Comments from J White Jan 75 — Jan 7, 1975

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COMMENTS ON U. S. DRAFT OF TECHNICAL AGREEMENT

I will not attempt to go into the various language problems that are obvious from a read of this draft. I will devote my commentary mostly to the substance and issues involved.

I have no particular objection to the introductory material on page 1, but it just doesn't use normal legal language applicable to an agreement, such as the whereases and the therefores.

Under Part I, Section 1, there is no problem with the use of the language; however, maps should be checked closely to insure conformity with our present intentions--especially in reference to San Hose Harbor wherein we are keeping nine (9) acres plus six hundred (600) feet of pier area plus the roadway.

4(b)(2)

Under Part I, Section 2(d), reference is made to the one hundred thirty-three (133) acres of land to be used for a Memorial Park. The procedure to be followed in this area should be the dedication of the one hundred thirty-three (133) acres for the Memorial Park and then a lease of the full one hundred seventy-seven (177) acres of land subject to the terms of the dedication in reference to the acreage for the Memorial Park. In a meeting here on Saipan between

myself, Walt Appelle, Roy Markon, and Emmett Rice, we went through the various procedures to be used and this was Roy Markon's best suggestion, unless we are willing to give up the fee. Then the United States would dedicate for park use. I indicated our reluctance here for the Marianas to give up the fee and he then agreed that it would be appropriate for the Marianas to make the dedication and then lease the land to the United States subject to that dedication. The dedication could include some limiting language such as military use during national emergency if it is properly restored and all damages covered. In this section the United States makes no clarification as to how the trust fund is to be used, only that a $2 million trust fund is to be established for the development of the park and maintenance. However, in another section of the document they restrict it to income. A distinction should be made here as to whether or not more than income is allowable for the development and/or maintenance of the park. My personal preference is to keep the restriction as to income because that will insure a very adequate park facility for years to come, however, there was sentiment to the contrary voiced during our last session. We should get rid of the redundancy of the language which appears here and again on page 8.

The following full paragraph under Section 2 had no subsection lettered in so I have included it on the draft as subsection

(e). The problems with the terminology that the United States uses are as follows:

1. There is no date as to when the lease is to be signed. Without such a limiting time factor, the United States could extend the lease for years on a defacto basis without payment before signing.

2. There is no allowance for appropriating ten percent (10%), plus or minus, interest from the date of signing till actual payment. This could deprive the Marianas of millions of dollars of income potential. If we can get them to concede to this point we can indirectly assist our client tremendously.

3. The use of the Guam Consumer Price Index is fine for any percentage change up or down as long as the bottom line figure never goes below $19,520,600.

4. When they refer to five (5) years from the effective date of this agreement, do they mean the technical agreement or the actual lease?

5. Should there be some form of guarantee if, after the United States signs the lease, no money is forthcoming; i.e., should there be a penalty? I don't know if this is possible under United States law; but if we could have a sufficiently severe penalty included, it would tend to push Congress in the right direction. To not have a form of penalty, as well as the interest described above, the United States could effectively take eighteen thousand (18,000)

acres of land out of circulation for a long period of time without any recompense.

Under Part I, Section 3, there appears to be a technical error in the second paragraph wherein, if the United States terminates early, it is not required to hold the Government of the Northern Marianas harmless. However, on the alternative the Government of the Northern Marianas is required to hold the United States harmless. This should be corrected.

This is an appropriate point to inform you of a discussion I had with a member of the Trust Territory Government who apparently has rather close connections with Jones. He said that Jones indicated that he would like very much to trade the acreage he has under lease in the southern one third (1/3) for grazing land leasing capability, under the same terms and conditions, in the northern area above West Field, west of Broadway. This apparently would consolidate his holdings, has good grazing land, and it would free up the southern one third (1/3) from the onus of having so much of the southern one third (1/3) being out on lease. This could also be helpful in the present homesteading program. I have checked with no one from Tinian with reference to this, but it may be interesting to sound out the United States as to whether or not they would like to develop this approach.

Under Part I, Section 4, regarding leasebacks, if you can change the one dollar ($1.00) per acre per year to just one dollar ($1.00) per acre it would save several thousands of dollars per year to the Marianas; and it would also make the accounting much easier. We could use the analogy of the United States, where they wanted a lump sum to avoid accounting problems. Under Sub-section A(1) of this section there are small letters a, b and d. These appear to give our friendly base commander all that discretion that we have been consistently trying to avoid. No doubt he should have this capability in reference to land north of West Field, but the present terms give him the same capability south of West Field. Under Sub-section A(2) reference is made to the area south of the present West Field and it includes an additional revocation clause which appears redundant. In addition, the uses in this area appear to be too restrictive. We should try to get them expanded, and as stated above, especially in reference to this land, the restrictions indicated in Sub-section A(1), a, b and d should not apply.

Under Sub-section A(4), the land should be leased back to the Government of the Northern Marianas for two (2) reasons:

1. To develop a general principle for all leaseback land, that it be leased back to the Government of the Northern Marianas and not to individuals.

2. Most of the present grazing leases have now in fact expired.

It might also be worthwhile if we attempt to expand the grazing only use, at least punch this back into uses of land being "compatible to the planned military activities." This might allow an individual to do something other than just grazing with appropriate permission. As it stands now, I can just hear some base commander saying, "Gee, fellow, I would love to let you grow plants there, but this technical agreement won't allow it."

Under Sub-section A(5), the second line from the bottom on page 6 indicates a reference to paragraph 3. I am not sure what the correlation is here with the MDC lease which is the subject matter of paragraph 3. Again, the leaseback should be to the Government of the Northern Marianas, and the Government of the Northern Marianas should then, on a case by case basis, sublease the land to its former owners. This gives the necessary flexibility to the Government of the Northern Marianas to deal with the present land owners to arrive at a negotiated settlement on their land, and it also establishes the principle that any leaseback of military land in the Northern Marianas goes only to the Government of the Northern Marianas and not to other individuals. Obviously the exception for other United States Government agencies having priority probably has to stand, but it would be better if the Government of the Northern Marianas came first on that priority if possible.

Page 7 should be page 8 and page 8 should be page 7.

Under Sub-section A(6), the United States uses the words, "...old terminal building." If possible, that should be changed to read "...the then existing terminal facilities." Also, there should be specific language inserted to allow for necessary expansion of the present terminal facilities and that expansion would be subject to appropriate reimbursement whenever the facilities are moved. Should the new West Field be developed, the United States should pay, not only the cost of the then existing terminal facility, but also cover the cost of a new apron, aircraft parking area sufficient to handle two (2) 707's and eight (8) private planes, automobile parking for at least fifty (50) cars and adequate roadways to get to the main road. Interestingly enough, in this draft they have neglected to indicate any reference to the possibility of relocation after placement at the new West Field as was previously done. It is very important to include a third alternative that, should the facilities on the new field need to be taken over by the military, the military would insure continued use of the new West Field and would also pay all expenses of relocating the then necessary facilities. To not have this assurance within the agreement would mean that, after the new field is developed, should the United States military need to make use of that area, they could take it over in accordance with Sub-section A(1) which could

close the location and access, and may or may not adequately recompense for the loss of such facilities.

Under Sub-section B(1), in reference to Tanapag Harbor, the same problem exists as previously described regarding the Memorial Park area. This is mainly a redundancy problem. As to the forty-four (44) acres mentioned at the top of page 7, in no way should this acreage be subject to the same restrictions as indicated for land on Tinian. Also, specific language should be included to allow structures of sufficient size and durability to attract the best economic capability for this acreage. Assurances should be included that, if cancellation is required, fair compensation for all improvements would be forthcoming. In reference to the park, it should be made clear that it will not be subject to any restrictions except those specifically stated within this section. It is important that no ambiguity develop wherein the general principles of Tinian might be applied to the Tanapag area.

Under Part II, Section 1, in reference to joint use of San Jose Harbor, Tinian, I like the wording in reference to construction of a full base development. This is a step forward from their previous push for United States control during this period, however, I would like to see the words, "subsequent periods" deleted. This would mean joint control

during military construction only. Other than that, the harbor would be under the control of the Government of the Northern Marianas. I am also glad to see that the United States is finally coming around to using the word "reimburse" in reference to the six hundred (600) feet of wharf area. It would be nice if we could develop language to expand upon the word "reimburse" to mean "payment after the job is completed." The language should show that the option, of whether or not the Government of the Northern Marianas will upgrade their approximate six hundred (600) feet of wharf space or pay the United States Government for doing same, is the option of the Government of the Marianas and not the United States Government. One other point is that there is no indication of the POL capability. The terminology of the United States in their draft report of the Joint Land Committee would appear adequate:

> "POL FACILITIES, WHEN DEVELOPED, SHOULD BE SO DEVELOPED AS TO ADEQUATELY ALLOW OTHER COMMERCIAL OPERATIONS TO CONTINUE ON AN UNINTERRUPTED BASIS DURING THE LOADING AND OFF-LOADING OF POL PRODUCTS...NORMAL COMMERICAL HARBOR OPERATIONS ALLOW FOR CONCURRENT HARBOR ACTIVITIES INVOLVING POL PRODUCTS AND OTHER COMMERICAL CARGO LOADING AND UNLOADING. HOWEVER, THE MILITARY SAFETY REGULATIONS ARE SUFFICIENTLY STRINGENT IN A HARBOR AS SMALL AS SAN JOSE HARBOR TO IMPOSE SOME RESTRICTIONS ON CONCURRENT EXERCISE OF BOTH ACTIVITIES...IT IS APPROPRAITE AND DESIRABLE THAT THE LESS STRINGENT COMMERCIAL STANDARDS BE ADOPTED, THUS MINIMIZING POSSIBLE INTERFERENCE WITH CIVILIAN ACTIVITY."

During the construction period, when there would be joint

control at the harbor, again referring to language of the United States in their draft of the Land Committee report:

> "THE UNITED STATES WILL ENCOURAGE THE DEVELOPMENT OF MARIANAS CAPABILITIES BY AWARDING PORT SERVICE CONTRACTS, WHENEVER POSSIBLE, TO QUALIFIED LOCAL FIRMS IF EXISTING LAWS AND REGULATIONS PERMIT SUCH PORT SERVICE CONTRACTS TO BE SO AWARDED ON A PREFERENTIAL BASIS. THE UNITED STATES WILL ATTEMPT TO RECRUIT, EMPLOY AND TRAIN CITIZENS OF THE MARIANAS FOR PORT RELATED JOBS OF ALL LEVELS."

The United States also proposed that, should the United States start using the port area extensively:

> "CERTAIN EXPENSES ATTRIBUTABLE TO BOTH THE AREA RETAINED BY THE GOVERNMENT OF THE MARIANAS AND THE AREA ACQUIRED BY THE UNITED STATES WILL BE PAID FOR BY VESSELS USING THE PORT FACILITIES...IT IS PROPOSED...THAT A COMMITTEE BE ESTABLISHED WITH MEMBERSHIP FROM BOTH THE UNITED STATES AND THE GOVERNMENT OF THE (NORTHERN) MARIANAS TO DEVELOP AND DETERMINE ALL ASPECTS OF THIS OPERATION AS TO CONTROL OF VESSELS AND PAYMENT OF FEES."

Under Part II, Section 2, Sub-section B, development costs should be made clear to reflect that future civilian terminal facilities be restricted to the present location at the present West Field. Should there be a removal from that location to a new West Field, the other principles should apply.

Under Part II, Section 2, Sub-section C, in the last sentence after the word "with" and before the word "private", the

words "adequate and capable" should be inserted. It would not assist the Government of the Northern Marianas to have an entity established that would be nothing more than civilian competition at unreasonable prices and inadequate service.

Under Part II, Section 2, Sub-section G, relating to landing fees, we may want to attempt to include the dispostion of these landing fees in accordance with the Joint Military/Civilian Relations Committee rather than just having it appear as it does now that these fees will go to the United States. It will give the future committee an opportunity to gain for the Government of the Northern Marianas some substantial landing fees in the future.

There is no mention within this section of use of military hangers and related maintenance facilities. Again, referring to the report of the Joint Land Committee's draft by the United States, they use the terminology:

> "ALL USE OF MILITARY HANGERS AND RELATED MAINTENANCE FACILITIES BY CIVILIAN AIRCRAFT WILL BE IN ACCORDANCE WITH THE THEN-EXISTING HOST SERVICE GUIDELINES AND FEES."

Under Part III referring to social structure, in the general verbage, "...modified by mutual agreement...", after the word "agreement" the words "in writing" should be added.

Under Part III, Section 1, the last two (2) words, "commercial activities" are a new wrinkle. Possibly the reason this has been inserted is because of the MDC lease; however, one of the sorest points with the people of Tinian is the closing of Long Beach by Jones after he previously verbally agreed to keep it open. Consequently, unless there is some other valid reason for the use of the word "commercial" it should be restricted to military only.

Under Part III, Section 2, the first sentence apparently leaves out the necessary words. It should read, "Marianas citizens should have the same access to beach areas in the military areas of Tinian for recreational purposes as the military personnel and their dependents have for recreational purposes." The last sentence could create problems. It would be a very easy thing for the military to set up regulations that would be easy for the military to follow, but not the civilian community. For example, the requirement of signing up to use a beach area twenty-four (24) hours in advance of a permit to use that beach area being issued, and then requiring the signing up to be done on the military base itself would effectively restrict the civilian community from using these beach areas. Some appropriate wording to indicate that, if the beach areas are open for military and/or their dependents for recreation, there shall be free access without need of any pass or prior approval

to the civilian community, subject to reasonable regulations of use on the beach area itself applicable to both the military and civilian communities.

Under Part III, Section 3, referring to utilities, the only major problem is the retreating on the part of the United States from the development, after planning on an island-wide basis, facilities adequate to carry the entire island. A principle was emerging from all of our previous talks wherein the purpose was to plan on an island-wide basis and then construct the utilities of a sufficient size to adequately handle both military and civilian communities if this was the desire of the Government of the Northern Marianas, with the excess cost over and above what would have been necessary for military purposes being born by the civilian community on a reimbursable basis. I think it is important to re-establish this principle. It won't cost the United States any money, and it will allow the island of Tinian to be assured of adequate power, water, etc. when the military does, in fact, come aboard and a large expansion of the civilian capacity then becomes necessary.

Under Part III, Section 5, referring to medical care, restricting emergency medical care to United States citizens and nationals is ludicrous. An individual, no matter what his nationality, if he is in need of emergency medical

treatment, United States military facilities should be ready to assist.

Under Part II, Section 7, referring to schools, the wording they are presently using is the best wording yet. I suggest we stick with it.

Within Part III there is no mention of two (2) areas previously discussed at length: (1) roads on Tinian; and (2) other recreational facilities besides beach areas. In reference to roads, I am of the opinion that we should drop the subject as it is too remote at this time. However, recreational facilities should be developed at the time of the development of the military base, as island-wide planning should account for the civilian needs as well as the military needs. Again, the Government of the Northern Marianas could reimburse the military for their share of the cost.

Prepared by
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