLF; and

WHEREAS, the Department of Defense has a continuing requirement to ensure proper solid waste management and reduce solid waste disposal volumes and cost through appropriate waste reduction and recycling strategies for existing DoD installations on Guam, and will have increased solid waste management and waste reduction requirements associated with future DoD growth on Guam, including the relocation of U.S. Marine Corps forces from Okinawa; and

WHEREAS, the Commander, Navy Region Marianas (COMNAVREG) will be responsible for installation management functions for Navy and Air Force installations on Guam upon the completion of associated realignment efforts; and

WHEREAS, the Naval Facilities Engineering Command, Marianas (NAVFAC), as the execution agent for COMNAVREG, currently provides solid waste management services, waste reduction, and recycling programs for the Navy on Guam, and will similarly assume such responsibilities for Anderson Air Force Base under current DoD plans for realignment of shore installation management services in a joint region; and

WHEREAS, the Joint Guam Program Office (JGPO) has responsibility for the facilitation, management, and execution of requirements associated with the rebasing of Marine Corps Assets from Okinawa to Guam and the implementation of realignment efforts to establish a Joint Base on Guam, and

WHEREAS, the existing Integrated Solid Waste Management Plan for Guam, developed by Guam Environmental Protection Agency and accepted by the Guam Legislature, and current Federal and Department of Defense regulations and policies each

set forth similar goals and programs for the management of solid waste and recyclables; and

WHEREAS, COMNAVREG, NAVFAC, and JGPØ desire to cooperate with the Receiver and GovGuam to achieve a solid waste management system for Guam that will meet all applicable environmental standards, and will be mutually beneficial with DoD interests, and cost-effective.

NOW THEREFORE, in furtherance of the above recitals, **COMNAVREG, NAVFAC, JGPØ, the Receiver and GovGuam** agree to the following Letter of Intent concerning DoD involvement in Guam's future solid waste management system presently being developed pursuant to the Consent Decree.

1. Definitions: The following definitions are applicable to this Letter of Intent:

- a. Closure – actions taken by the owner or operator of a solid waste site or facility to cease operations and to ensure that all such facilities are closed in conformance with applicable regulations at the time for such closures and to prepare the site for the post-closure period.
- b. Commercial solid waste – all types of solid waste generated by stores, offices, restaurants, warehouses, multiple dwellings of five or more units, hotels, motels, bunkhouses, ranger stations, crew quarters, camp grounds, picnic areas, and day use recreation areas and other non-manufacturing activities, excluding residential and industrial wastes.
- c. Construction and Demolition waste – the waste of building materials, packaging, and rubble resulting from construction, remodeling, repair and demolition operations on pavement, houses, buildings, and other structures.
- d. Disposal – the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituents thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.
- e. Household Hazardous Waste (HHW) – household waste products which exhibit characteristics for reactivity, ignitability, corrosivity, toxicity, and persistence similar to hazardous waste. Examples include, but are not limited to drain cleaners, latex and oil paint, motor oil, antifreeze, fuel, poisons, pesticides, herbicides and rodenticides, fluorescent lamps, lamp ballasts, smoke detectors, medical waste, some types of cleaning chemicals, and consumer electronics (such as televisions, computers, and cell phones).
- f. Household Waste – any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (of single and multiple residences of up to four units).

- g. Industrial solid waste – solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA) or Guam's Hazardous Waste Management regulations.
- h. Material resource recovery facility – a facility where recyclable materials such as scrap metal, aluminum, newspaper, and paper are accepted for recycling.
- i. Municipal Solid Waste Landfill (MSWLF) unit - a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile , as those terms are defined in 40 CFR 257.2. A Municipal Solid Waste landfill may also receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste.
- j. Post-Closure - requirements placed upon disposal sites after closure to ensure their environmental safety for at least a 30 year period or until the site becomes stabilized (i.e. little or no settlement, gas production or leachate generation)
- k. Recoverable resources – materials that still have useful physical, chemical or biological properties after serving their original purpose and can, therefore be reused or recycled for the same or other purposes.
- l. Recovery – the process of obtaining materials or energy resources from solid waste
- m. Recycled material – a material that is used in the place of a primary, raw, or virgin material in manufacturing a product
- n. Recycling – the process by which recovered materials are transformed into new products.
- o. Solid waste – any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)
- p. Solid waste management – the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment , and disposal of solid wastes, including the recovery and recycling of materials from solid waste, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.
- q. Tipping Fees – Fees charged to dispose of or deposit solid waste in a municipal solid waste landfill unit or transfer station.

- r. Transfer station – any intermediate waste facility in which solid waste collected from any source is temporarily deposited and stored while awaiting transportation to another solid waste management facility.
 - s. Waste reduction – reducing the amount or type of waste generated.
- 2. COMNAVREG, NAVFAC, and JGPO** hereby state their intent to pursue appropriate contractual arrangements consistent with federal laws with the future solid waste agency, authority, or organization, to be authorized by the Receiver, in consultation with GovGuam, for solid waste management of DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste subject to the following terms and conditions:
- a. The development and execution of a time schedule for both the new MSWLF currently being developed by the Receiver pursuant to the Consent Decree and a solid waste management program that meets existing and future DoD military requirements
 - b. The establishment of a long-term regulatory and institutional management structure that ensures the financial viability of an integrated solid waste management program and new MSWLF, operated in accordance with applicable regulations and requirements.
 - c. Permitting and construction of a new MSWLF unit fully compliant with all terms and conditions of the Consent Decree and applicable environmental laws and regulations.
 - d. Agreement on appropriate and reasonable tipping fees and other charges covering solid waste management of DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste.
 - e. Development of appropriate waste reduction, resource recovery, and recycling plans for Guam and DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste.
 - f. Development of appropriate plans for disposal of construction and demolition waste generated by DoD activities. The parties, in consultation with GovGuam, may explore alternate uses or disposal options for some construction debris and demolition wastes.
3. It is the intent of the parties that tipping fees and other charges covering solid waste management of DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste will be subject to periodic adjustment as agreed by the parties and subject to review and approval by appropriate regulatory authorities such as the Guam Public Utilities Commission.
- TMJ
DDW*

4. It is the intent of the parties that tipping fees and other charges covering disposal of DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste into the to be constructed new MSWLF unit on Guam and associated solid waste management costs associated with waste reduction, resource recovery, and recycling efforts shall be based on a per ton rate covering:
 - a. Costs to plan, procure, finance, build, expand, operate, and maintain the new MSWLF and associated facilities on Guam to handle solid waste management of household waste, household hazardous waste, commercial solid waste, and industrial solid waste generated by the residents, businesses, and institutions of Guam and that generated by DoD over a period of at least 20 years from the date of initial operation, which is currently projected to be [TBD ~2011]
 - b. Costs for closure, post-closure monitoring, and post closure care efforts for the to be constructed new MSWLF, including certain financial reserves as may be necessary and required.
 - c. Costs to plan, procure, finance, build, operate, and maintain new material resource recovery facilities for the management of HHW generated by the residents, businesses, and institutions of Guam and that generated by DoD. Charges for use of such facilities shall be net of revenues, if any, gained from the sale of recoverable resources, to the extent DoD contractually agrees to use such new HHW material resource recovery facilities.
 - d. Costs to plan, procure, finance, build, operate, maintain, and manage any new material resource recovery facilities and equipment associated with waste reduction, resource recovery and recycling of solid waste other than HHW generated by the residents, businesses, and institutions of Guam and that generated by DoD. Charges for use of such facilities shall be net of revenues gained from the sale of recoverable resources, to the extent DoD contractually agrees to use such new material resource recovery facilities.
 - e. Costs associated with periodic updates of the Integrated Solid Waste Management Plan for Guam that account for solid waste generated by the residents, businesses, and institutions of Guam and DoD.
5. It is the intent of the parties that tipping fees and other charges covering disposal of DoD generated household waste, household hazardous waste, commercial solid waste, and industrial solid waste into the to be constructed new MSWLF unit and solid waste management costs associated with waste reduction, resource recovery, and recycling efforts shall include costs and programs only to the extent that DoD contractually agrees to use the programs and facilities giving rise to such costs.

6. It is the intent of the parties to cooperate in development of an island-wide program to dispose of HHW generated by the residents, businesses, and institutions of Guam and that generated by DoD. It is further the intent of the parties that costs for operation of programs HHW management, facilities, and equipment will be shared by the parties in proportion to contractual arrangements which shall be based on anticipated DoD quantities of HHW collected, processed and sold or disposed through such a joint program.
7. It is the intent of the parties to cooperate in development of an island-wide program for waste reduction, resource recovery and recycling of solid waste other than HHW generated by the residents, businesses, and institutions of Guam and by DoD. It is further the intent of the parties that costs for operating new material resource recovery facilities and equipment will be shared by the parties in proportion to contractual arrangements which shall be based on anticipated DoD quantities of solid waste , or recyclable materials, as applicable, other than HHW collected, processed and sold through such a joint program.
8. It is the intent of the parties that existing DoD waste reduction, resource recovery, and recycling efforts will continue, to the extent desired by DoD and that DoD shall maintain control over existing DoD materials resource recovery facilities and the revenues generated from the waste reduction, resource recovery and recycling of DoD generated solid waste. It is further the intent of the parties that DoD shall maintain control over disposal of construction and demolition waste generated by DoD activities and associated MSWLF units currently operated by DoD. The parties may explore alternate uses or disposal options for some construction debris and demolition waste.
9. It is the intent of the parties that DoD will bear the cost of collecting household waste, household hazardous waste, commercial solid waste, and industrial solid waste generated by DoD on its installations on Guam and that charges agreed to be paid by DoD shall not include costs of collecting other household waste, household hazardous waste, commercial solid waste, and industrial solid waste generated by the residents, businesses, and institutions of Guam on areas other than DoD installations on Guam.
10. It is the intent of the parties to reduce truck traffic into the to be constructed new MSWLF and the associated effects by using a properly permitted and located transfer station or stations.
11. It is the intent of the parties that all vehicles used for transporting household waste, household hazardous waste, commercial solid waste, and industrial solid waste either directly to or from transfer stations to the to be constructed new MSWLF shall use routes designated for such traffic in accordance with a routing plan to be developed in consultation with the Director of Public Works of the Government of Guam.

12. It is the intent of the parties that the to be constructed new MSWLF on Guam be operated in an efficient, cost-effective manner employing best practices to protect the environment and maximize its useful life.
13. It is the intent of the parties to plan and work cooperatively in joint solid waste management and recycling projects and programs as may be in their mutual interest.
14. It is the intent of the parties that this Letter of Intent may be amended, subject to the mutual written agreement of the parties.
15. It is the intent and understanding of the parties that no federal funds are obligated by this Letter of Intent. Furthermore, no provision of this Letter of Intent shall be interpreted to require obligation of funds by the Navy in violation of the Anti-Deficiency Act, 31 USC Sections 1301, 1341, 1342, and 1517.
16. It is the intent and understanding of the parties that this Letter of Intent may be terminated by any party upon providing 30-days written notice. The parties acknowledge such an action would be undertaken with all due consideration to potential adverse impacts on successful development of the critically required new MSWLF.

SO UNDERSTOOD AND AGREED by the parties hereto. Any reference to the date of this Letter of Intent shall be to the date as first stated at the beginning of this Letter of Intent.

D. Biesel
COMNAVREG
Date: 7/21/09
Peter J. Lynch
NAVFAC

Date: 22 July 2009

2009-07-22
JGPO
Date: _____

D. Biesel
RECEIVER
Date: 7/21/09
Felix P. Camacho
FELIX P. CAMACHO
Governor of Guam
Date: 17 July 2009

CERTIFIED TO BE A TRUE COPY

Beth C. Kontny
LT BETH C. KONTNY, JAGC, USN
STAFF JUDGE ADVOCATE
U.S. NAVAL BASE GUAM