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**MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

**THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT (“Agreement”)** is by and between **SMITHBRIDGE GUAM INC.** (“Smithbridge”), whose mailing address for the purpose of this agreement is P.O. Box 11700, Yigo, GU 96929, and **THE GUAM ENVIRONMENTAL PROTECTION AGENCY OF THE GOVERNMENT OF GUAM** (“Guam EPA”), whose address, for the purpose of this agreement, is c/o the Office of the Attorney General, 590 S. Marine Corps Drive, Suite 706, Tamuning, Guam 96913.

**RECITALS**

A. Smithbridge conducted earth-moving operations at Lot No. 7024-R5, located along Route 15 in Yigo, under Grading Permit No. G16000138 which expired on January 10, 2018 and was not renewed. Lot 7024-R5 is approximately 29.162 acres in size. On the basis of an April 2, 2019, site inspection, Guam EPA served Smithbridge with a Notice of Violation and Compliance Order (“NOV/CO”) on May 8, 2019, citing Smithbridge with violating the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152, as follows: (1) performing grading, clearing, grubbing, embankment, filling, excavation and other earth-moving activities without a grading permit (22 GAR §10103(A)).

B. Guam EPA recognizes the following with respect to the original violation: although the permit had expired, work continued on the site in full compliance with the terms of the original permit; the expiration of the permit did not result in any additional environmental impact that would not have occurred had the permit been renewed on time; and Smithbridge



submitted a new permit application and complied with all terms of the May 8, 2019 NOV/CO promptly and completely.

C. Guam EPA recognizes a public benefit resulting from the provision of training to contractors in the requirements and implementation of erosion and sediment controls at construction sites. The Guam Trades Academy offers a course titled "Guam Erosion and Sediment Control, Module 1" that was developed in conjunction with the Government of Guam to train contractors in the requirements and field implementation of the Guam Soil Erosion and Sediment Control Regulations and the 2006 CNMI & Guam Stormwater Management Manual, which was adopted under Executive Order 2012-02. Under Section 2.1.1 of that manual, Erosion and Sediment Control (E&SC) Standard 8 requires that "all construction site managers (or superintendents) shall provide documentation that they have received adequate training in the application and maintenance of erosion and sediment control practices." This course was designed to meet the requirement of E&SC Standard 8.

A. The parties agree that the terms and conditions set forth herein is sufficient consideration as settlement in full for any administrative action and any civil claims or actions arising from the May 8, 2019, NOV/CO.

B. This Agreement shall become operative upon execution hereof. In the event this Agreement is deemed void, all administrative and civil remedies will be available and may be pursued by Guam EPA.

**NOW THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties agree as follows:


1. **Purpose of Agreement.** The Parties acknowledge and agree that this Agreement is a settlement and compromise of the May 8, 2019, NOV/CO. The parties intend by the

execution of this Agreement to fully, finally and completely resolve all disputes between them regarding the May 8, 2019, NOV/CO as set forth in this Agreement.

**2. Smithbridge's Obligations.**

- 2.1 Smithbridge admits the allegations of the May 8, 2019 NOV/CO.
- 2.2 Smithbridge shall stipulate to a dismissal of the appeal of the May 8, 2019, NOV/CO with prejudice.
- 2.3 Smithbridge agrees to pay five thousand dollars (\$5,000.00) ("Settlement Payment") to Guam EPA no later than fourteen (14) days after the date Guam EPA executes this agreement and serves Smithbridge with a copy.
- 2.4 Smithbridge agrees to execute a Supplemental Environmental Project ("SEP") consisting of the funding of the Guam Trades Academy's course "Erosion and Sediment Control, Module 1" for up to 20 courses, each with a potential maximum of 15 students, offered over a period of 4 years following the date of execution of this settlement agreement. These courses will be paid for by Smithbridge directly to the Guam Trades Academy. The Guam Trades Academy will determine course schedules and enrollment requirements on the basis of maximizing enrollment given the prescribed time period and number of courses to be funded. Smithbridge will provide a report to the EPA on the course progress and investment in the courses on a progressive basis as each course is conducted.
- 2.5 If Guam EPA does not receive the Settlement Payment in full on or before the dates determined by Subsection 2.3 above, then Guam EPA, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:



- 2.5.1** Extend the period of time for the Settlement Payment in writing, and include interest accruing from the due date determined by Subsection 2.2 above, through the date of payment at a rate calculated at 5 percent (5%) per annum; or
- 2.5.2** Enforce this Agreement, in which event Smithbridge agrees to jurisdiction in the courts of Guam; or
- 2.5.3** Terminate the Agreement , to which Smithbridge consents and agrees that Guam EPA shall re-institute any administrative or civil legal action on Guam EPA's claims concerning the May 8, 2019, NOV/CO. Smithbridge further agrees to waive any defense based on any statute of limitations that would bar any of Guam EPA's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or
- 2.5.4** Seek any other relief available to it in law or equity.
- 2.5.5** Any extension of time granted by Guam EPA under this Agreement for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice Guam EPA's rights to take any of the actions set forth in Subsections 2.3.2 through 2.3.4 at any time prior to receipt of Settlement Payment (including any and all accrued interest) in full.
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**2.6** If Smithbridge does not execute the SEP in accordance with the terms described in Subsection 2.4 above, then Guam EPA, in its sole discretion, shall have the right at any time prior to receipt of reports documenting the completion of execution of the SEP as described in Subsection 2.4 to:

**2.6.1** Extend the period of time for the SEP in writing; or

**2.6.2** Enforce this Agreement, in which event Smithbridge agrees to jurisdiction in the courts of Guam; or


**2.6.3** Terminate the Agreement, to which Smithbridge consents and agrees that Guam EPA shall re-institute any administrative or civil legal action on Guam EPA's claims concerning the May 8, 2019, NOV/CO. Smithbridge further agrees to waive any defense based on any statute of limitations that would bar any of Guam EPA's claims and waive all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

**2.6.4** Seek any other relief available to it in law or equity.

**2.6.5** Any extension of time granted by Guam EPA under this Agreement for execution of the SEP or acceptance of a portion of the SEP shall not prejudice Guam EPA's rights to take any of the actions set forth in Subsections 2.6.2 through 2.6.4 at any time prior to full execution of the SEP in full.

**3. Guam EPA Obligations.**



- 3.5 Guam EPA shall settle the pending administrative matter regarding the May 8, 2019, NOV/CO for the sum of \$5,000.00 and the execution of the SEP as described in Subsection 2.4 above for the violations alleged under the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152.
- 3.6 Upon receipt of confirmation of the payments specified in Subsection 2.3, and upon receipt of reports documenting the completion of execution of the SEP as described in Subsection 2.4, Guam EPA will dismiss with prejudice any action against Smithbridge regarding the May 8, 2019, NOV/CO.
4. **Independent Advice of Counsel.** Each party has had the opportunity to receive independent advice from its respective attorneys with respect to the advisability of this settlement and the advisability of executing this Agreement. Each party further represents and declares that it has not relied upon any statement or representation by the other party or of any of its partners, agents, employees, or attorneys in executing this Agreement or in making this settlement, except as expressly provided for herein. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.
5. **Voluntary Agreement.** The parties represent and declare that they have carefully read this Agreement, know the contents of this agreement, and that they have signed the same freely, voluntarily and knowingly.
6. **Release.** Except for the rights and obligations created by this Agreement, the parties hereby fully release and forever and irrevocably discharge all claims of any nature related to or arising from the May 8, 2019, NOV/CO whether known or unknown, asserted or
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unasserted, whenever and howsoever arising, that have been or could have been or may in the future be asserted, against any party, including that parties' employees, agents and similar persons.

7. **Exceptions from Releases by Guam EPA.**

7.5 Notwithstanding any other provision of this Agreement, Guam EPA does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

7.5.1 Against Smithbridge or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any check, promissory note or indebtedness payable or owed by them to Guam EPA, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by Guam EPA based on a failure of consideration by Smithbridge; and

7.5.2 Against any person or entity not expressly released by Guam EPA in this Agreement.

7.6 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of Guam EPA in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person for incidents or occurrences separate from the May 8, 2019, NOV/CO.





- 7.7 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to prevent Guam EPA from considering the allegations arising out of the May 8, 2019, NOV/CO to be prior violations for the purposes of any enforcement action arising out of any incident occurring subsequent to the May 8, 2019, NOV/CO.
- 7.8 Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6.
8. **Parties to Bear Own Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs incurred with respect to the May 8, 2019, NOV/CO and this Agreement.
9. **Use of This Agreement in Court.** This Agreement may be pleaded as a full and complete defense to any causes of action that may be instituted, prosecuted or attempted for, upon, or in respect of any and all parts of the May 8, 2019, NOV/CO, so long as neither Party is in breach of the terms of the Agreement.
10. **Severability.** If any portion or term of this Agreement is held unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall remain in full force and effect.





IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written by their respective names.


  
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**ALBERT SMITH**  
Vice President & Managing Director  
Smithbridge Guam, Inc.

  
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**WALTER S. LEON GUERRERO**  
Administrator, Guam Environmental Protection Agency

Date: 14 MAY 2021

Date: 05/19/2021

**APPROVED AS TO FORM:**


  
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Michael J. Gatewood  
Attorney for Smithbridge Guam, Inc.

 **MICHAEL J. GATEWOOD**  
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330 HERNAN CORTEZ AVENUE, SUITE 300, HAGATÑA, GU 96910

Date: May 14, 2021

**OFFICE OF THE ATTORNEY GENERAL**

  
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**KRISTAN K. FINNEY**  
Assistant Attorney General

Date: 5-17-2021