**DRAFT AGREEMENT**
For
Provision of Solid Waste Disposal Services
By Guam Government to the US Navy

THIS SOLID WASTE DISPOSAL "AGREEMENT" made and entered into this xx day of XXXX, 201X, (the "Effective Date"), and is made by and between the COMMANDER NAVFAC REGION M MARIANAS (COMNAVRED), NAVAL FACILITIES ENGINEERING COMMAND MARIANAS, (NAVFAC). GERSHMAN, BRICKNER & BRATTON, INC. FOR THE DISTRICT COURT OF GUAM, TERRITORY OF GUAM (RECEIVER) and the GOVERNMENT OF GUAM (GOVGUAM).

SECTION 1. INTRODUCTION

The purpose of this AGREEMENT is to establish the terms for waste disposal by NAVFAC and associated U.S. Department of Defense organizations in the Layon Municipal Solid Waste Landfill ("LMSWL") or Transfer Station ("TS") and to establish a frame-work for mutual cooperation in the management of waste as defined in this AGREEMENT.

Prior Agreement. On July 17, 2009, the parties signed a LETTER Of INTENT ("LOI") in which they formalized their intention to develop this AGREEMENT; once executed, this AGREEMENT will replace the LOI.

SECTION 2. DEFINITIONS

1. Definitions of Waste –
    a. Acceptable Waste - The following types of waste are acceptable for disposal under this AGREEMENT:
        i. Non-hazardous Solid Waste, and
        ii. Special Waste

    as defined in Attachment A- Permit to Operate the LMSWL issued by GUAM Environmental Protection Agency ("GUAM EPA"), and Attachment B - Book 4, Operations Plan, Appendix B, as well as any other waste material described in the Permit to Operate issued by the GUAM EPA.

    b. Unacceptable Waste - Regulated hazardous waste, polychlorinated biphenyls (PCB), and any other material described in the current version of the Permit to Operate as defined in Attachment A- Permit to Operate the LMSWL issued by GUAM EPA, and Attachment B - Book 4, Operations Plan, Appendix B. GOVGUAM and NAVFAC agree to separately operate programs to enforce the exclusion of Unacceptable Waste from their respective collection systems so as to minimize the potential for disposal of Unacceptable Waste in the LMSWL.

2. Other Definitions.

    a. Closure - Actions taken by the owner or operator of a Solid Waste facility to cease accepting waste at the site in its entirety or in some portion of the site and to close in conformance with applicable regulations at the time for such closures and to prepare the site, or portion of the site for the post-closure period.

b. Commercial Solid Waste - Solid Waste generated by retail and commercial facilities, offices, restaurants, warehouses, residential dwellings of five or more units, hotels and other facilities for temporary housing, crew quarters, camp grounds, picnic areas, day use recreation areas, other non-manufacturing activities, and institutions including schools, colleges, and other governmental functions of various types.

c. Construction and Demolition Waste – Waste consisting of building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations of houses, buildings, factories, institutions, and other structures.

d. Disposal- The placing for final disposition of any Solid Waste into the LMSWL in accordance with conditions of the Permit to Operate issued by Guam EPA shall be considered acceptable disposal. Placing for final disposition Solid Waste in any other facility (other than those operated by the NAVFAC) shall not be considered acceptable disposal and will not meet the terms of this AGREEMENT.

e. Guam Public Utilities Commission (PUC) – The independent regulatory commission, which regulates the rate and rates impacting procurements of the Guam Power Authority, Guam Waterworks Authority, the Department of Public Works' Division of Solid Waste Management and the Guam municipal golf course.

f. Household Hazardous Waste (HHW) - Waste products which exhibit characteristics for reactivity, ignitability, corrosivity, or toxicity, as defined by the Resource Conservation and Recovery Act (RCRA), as amended, as hazardous waste, but are generated by households. 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). HHW may be disposed of in the LMSWL if such disposal is in compliance with the requirements of the RCRA.

g. Household Waste - Any Solid Waste (including garbage, trash, and sanitary waste in septic tanks) generated by households of single- and multiple-residences of up to four units.

h. Industrial Solid Waste - Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the RCRA or Guam's Hazardous Waste Management regulations.

i. Integrated Solid Waste Management Plan (Plan) - The set of objectives and approaches to reach them regarding solid waste management and recycling authorized by Guam Law and promulgated by the Guam EPA.

j. 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, and Industrial Solid Waste.

k. Post-Closure Care – Activities of monitoring and management of a MSWLF after closure has been completed to ensure environmental safety for at least a 30- year period after closure has occurred or such period as applicable law and regulations shall require.

l. Recycled Material- A material that is used in the place of a primary, raw or virgin material in manufacturing a product

m. Recycling - The process by which materials are recovered from Solid Waste for use in new products and materials.

n. Reuse- The use of a material or item for a second or subsequent use similar to that for which the material or item was originally intended.

o. Scavenging - The action of a person or person(s) removing materials from loads of Acceptable Waste delivered to the LMSWL or TS for their own personal benefit, on an informal basis and not as a contracted or organized activity at the LMSWL or TS.

p. Solid Waste - Any garbage, 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 US.C. 1342, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)

q. Solid Waste Management - The systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of Solid Waste, including the recovery and recycling of materials from Solid Waste.

r. Tipping Fees - Fees charged to dispose of or deposit Solid Waste in a LMSWLF unit or TS. The tipping fee under this AGREEMENT shall be assessed and calculated on a per ton basis.

s. Transfer Station - An intermediate waste facility in which Solid Waste collected from any source is temporarily deposited and stored while awaiting transportation to another Solid Waste Management facilityfor Disposal.

t. Waste Reduction – The act of reducing the amount or type of waste generated.

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SECTION 3. COMMODITY AND SERVICES

1. Responsible Agency. GOVGUAM agrees to pursue development and implementation of an Authority that will function to plan, manage, finance, and operate or cause to be operated the LMSWLF or TS, and all other elements of the Solid Waste disposal system under the control of the Receiver as of January 1, 2010. The Authority shall be governed in substantially the same manner as the Guam Water Works Authority and shall have its rates governed by the Guam Public Utilities Commission. GOVGUAM agrees, upon the creation and commencement of operation of the Authority, to assign and convey all rights for fixed and non-fixed assets used to provide Solid Waste Management services including the LMSWLF, TS, and all other proposed and actual elements of the Solid Waste Management system to the Authority.

2. Services To Be Provided.
    a. Disposal Services. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER agree to provide for NAVFAC disposal of Acceptable Waste in the LSMLF under the Terms of this AGREEMENT. Materials not meeting the definition and terms of Acceptable Waste may not be delivered to the LMSWL.
    b. Transfer Station. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the REICEIVER agree to provide access to a properly constructed and permitted TS, and NAVFAC shall have rights to deliver its Acceptable Waste to this TS.

3. Operational Schedule. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER agree to develop and implement an operational schedule that will allow deliveries of Acceptable Waste at the LMSWL consistent with Operations Plan, Book 4, including Section 5.1 and 7.0, and at the TS during business hours of a minimum of 8:00 am to 4:00 pm, Monday through Friday, holidays excepted. Holidays and other conditions that will provide for closing of the LMSWL shall also apply and cause the closing of the TS.

4. No Scavenging Policy. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER agree to develop, implement, and enforce a policy to prohibit Scavenging at the LMSWL and at the TS. Such requirements shall be included in any contract with any private contractor(s) engaged to operate either of the LMSWL or the TS and shall apply to GOVGUAM's and contractors' employees, agents, and subcontractors, and also shall apply to all other persons.

5. Method of Delivery of Waste. All Solid Waste shall be consolidated prior to delivery to the LMSWL. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER may, in their sole discretion, allow vehicles direct access to the LMSWL if such direct access is determined to be in the best interests of maintaining an effective and efficient Solid Waste Management system. Any Special Waste for which acceptance program(s) are implemented shall be delivered in accordance with adopted operating procedures of the LMSWL and/or the TS.

6. Other Programs . GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER agrees to develop and implement, on an

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ongoing basis, appropriate Waste Reduction, Reuse, and Recycling programs. GOVGUAM and NAVFAC agree to explore participation by NAVFAC in these programs but acknowledge that participation by NAVFAC in such programs is not required.

7. Rights to Military Programs. GOVGUAM shall not have any rights or control over material recovery facilities, Waste Reduction or Reuse programs, Recycling programs, waste collection programs, or ancillary programs operated by NAVFAC and the costs and revenues associated with them.

8. Construction and Demolition Waste. GOVGUAM agrees that NAVFAC shall maintain control over disposal of Construction and Demolition Waste generated by military installations on Guam and associated Solid Waste landfills operated by military installations during the Term of this AGREEMENT. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER and NAVFAC agree to explore, Reuse, Recycling, or other alternate uses or disposal options for certain Construction and Demolition Waste or materials.

SECTION 4. SCOPE AND DURATION OF AGREEMENT

1. Agreement Term. The Initial Term ("Initial Term") of this AGREEMENT shall be _____ years (the maximum time permitted under applicable DOD regulations) from the date Acceptable Waste is first accepted for disposal at the LMSWL or TS. GOVGUAM, acting through the Authority created pursuant to Section 3, Item 1 and the RECEIVER agree to provide disposal services to NAVFAC and NAVFAC agrees to utilize these services in accordance with the applicable Tipping Fees, rules, and regulations as approved by the applicable governing regulatory body and as set forth in this AGREEMENT. Notwithstanding the foregoing, if GOVGUAM has not established and implemented the Authority described in Section 3, item 1 of this AGREEMENT at the time the Receivership is terminated by the District Court of Guam, NAVFAC shall have the right to terminate this AGREEMENT with thirty (30) days' written notice.

2. Agreement Extension. All other conditions of this AGREEMENT must be met during the Initial Term as a condition to execute an extension as described in this AGREEMENT. AGREEMENT extension periods will be for no less than __ years in duration (the maximum time permitted under applicable DOD regulations), and will become effective automatically unless either GOVGUAM or NAVFAC notifies the other party no less than 180 days prior to the renewal date of its intention not to extend the AGREEMENT.

3. Maintenance of Existing Military Landfills. NAVFAC intends to maintain its current waste disposal facilities in open status for disposal services to be used for disposal of Construction and Demolition Waste or Acceptable Waste if the LMSWL is unavailable due to a Force Majeure event or if GOVGUAM fails to meet all requirements in this AGREEMENT.

4. It is expressly understood that neither GOVGUAM nor NAVFAC is under any obligation to continue any service under the terms and conditions of this AGREEMENT beyond the expiration date.

5. GOVGUAM agrees to provide NAVFAC, through certified mail service with the USPS or by hand delivery to NAVFAC's designated Contract Officer, one complete set of rates, terms, and conditions of service which are in effect as of the date of this AGREEMENT and any subsequently approved rates as the Guam Public Utilities Commission may authorize, and GOVGUAM agrees to continue furnishing service under this AGREEMENT in accordance with the amended tariff, and NAVFAC agrees to pay for such service at authorized rates as of the date when such rates are made effective.

6. Starting Date of Services Under This AGREEMENT. The start date of disposal services shall be no later than 60 days after the LMSWL commences commercial operation. GOVGUAM shall provide NAVFAC written notice of the specific start date.

7. Default By GOVGUAM. GOVGUAM will be in default of this AGREEMENT for suspension of disposal services, unless suspension is the result of a Force Majeure event as defined by this AGREEMENT. NAVFAC agrees to notify GOVGUAM if any incident of default occurs and to allow GOVGUAM 30 days to provide a cure for default or demonstration of a plan to cure with a schedule mutually agreed upon by GOVGUAM and NAVFAC.

8. Fees. Fees for disposal services will be as set by the Guam Public Utilities Commission and remain in effect until revised pursuant to the regulatory process of the Guam Public Utilities Commission.

    a. Disposal fees charged NAVFAC pursuant to this AGREEMENT and set by the Guam Public Utilities will be the same as fees charged to commercial customers of the LMSWL or TS.

    b. GOVGUAM agrees to give NAVFAC written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the Guam Public Utilities Commission as of the date of this AGREEMENT.

    c. In the event that a regulatory body promulgates any regulation concerning matters other than rates which affects this AGREEMENT, upon becoming aware of such regulation GOVGUAM shall promptly provide a copy to NAVFAC. NAVFAC shall not be bound to accept any new regulation inconsistent with applicable laws or regulations.

    d. In the event NAVFAC delivers Unacceptable Waste to GOVGUAM, GOV GUAM or its contractor will separate out such waste and dispose of it in appropriate facilities or return it to NAVFAC. NAVFAC agrees to pay GOVGUAM's cost of the separation, return and/or disposal of such Unacceptable Waste.

9. LMSWL or TS Contractor. GOVGUAM agrees to conduct a competitive procurement process(es) to select the fully qualified contractor(s) for operation of the LMSWL and of the TS, and further, to impose requirements on said contractor(s) to ensure the environmental and technical compliance

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with the LMSWL and TS permits issued by GUAM EPA, operated in accordance with applicable Guam and federal laws, regulations, and permit requirements, and to enter into contract(s) with the selected contractor(s). Prior to expiration of the initial contract(s) entered into for this purpose, GOVGUAM agrees to conduct a competitive procurement(s) for a replacement contractor(s) for operation of the LMSWL and of the TS. This procurement process will be repeated as needed to ensure qualified private contract operations of the LMSWL and TS during the Initial Term of this AGREEMENT, including all extensions beyond the Initial Term of this AGREEMENT.

10. Access for Compliance Observation. GOVGUAM agrees to, and will include in each contract for the operation of the LMSWL and TS, complete access by GOVGUAM, the RECEIVER, and NAVFAC to observe operations of the contractor without notice to ensure compliance with the contract and with this AGREEMENT.

11. Scale House. GOVGUAM shall retain ownership and operation of the scale house at the LMSWL and TS and such operation(s) shall be subject to an annual audit conducted by an independent third party. GOVGUAM agrees to provide for routine scale certification at the LMSWL and TS, the latter when implemented, in compliance with Guam regulation and in addition, to provide for one additional certification by a third party at the same frequency required by Guam regulations. If the scales are not working properly or are being tested, GOVGUAM shall estimate the quantity of waste delivered on the basis of truck volumes and historical information about NAVFAC or its designated Haulers. These estimates shall take the place of actual weighing records during the scale outage and will be the basis of NAVFAC's payment for waste delivered to the LMSWL or TS during the outages.

12. Revenue Fund. GOVGUAM agrees to set up a fund to receive all revenue (the "Revenue Fund") from Solid Waste Management services provided to NAVFAC, other customers, and GOVGUAM. GOVGUAM agrees to appoint a trustee organization that meets fiduciary requirements of GOVGUAM to manage and maintain the Revenue Fund. Should this provision be determined by bond counsel to be in conflict with the terms of any applicable bond indenture, the terms of the applicable bond indenture shall be controlling.

13. Reserve Fund. GOVGUAM and the RECEIVER agree to set up a fund to receive monies budgeted for reserves (the "Reserve Fund") for equipment replacement, closure of cells and of the entire LMSWL, Post-Closure Care to respond to regulatory requirements, and any cell construction costs to be funded from the operating budget. This Reserve Fund shall be managed by the same trustee managing the Revenue Fund. Should this provision be determined by bond counsel to be in conflict with the terms of any applicable bond indenture, the terms of the applicable bond indenture shall be controlling.

14. Force Majeure. No party shall be liable for any failure to perform its obligations under this AGREEMENT where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, typhoon or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government

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sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, and no party will have a right to terminate this AGREEMENT under Clause (Termination) in such circumstances.

Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be taken.

SECTION 5. GENERAL CONDITIONS

1. Compliance with Applicable Laws and Regulations. GOVGUAM agrees to maintain the LMSWL and TS in full compliance with all applicable United States and GOVGUAM laws and regulations.

2. Exclusive Use. NAVFAC agrees to use GOVGUAM's LMSWL or TS for all Acceptable Waste requiring disposal during all times when GOVGUAM's LMSWL and TS are accepting waste and in compliance with this AGREEMENT. Placing for final disposition of Solid Waste in any other facility (other than those operated by the NAVFAC) will not meet the terms of this AGREEMENT.

3. Ownership of Waste. Acceptable Waste being delivered to the LMSWL or TS, shall become the property of GOVGUAM once it is delivered and accepted by the LMSWL or TS operator.

4. Notices. The respective addresses for each party to receive any notice required under this AGREEMENT are:

    a. GOVGUAM:
    b. NAVFAC:
    c. RECEIVER: Gershman, Brickner & Bratton, Inc., 8550 Arlington Boulevard, Suite 304, Arlington, Virginia 22031

    Any party may specify a different address or contact by serving notice of such change to the other parties.

5. Conflicts. The terms of this AGREEMENT shall prevail over any inconsistent or conflicting terms of any exhibit or attachment to this AGREEMENT.

6. Headings or Titles. The headings or titles preceding each Section or Paragraph or Subparagraph are for identification purposes only. They shall not be construed as conferring any substantive contract right or duty on any party

7. Applicable Law. This is a Federal AGREEMENT. It shall be interpreted and enforced under the rules, regulations, laws and policies of the United States only. This AGREEMENT is subject to federal court jurisdiction only.

8. No Joint Venture. Nothing in this AGREEMENT will make, or be construed to make, the parties hereto partners or joint venturers. Nothing in this AGREEMENT

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shall render, or be construed to render, any of the parties liable to any third party for debts or obligations of the other parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT, as of the day and year first above written.

| | |
|---|---|
| _____ | _____ |
| **COMNAVREG** | **RECEIVER** |
| Date: _____ | Date: _____ |
| _____ | _____ |
| **NAVFAC** | **FELIX P. CAMACHO**<br>**Governor of Guam** |
| Date: _____ | Date: _____ |

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