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Messages and Communications

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To: Guam Legislature Clerks Office <clerks@guamlegislature.org>

Thu, Apr 2, 2015 at 9:12 AM

4/2/2015 3/20/2015 CABOT MANTANONA LLP

Civil Case No. 02-00022; DPW Weekly Report on Progress of Road and Bridge Projects (March 16, 2015); United States' Response Re Government of Guam's Interm Maintenance Plan; Government of Guam's Response to Receiver's March 5, 2015 Quarterly Report; Declaration of Michael Lanning; Government of Guam's Response to Receiver's March 5, 2015 Quarterly Report Re: Tax Credits 33-15-0288

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Dear Speaker Wonpat:

Please see the attached filings in the above matter.

Thank you.

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0288

33-15-0288
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6 attachments

-  **Layon - DPW Weekly Report on Progress of Road and Bridge Projects 031615 ECF 1537.pdf**
81K
-  **United States' Response Re Government of Guam's Interim Maintenance Plan ECF 1538.pdf**
136K
-  **Layon - Declaration of Celco G. Hermogenes P.E., In Support of United States' Response Re Government of Guam's Interim Maintenance Plan ECF 1539.pdf**
443K
-  **Layon - Government of Guam's Reponse to Receiver's March 5, 2015 Quarterly Report ECF 1540.pdf**
82K
-  **Layon - Declaration of Michael Lanning ECF 1542.pdf**
350K
-  **Layon - Government of Guam's Response to Receiver's March 5, 2015 Quarterly Report Re Tax Credits ECF 1543.pdf**
318K

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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 GOVERNMENT OF GUAM,)
)
 Defendant.)

CIVIL CASE NO. 02-00022

**DPW WEEKLY
REPORT ON PROGRESS OF
ROAD AND BRIDGE PROJECTS
(March 16, 2015)**

Pursuant to the ORDER RE: SPECIAL REPORT issued by the Court on June 7, 2010, [Doc.581-1], the DEPARTMENT OF PUBLIC WORKS ("DPW") hereby submits the attached report marked as EXHIBIT A which details the status and progress of the road and bridge projects along Route 4 which affect the Consent Decree.

Date: March 18, 2015.

CABOT MANTANONA LLP

By: /s/ RAWLEN M.T. MANTANONA
RAWLEN M.T. MANTANONA

Rec'd By:
Emily Cruz
3/18/15
Law Office of James M. Maher.

CERTIFICATE OF SERVICE

I, **RAWLEN M.T. MANTANONA**, hereby certify that I have served a copy of the foregoing by delivering to:

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And delivering via US regular mail to:

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Dated: March 18, 2015.

CABOT MANTANONA LLP

By: /s/ RAWLEN M.T. MANTANONA
RAWLEN M.T. MANTANONA

EXHIBIT “A”

Consent Decree Route 4 Project Status – Weekly Report
March 16, 2015

The following Route 4 projects are along the transfer truck route to the Layon Landfill and are considered critical elements in the on-going operations of transfer trucks travelling to and from the landfill.

(1) Ylig Bridge:

Status:

- Construction: Approximately 98% complete.

Issues:

- Issue resolution is in progress.

Progress (since last report):

- All original contract work completed. Design of property access is ongoing. Punch list, change order and cleanup work remain.

Schedule:

- Project delays attributed to resolving water line conflicts, subsurface pile conflicts archeological data recovery, Ylig memorial site and perpetuation of existing property access.

Issue Bid Docs	Bid Opening	Executed Contract	NTP	Phase 1 open¹	Project Complete
8/17/2010	10/4/2010	11/10/2010	11/24/2010	7/28/2011	11/20/2011
Expected completion date				8/8/2011 (Actual)	May 2015

1- Bridge open to full legal loads in the southbound direction (toward Layon Landfill).

(2) Togcha and Talofoto Bridges:

Status:

- Project complete

(3) Route 4 Pago Bay to Route 17:

Status:

- Project complete

(4) Togcha River to Ipan Beach Park:

Status:

- Project complete

(5) As-Alonso Area Route 4 (slope stability assessment):

Status:

- August 22, 2013: DPW responded to the receiver that Route 2 is the alternate access to the Layon Landfill.
- August 12, 2013: The receiver, sent a letter to DPW agreeing with DPW's recommendation to pursue Option 3 outlined in the *2nd Draft Geotechnical Investigation As Alonso Slides on Route 4 near Inarajan, Guam, April 10, 2013*, so long as DPW could identify an alternate route for access to the Layon Landfill should Route 4 become inaccessible.
- July 3, 2013: GSWA received a letter from DPW stating its preference for Option 3 in the April 17, 2013 draft report (below) and requested concurrence from GSWA.
- Apr 17, 2013: The second draft Geotechnical Investigation Report submitted to the Receiver.
- Apr 10, 2013: Kleinfelder submitted the second draft Geotechnical Investigation report to PTG.

(6) Route 4 Safety Enhancements:

Status:

- February 25, 2015: An interim maintenance plan for the Route 4 curves area was filed with the court.
- September 17, 2014: DPW transmitted the 25% conceptual plan cost estimate to the receiver.
- July 29, 2014: DPW received the final estimate of probable costs for widening and pavement improvements to Route 4 to accommodate the long refuse transfer vehicles.
- July 15, 2014: DPW received Final 25% Conceptual Plans and Basis of Design from AECOM. Awaiting final cost estimate.
- June 17, 2014: DPW will present comments on 25% Conceptual Plans to the Design firm, AECOM.
- June 3, 2014: AECOM submitted revised 25% Conceptual Design plans for DPW's review and comment.
- May 9, 2014: DPW returned first draft of 25% Conceptual Design to AECOM for revisions.
- May 2, 2014: AECOM submitted the first draft of the 25% Conceptual Design for DPW's review and comment.
- February 13, 2014: AECOM submitted their proposed project schedule showing completion of the conceptual design by June 12, 2014.
- January 28, 2014: Kick off meeting was held between DPW and AECOM to review the project scope and schedule. Formal schedule to include deliverables will be established in the next few weeks.
- January 17, 2014: Task Order 3A was approved by the Receiver and NTP issued to AECOM to begin work on Phase 1 of the project.
- October 25, 2013: Task Order 3A for Islandwide Roadway and Bridge Design for Route 4 Curves (Ylig Bridge to Dandan Road) was received by the Receiver for their review and approval.
- September 26, 2013: DPW received signed task order back from AECOM. DPW will process and forward to the Receiver for final review, approval and acceptance.
- September 16, 2013: Task order, with recommended changes from the Receiver, is being signed/processed by AECOM. Once returned to DPW, it will be forwarded to the Receiver for final review, approval and acceptance.
- August 21, 2013: DPW is drafting a task order for approval by the Receiver.
- August 14, 2013: DPW addressed two questions that the Receiver had with the Scope of Work for AECOM's safety enhancement project.

- June 14, 2013: DPW submitted the draft fee proposal to the Receiver for review and approval.
- Apr 15, 2013: DPW will re-scope the design services with AECOM for an incremental approach to design and subsequently develop a task order for task number 1. Once drafted the task order will be submitted to the Receiver for concurrence to proceed.
- Apr 8, 2013: Receiver informally indicated that incremental approach to design was acceptable.
- Apr 5, 2013: Suggested option of implementing an incremental approach to design to ensure an efficient project and reduce design and construction costs submitted to the Receiver.
- Mar 19, 2013: Meeting with Receiver to discuss design services scope and fee.
- Feb 27, 2013: Negotiation memo for design services by AECOM sent to the Receiver for review and comment. The design services estimate was significantly higher than expected.

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CIVIL CASE NO. 02-00022
)	
Plaintiff,)	
)	
v.)	UNITED STATES' RESPONSE RE
)	GOVERNMENT OF GUAM'S INTERIM
)	MAINTENANCE PLAN
GOVERNMENT OF GUAM,)	
)	
Defendant.)	
_____)	

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On February 25, 2015, after 6 days of evidentiary hearings, the Government of Guam (“GovGuam”) submitted an interim maintenance plan for Route 4 and a declaration from Glenn Leon Guerrero, the Director of the Department of Public Works (“DPW”). ECF Nos. 1526, 1527. On March 3, 2015, the Court directed the Receiver and the United States to respond to the interim maintenance plan. ECF No. 1530. The Receiver filed its response on March 12, 2015. ECF No. 1535. In accordance with the Court’s Order, the United States files this response and the supporting declaration of Celso G. Hermogenes, a licensed Professional Engineer with the Transportation Business Group of CH2M HILL, which is a contractor to the U.S. Environmental Protection Agency (“EPA”).

I. BACKGROUND

The United States presents this background information relevant to the Route 4 safety issues and the financing issues for the Route 4 safety enhancement project.

A. The Route 4 Safety Issues

1. Selection of the Dandan Site

On January 31, 2005, pursuant to Paragraph 9.a. of the Consent Decree, DPW’s Director stated to U.S. EPA that GovGuam’s preferred location for its future landfill was the Dandan site (now known as the Layon landfill). ECF Nos. 1497-3 at 90 (page 80 of report), 1497-6 at 51. In its March 2005 final site selection report, GovGuam explained that, according to the Guam Highway Master Plan, the Route 4 reconstruction program supported the transportation corridor requirements for the Layon site. ECF No. 1497-3 at 36 (page 26 of report). In the July 2005 Supplemental Environmental Impact Statement (“SEIS”), DPW identified highway safety issues relating to Route 4. ECF No. 1497-5 at 17 (page 3-28 of SEIS). DPW stated that Route 4 would “undergo reconstruction and widening to current GDPW standards.” *Id.* at 54 (page 4-25). DPW acknowledged that there was no current schedule for those improvements, but asserted that the Route 4 project “would be implemented in time to support the opening of a new landfill.” *Id.* At the time DPW prepared the SEIS in July 2005, the new landfill was required to open in late September 2007 pursuant to Paragraph 9.i. of the Consent Decree. ECF No. 55 at 11. However, DPW failed to provide necessary improvements to Route 4 despite its statements in the July

2005 SEIS.

2. DPW's Representations to the Court and the Winzler & Kelly Report

At a hearing on July 10, 2008, DPW acknowledged the following: "DPW Highways Division in conformance with the Consent Decree is to provide necessary roadway improvements to Route 4 between Route 10 and the Municipal Solid Waste Landfill turnoff." ECF No. 1391-3 at 1. DPW's July 2008 presentation to the Court on Route 4 improvements specifically included both roadway and embankment repair in the As-Alonso area and roadway widening to prevent off-tracking of trash haulers on Route 4's curves. *Id.* at 4-5.

Despite its representations at the July 2008 hearing, DPW failed to provide needed improvements to Route 4. In preparing to transport trash to the new landfill at Layon in the summer of 2011, the Receiver identified several safety hazards on Route 4. ECF No. 794-1 at 32. As a result, the Receiver requested Winzler & Kelly to prepare its August 2011 report to evaluate the use of trash haulers¹ on Route 4 to the Layon landfill. ECF No. 794-12. The Winzler & Kelly report identified several interim measures that should be implemented without delay until the roadway could be upgraded to current design standards, such as removal of vegetation and rock outcrops, shoulder improvements, placement of warning signs, and use of pilot cars. *Id.* at 6-7.² With the opening of the new landfill at Layon on September 1, 2011, the Receiver implemented, as an interim measure, the use of pilot cars through its contractor, Guahan Waste Control, and pledged to work with DPW to ensure proper signage was installed pending a more permanent solution. ECF Nos. 794-1 at 32, 1535 at 5.

In December 2011, the Court noted that DPW had not yet responded to the Winzler & Kelly report. The Court determined that "[a]s a matter of public safety, the Route 4 hazards need to be resolved immediately" and ordered DPW to respond by January 9, 2012. ECF No. 861 at 4. In its response, DPW generally agreed that safety would be enhanced on Route 4 by the addition of 4-foot shoulders on the curves, and estimated that the cost of constructing these

¹ The Winzler & Kelly report explained that "trash haulers" are "relatively large combination trucks that include a single unit truck and a full trailer." ECF No. 794-12 at 3.

² DPW's current chief engineer, Phillip Slagel, was the author of the Winzler & Kelly report when he worked for that firm. ECF No. 1466 at 1.

shoulders for all the marginal and deficient curves would be \$3 million. ECF No. 874-1 at 4-5. However, DPW stated that no local funds were available and it would check on federal funds. Id. at 5.

3. The Court's February 2012 Order Regarding Route 4 Safety Issues

The Court issued an Order regarding the As-Alonso area and Route 4 safety issues on February 15, 2012. ECF No. 888. In the Order, the Court authorized the Receiver to pay DPW's costs to conduct a slope stability analysis of the As-Alonso area. Id. at 2. In addition, the Court directed DPW to immediately proceed with the design and construction of the Route 4 shoulder enhancement project and to use its best efforts to obtain local or federal funding for the project. Id. at 3. If DPW could not obtain funds without significantly delaying construction of the project, the DPW Director was required to certify that fact to the Court, and the Court would authorize the Receiver to pay for the project from capital funds that were available to the Receiver. Id.

In June 2012, DPW's Director certified to the Court that no local or federal funds were available for shoulder enhancements on Route 4. ECF No. 964 at 1. The Director explained that for federal funds to be available, it would need to amend the transportation improvement plan, which would take a minimum of one to two months. Id. at 2. According to the Director, DPW could not obtain federal highway funds for immediate design and construction; he asserted that it would take 3 to 4 years to obtain federal funds and to go out to procurement before construction could start. Id. Relying on its consultant's (Parsons Transportation Group) report, DPW estimated the cost of the Route 4 shoulder enhancement project at \$4 to \$4.5 million in June 2012, and stated it did not have sufficient funds in its budget to cover a project of this scope. Id. at 3.

Based on the DPW Director's certification, the Receiver, on behalf of the Guam Solid Waste Authority ("GSWA"), entered into a Memorandum of Agreement ("MOA") in July 2012 with DPW to pay for both the As-Alonso slope stability analysis and the Route 4 shoulder enhancement project. ECF No. 1391-1. Notably, this MOA was signed by the Receiver "Subject to Availability of Funds." Id. at 6. Pursuant to the MOA, DPW retained authority for

the procurement, design, and construction of the projects. Id. at 2-3. With funds provided by the Receiver, DPW has procured and managed contracts for both the As-Alonso assessment and the Route 4 conceptual plan in 2013-14. See ECF No. 1534 at 5-7.

B. GovGuam's Financing Plan for the Route 4 Safety Enhancement Project

1. The \$19.9 Million Shortfall

In its May 2013 status report, the Receiver stated that the 2009 Section 30 Bond funds would not be sufficient to cover the environmental closure of the Ordot Dump as well as other Consent Decree-related projects. ECF No. 1067-1 at 34. Accordingly, the Receiver intended to: (1) prioritize the closure of Ordot Dump; (2) fund planning and design phases for the other projects; and (3) postpone contracting for any additional construction for those projects until funds were available to complete the projects as designed. Id. In its November 2013 status report, the Receiver estimated a shortfall of \$19.9 million to complete construction of the Route 4 safety enhancements, Dero Road, and the residential transfer stations. ECF No. 1267-1 at 26-27.

2. GovGuam's Failure to Present a Financing Plan

On November 22, 2013, the Court ordered GovGuam to meet with the Receiver to discuss development of a plan to finance these additional capital projects. ECF No. 1271 at 6. The Receiver reported to the Court in February 2014, stating that GovGuam had refused to meet with the Receiver to discuss a financing plan. ECF No. 1307 at 2-3. Regarding the Route 4 safety enhancement project, the Receiver stated this requirement could be removed if GovGuam agreed to directly fund these roadway improvements as it had with other bridge projects along Route 4. Id. at 3 n.1. On March 17, 2014, the Court found that GovGuam had failed to meet with the Receiver to discuss a financial plan. ECF No. 1319 at 19. The Court directed the Receiver to complete these projects using the funds it currently had at its disposal, including the \$4.5 million it annually reimbursed the General Fund. Id. at 21.

In its June 2014 status report, the Receiver stated that its discussions with GovGuam about a financing plan had not produced any tangible results. ECF No. 1369-1 at 36. The Receiver presented a financing plan to fund the additional capital projects and an estimated \$14.3

million in costs for post-closure care at Ordot. Id. at 37. In its July 2014 Order, the Court concluded: “Since the Government of Guam has not provided financing for the additional projects related to the Consent Decree and post-closure maintenance of the Ordot Dump, the Receiver may need to use GSWA operating revenue to fund these expenses, which would result in delaying the transition from Receivership to Board control.” ECF No. 1378 at 5-6. The Court denied the GSWA Board’s request to expedite the transition of authority timeline given the number of projects that remained outstanding: “projects which are either required by the Consent Decree or otherwise related to it.” Id. at 6.

After the June 2014 status hearing, the parties agreed to meet to resolve disputes relating to the Receiver’s status report. ECF No. 1380. The Court issued an Order directing the parties to file a joint report by August 1, 2014. ECF No. 1381. The parties met and filed a joint report, specifying their areas of disagreement regarding the additional capital projects, including the Route 4 project, and post-closure care. ECF No. 1391.

3. The Court’s September 2014 Trust Account Order and GovGuam’s Proposed Financing Plan

On September 12, 2014, in order to facilitate a clear accounting, the Court approved the establishment of a separate trust account to accumulate debt service reimbursements withheld by the Receiver beginning in May 2014. ECF No. 1405 at 2. These funds were needed to pay for four additional projects, including the Route 4 safety enhancements, “related to but not otherwise specifically required under the Consent Decree.” Id. at 1 and n.1. According to the Receiver’s latest status report, this account has a balance of \$2,956,575 as of December 31, 2014. ECF No. 1531-1 at 43.

On September 30, 2014, GovGuam submitted its financing plan for the additional capital projects and post-closure care. ECF No. 1416. In that financing plan, GovGuam represented that “Route 4 is no more dangerous than other roads on Guam that have been prioritized ahead of it.” Id. at 6. GovGuam proposed to continue the pilot car escort program on Route 4 until federal funds become available at some time in the next decade. Id. at 7. The Receiver responded to GovGuam in its quarterly report. ECF No. 1422-1 at 36-39. The United States

filed its response on October 23, 2014. ECF No. 1431.

On December 15, 2014, the Court set a hearing to discuss GovGuam's financing plan. ECF No. 1462. The Court also directed GovGuam to respond to specific questions regarding its plan. *Id.* at 2. GovGuam submitted a response and four additional declarations to explain its position on December 22, 2014. ECF Nos. 1465-1466, 1468-1470. During the evidentiary hearings regarding these issues, GovGuam requested the Court's permission to submit additional information -- a proposed interim maintenance plan to address Route 4 safety issues. The Court granted GovGuam's request. ECF No. 1499 at 1.

II. ARGUMENT

GovGuam's current position regarding the Route 4 safety enhancements is internally inconsistent. On the one hand, GovGuam argued that continuing the pilot car escort program is a viable alternative to Route 4 safety enhancements (ECF No. 1526 at 1), and objected to any requirement to fund this Route 4 project, asserting that the project is not part of the ambit of Consent Decree compliance. *Id.* at 3. On the other hand, GovGuam not only requested the Court's permission to submit an interim maintenance plan for Route 4 (ECF No. 1527-1), it also specifically asked the Court to adopt its plan "to address the immediate concerns of the residents of Inarajan and the people of Guam." ECF No. 1526 at 5. Moreover, GovGuam proposed to fund the \$1.4 million project from the amount retained in a trust fund established by the Court's September 2014 Order. *Id.* at 3; ECF No. 1527-1 at 10.

In this response, the United States will first address GovGuam's arguments regarding the scope of the Consent Decree and the Court's authority to order GovGuam to implement the Route 4 safety measures. Next, the United States will analyze the interim maintenance plan proposed by GovGuam. Finally, the United States will summarize its position on the funding issues still pending before the Court: the Route 4 safety enhancements (including As-Alonso), the Dero Road improvements, the residential transfer station upgrades, and post-closure care for the Ordot Dump.

A. The Route 4 Safety Enhancement Project is Closely Related to Implementation of the Consent Decree.

In its financing plan, GovGuam requested the Court to reconsider its February 2012 Order regarding Route 4 safety issues. ECF No. 1416 at 6. GovGuam further argued that the Route 4 project was not required by the Consent Decree, and that therefore the Court lacked jurisdiction to impose this requirement on GovGuam. *Id.* at 8-9. In its recent brief, GovGuam now claims that it detrimentally relied on a Court Order permitting it to withdraw the Route 4 project. ECF No. 1526 at 2-3. GovGuam's arguments are unpersuasive. This Court has a broad range of equitable powers available to it "to enforce and effectuate its orders and judgments." U.S. v. Alisal Water Corp., 326 F. Supp. 2d 1010, 1012 (N.D. Cal. 2002) (citation omitted); see also Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 440 (2004). As the Court recognized in its February 2012 Order and subsequent Orders, ensuring the safe transit of GSWA's trash haulers on Route 4 to the Layon landfill is closely related to implementation of the Consent Decree.

First, the Consent Decree expressly addressed the selection process for the new landfill, requiring GovGuam to prepare an Environmental Impact Statement with a detailed analysis and comparison of at least three alternative sites, and to select its preferred site. Consent Decree, ¶9.a.; ECF No. 55 at 8. Pursuant to that requirement, DPW prepared an SEIS in July 2005 that specifically identified highway safety issues on Route 4 relating to the Layon landfill. In order to address that safety problem, DPW stated that reconstruction and widening of Route 4 would be implemented in time to support the opening of the new landfill. ECF Nos. 1497-5 at 17, 54 (pages 3-28, 4-25). In other words, when DPW selected the Dandan site for the Layon landfill in July 2005, DPW committed to complete the reconstruction and widening of Route 4 before September 2007, the time when the new landfill was required to open. Consent Decree, ¶9.i; ECF No. 55 at 11. DPW did not keep this commitment.

Second, DPW expressly acknowledged at a July 2008 hearing that its Highways Division, in conformance with the Consent Decree, was required to provide necessary roadway improvements to Route 4. ECF No. 1391-3 at 1. DPW specifically mentioned both roadway repairs in the As-Alonso area and roadway widening in its presentation to the Court. *Id.* at 4-5.

DPW did not follow through on this commitment.

Unfortunately, DPW's abject failure to address the Route 4 safety issues left yet another problem on the Receiver's plate. In preparing for the October 2011 opening of the Layon landfill, the Receiver discovered continuing safety problems with the narrow roadway and curves on Route 4. ECF No. 794-1 at 32. The August 2011 Winzler & Kelly report, which was prepared at the Receiver's request, identified several interim measures that should be implemented without delay until the roadway could be upgraded to current standards. ECF No. 794-12 at 6-7. However, GovGuam did not even respond to the Winzler & Kelly report until the Court required it to do so in its December 2011 Order. See ECF No. 861 at 4 ("As a matter of public safety, the Route 4 hazards need to be resolved immediately"). In its response, DPW generally agreed that safety would be enhanced on Route 4 by the addition of 4-foot shoulders on the curves, but stated that no local funds were available and it would check on federal funds. ECF No. 874-1 at 4-5.

Significantly, the Court issued a second Order regarding Route 4 safety issues on February 15, 2012, directing DPW to *immediately* proceed with the design and construction of the Route 4 shoulder enhancement project, and to use its best efforts to obtain local or federal funding for the project. ECF No. 888 at 3. Because DPW's Director subsequently certified that no local or federal funds were available for shoulder enhancements on Route 4 (ECF No. 964 at 1), the Court's February 2012 Order authorized the Receiver to pay for the project "from capital funds that are available to the Receiver." ECF No. 888 at 3. Thereafter, the Receiver, on behalf of GSWA, entered into a July 2012 MOA with DPW, "Subject to the Availability of Funds," to pay for both the As-Alonso slope analysis and the Route 4 shoulder enhancement project. ECF No. 1391-1 at 6.

A few months later, the availability of capital funds to the Receiver to complete the Route 4 project became a pressing issue. In May 2013, the Receiver notified the Court that the 2009 Section 30 Bond funds would not cover the cost of the environmental closure of the Ordot Dump as well as other Consent Decree-related projects, including the Route 4 safety enhancements. ECF No. 1067-1 at 34. Accordingly, the Receiver stated its intent to fund planning and design

phases for the other projects, and to postpone contracting for any additional construction for those projects until funds were available. Id. In its November 2013 status report, the Receiver estimated a shortfall of \$19.9 million to complete construction of the Route 4 safety enhancements, Dero Road, and the residential transfer stations. ECF No. 1267-1 at 26-27.

This Court addressed the financing shortfall in a series of Orders from November 2013 through September 2014:

- November 22, 2013: the Court ordered GovGuam to meet with the Receiver to discuss development of a plan to finance these additional capital projects, including the Route 4 safety enhancements. ECF No. 1271 at 6.
- March 17, 2014: the Court found that GovGuam had failed to meet with the Receiver to discuss a financial plan. ECF No. 1319 at 19. The Court directed the Receiver to complete these projects using the funds it currently has at its disposal, including the \$4.5 million it annually reimburses the General Fund. Id. at 21.
- July 3, 2014: the Court concluded: “Since the Government of Guam has not provided financing for the additional projects related to the Consent Decree and post-closure maintenance of the Ordot Dump, *the Receiver may need to use GSWA operating revenue to fund these expenses*, which would result in delaying the transition from Receivership to Board control.” ECF No. 1378 at 5-6 (emphasis added).
- July 8, 2014: the Court issued an Order directing the parties to file a joint report by August 1, 2014. ECF No. 1381. The parties met and filed a joint report, specifying their areas of disagreement regarding the additional capital projects, including the Route 4 project, and post-closure care. ECF No. 1391.
- September 12, 2014: the Court approved the establishment of a separate trust account to accumulate debt service reimbursements withheld by the Receiver beginning in May 2014. ECF No. 1405 at 2. These funds were needed to pay for four additional projects, including the Route 4 safety enhancements, “related to but not otherwise specifically required under the Consent Decree.” Id. at 1.

Contrary to GovGuam’s assertion, however, these Court Orders regarding financing for

additional capital projects did not contravene the Court's February 2012 Order regarding Route 4 safety issues. Moreover, GovGuam itself had recognized the importance of these Route 4 safety issues *in 2005* when it selected the Dandan site to construct its new landfill. ECF No. 1497-5 at 17. Ten years later -- despite DPW's January 2012 acknowledgement that implementation of the Winzler & Kelly report's recommendations would improve safety on Route 4 -- GovGuam has still not properly addressed these important safety issues. Accordingly, the United States requests the Court to deny GovGuam's request to reconsider its February 2012 Order directing DPW to immediately proceed with the design and construction of the Route 4 project. ECF No. 888 at 3.

B. GovGuam's Interim Maintenance Plan is Not Credible.

GovGuam filed its proposed interim maintenance plan as Exhibit A to Mr. Leon Guerrero's declaration. ECF No. 1527-1.³ In its pleadings, GovGuam represented that: (1) this interim maintenance plan was based on AECOM's 25% conceptual design (ECF No. 1527 at 2); (2) the work will be performed "in-house" by DPW (*id.*); (3) it will cost \$1.4 million (ECF No. 1527-1 at 9); (4) construction work on the curves will be completed by May 2016 (*id.* at 10); and (5) DPW proposed to pay for this work with \$1.4 million from the trust fund established by this Court in its September 2014 Order. *Id.*

The United States requests the Court to reject GovGuam's plan. As detailed below, GovGuam's plan fails to include key safety elements of AECOM's conceptual design, does not properly account for costs associated with the project, contains an unrealistic timeline for construction, and would not adequately address safety concerns associated with the transit of trash haulers on Route 4.

1. GovGuam's Plan Omits Key Safety Elements of AECOM's Conceptual Plan.

GovGuam's interim maintenance plan was developed based on AECOM's 25%

³ During the evidentiary hearing regarding Route 4 safety issues, GovGuam asserted that DPW's chief engineer, Phillip Slagel, could design an interim maintenance plan to address these issues. The United States notes that Mr. Slagel was not part of GovGuam's Interim Maintenance Plan team. *See* Guerrero Decl. at ¶4, ECF No. 1527 at 1-2.

conceptual design, the review of a video, and a field review. ECF No. 1527 at 2-3. Mr. Leon Guerrero did not expressly state in his declaration that GovGuam had rejected any aspects of AECOM's 25% conceptual plan, nor did he mention any addition of design elements to the plan. After reviewing AECOM's conceptual plan, the GovGuam team confirmed that the work could be done "in-house" at DPW. ECF No. 1527 at 3.

Without any explanation, GovGuam's interim plan excludes several key safety measures in the Winzler & Kelly report and the AECOM conceptual design. Specifically, GovGuam excludes the removal of rock outcrop, the use of asphalt for paving, guardrails, retaining walls, barriers, impact attenuators, drainage and erosion control, and landscaping. See Declaration of Celso G. Hermogenes, P.E., in support of United States' response re Government of Guam's interim maintenance plan ("Hermogenes Decl."), ¶5, which was filed concurrently with this response. In addition, GovGuam's interim plan does not contain a design analysis, which should include a geometric evaluation of the proposed roadway, a roadside clearzone evaluation, and a vehicle/truck off-tracking analysis. Id., ¶6. As Mr. Hermogenes explained, GovGuam's failure to include any design analysis to support its proposal makes it impossible to determine if the proposal is technically sound or meets safety requirements. Id.

Two aspects of GovGuam's plan serve to illustrate particular safety concerns. First, GovGuam's plan does not include the removal of rock outcrops as recommended in the Winzler & Kelly report. Id. Instead, GovGuam proposed to move the centerline striping in an apparent effort to avoid the cost of removing such outcrops. Id. As Mr. Hermogenes explained, in order to shift the centerline, GovGuam would need to perform a design analysis of the proposed roadway to determine if the proposed approach meets roadway design and safety requirements. Id. Implementing GovGuam's proposed interim measures without proper design, based on the necessary analyses and calculations, could result in an adverse impact to public safety. Id.

Second, GovGuam does not commit to paving widened areas with asphalt, but instead plans to place aggregate base (i.e., gravel) widening for truck off-tracking. Id., ¶7. Soft gravel shoulders are typically used for emergency purposes only and are not intended for daily traffic use. Id. Mr. Hermogenes stated that GovGuam's proposed use of gravel instead of an asphalt

pavement section, in conjunction with the plan's lack of drainage improvements, "would likely exacerbate deterioration of the roadway condition." Id.

2. GovGuam's Plan Includes an Incomplete Cost Estimate.

In January 2012, DPW presented a technical report with a programmatic cost estimate of \$3 million for the Route 4 shoulder-widening project. ECF Nos. 874-1 at 4, 874-2 at 2.⁴ Six months later, based on a report prepared by Parsons Transportation Group, DPW stated that the cost of the project was estimated to be \$4 to \$4.5 million. ECF No. 964 at 3. With funding provided by the Receiver, DPW then selected AECOM in 2013 to prepare a 25% conceptual plan and cost estimate for the widening and pavement improvements to Route 4. ECF No. 1534 at 6-7. As GovGuam acknowledged, AECOM estimated that implementation of the Route 4 construction project pursuant to the AECOM conceptual plan would cost \$6.6 million. ECF No. 1526 at 4.

GovGuam's interim plan contains a cost estimate of \$1.4 million for in-house work, which represents only 21% of AECOM's \$6.6 million estimate for the Route 4 safety enhancements. As Mr. Hermogenes explained, however, GovGuam's cost estimate significantly understates the costs of the project. Id., ¶8. First, even for work included in the proposal, GovGuam did not include critical cost components such as design and maintenance. Id. Second, GovGuam's plan excluded several important safety measures in AECOM's conceptual design, such as removal of rock outcrops, the use of asphalt pavement sections, drainage swales, retaining walls, mitigation and catchment areas, utility relocation, erosion control, and guardrail and roadside safety improvements. Id. By excluding these safety measures, GovGuam failed to account for significant costs of the Route 4 safety enhancement project. Id. For example, according to AECOM's conceptual plan, the estimated cost of rock outcrop removal alone is \$2.0 million. Id.

3. GovGuam's Construction Timeline is Unrealistic.

DPW stated its intention to begin the shoulder-widening work on Route 4 curves in April

⁴ This report was based on information provided to DPW by its contractor, Parsons Transportation Group. ECF No. 1495-1 at 2.

2015 (ECF No. 1527-1 at 9), and to complete the work approximately one year later in May 2016. Id. at 10. DPW acknowledged that it does not currently have the equipment required for this project; it plans to purchase that equipment, projecting that it will be delivered to Guam within 9-10 months. Id. at 1.⁵ In the meantime, DPW assumed that it could rent the equipment. Id.

As Mr. Hermogenes stated, GovGuam's plan provides insufficient information to allow him to confirm whether the plan's general construction schedule is feasible. Hermogenes Decl., ¶9. Before starting construction, however, GovGuam would need to perform, develop, and approve design plans, analyses, calculations, and a detailed construction schedule. Id. In light of these facts, Mr. Hermogenes concluded that GovGuam's general construction schedule appeared unrealistic. Id.

4. GovGuam's Plan Does Not Adequately Implement Roadway Safety Measures.

According to Mr. Hermogenes' analysis, GovGuam's interim maintenance plan:

- lacks roadway safety features, such as retaining walls, guardrails, barriers, and impact attenuators;
- fails to demonstrate, through a proper roadway design and supporting analyses and calculations, that its proposed minimal road widening with centerline shift meets safety requirements;
- improperly excludes key safety measures in the 2011 Winzler & Kelly report and AECOM's conceptual design;
- inappropriately uses gravel pavement, leading to both a risk to safety and an increase in rock debris and dust pollution, and exacerbating deterioration of the roadway edges;
- fails to include drainage and erosion control features; and

⁵ According to DPW's plan, purchase orders for the equipment have been completed. ECF No. 1527-1 at 1. The plan does not discuss whether DPW currently has the funds to purchase such equipment in its budget, and does not address whether the equipment purchase will be subject to GovGuam's procurement process, which could substantially delay the acquisition.

- includes an incomplete cost estimate and an unrealistic implementation schedule.

Id., ¶10. Consequently, the United States requests the Court to reject GovGuam’s interim maintenance plan because it “does not adequately implement the roadway safety measures recommended in the 2011 Winzler & Kelly report to reduce the hazards associated with the transit of trash haulers on the curves of Route 4.” Id.

C. GovGuam Has Not Presented a Realistic Plan to Finance the Projects Related to the Consent Decree and Post-Closure Care at the Ordot Dump.

In January and February 2015, the Court conducted 6 days of evidentiary hearings regarding GovGuam’s financing plan presented on September 30, 2014. The United States summarizes its position regarding the unresolved issues before the Court.

1. The Route 4 Safety Enhancement Project

GovGuam has known since May 2013 that the 2009 Section 30 Bond Fund proceeds would not suffice to pay for the closure of the Ordot Dump and additional Consent Decree-related projects. In a series of Orders regarding the financial shortfall of \$19.9 million for the additional projects including the Route 4 safety enhancements, the Court provided GovGuam with numerous opportunities to address this shortfall. However, these Orders did not result in a reconsideration of the Court’s February 2012 Order regarding the importance of Route 4 safety issues. Three years after GovGuam acknowledged in January 2012 that safety would be enhanced on Route 4 by the addition of 4-foot shoulders on the curves, it has not yet presented a viable financing plan to address the Route 4 safety issues. Moreover, as stated above in Section II.B., GovGuam’s belated interim maintenance plan does not adequately address the safety hazards posed by the daily transit of trash haulers on Route 4. Accordingly, the United States requests the Court to authorize the Receiver to proceed with the Route 4 safety enhancement project to the extent that funds are available either in the trust fund established by the Court’s September 2014 Order or from GSWA’s operating revenue. See ECF Nos. 1319 at 21, 1378 at 5-6, 1405. In addition, the Court should authorize the Receiver to undertake work needed to repair earthquake damage in the As-Alonso area. At this point, the Receiver has received an informal estimate from DPW’s consultant that this work will cost approximately \$1 million.

ECF No. 1531-1 at 35.

2. The Dero Road Project

Based on testimony presented to the Court, the Dero Road project is closely related to the proper closure of the Ordot Dump. First, the road was extensively damaged by construction traffic related to the Dump's environmental closure, and by the installation of wastewater lines needed to convey leachate from the Ordot Dump to the Hagåtña wastewater treatment plant. Second, in order to protect the integrity of the Ordot Dump environmental closure and the newly-constructed wastewater lines, reconstruction of the road should provide for proper storm water management. ECF No. 1535 at 4. GovGuam stated that Territorial law does not require improvements to Dero Road such as bicycle lanes and sidewalks. ECF No. 1416 at 4. Accordingly, the United States recommends that the Court authorize the Receiver to redesign the Dero Road project to properly reconstruct the part of Dero Road damaged by the Ordot Dump closure project, and to address associated storm water issues.

3. The Residential Transfer Stations

As a condition in the permit for the Layon landfill, Guam EPA required GSWA to obtain operating permits for the three residential transfer stations, Dededo, Malojloj, and Agat. In order to obtain these permits, the Receiver will need to upgrade each of the transfer stations at an estimated cost of \$7.3 million. ECF No. 1391 at 14. GovGuam has now proposed to close the Dededo transfer station (ECF No. 1416 at 5), which is the most heavily used station. See ECF No. 1531-1 at 15 (Dededo station served 58% of GSWA's customers). The United States notes the Receiver's position that closing the Dededo transfer station is "bad solid waste policy for Guam," but we also agree with the Receiver that GovGuam has the discretion to close this station. ECF No. 1535 at 3. Furthermore, we agree with the Receiver that Guam EPA lacks the expertise to properly close the transfer station. Id. Therefore, as funds become available for these projects, we recommend that the Court authorize the Receiver to: (1) fund and implement a proper environmental closure of the Dededo transfer station; and (2) fund and implement the upgrades required at Malojloj and Agat.

4. Post-Closure Care at the Ordot Dump

In the March 2015 status report, the Receiver estimated that post-closure care at the Ordot Dump will cost \$15.67 million (net present value). ECF No. 1531-1 at 35.⁶ At the evidentiary hearing, GovGuam did not dispute that the Consent Decree requires post-closure care for the Ordot Dump. See, e.g., Consent Decree, ¶¶8.b.i. and ii., c.i. and ii., h.; ECF No. 55 at 6-8. The issue in dispute concerns the proper means for GovGuam to pay for this post-closure care. GovGuam has proposed an initial deposit of \$1 million followed by a monthly deposit from GSWA revenue. ECF No. 1416 at 9. Given GovGuam's poor track record concerning the financing of Consent Decree projects, the United States is concerned that GovGuam's proposal does not adequately ensure that money will be available for the required 30 years of post-closure care. Accordingly, before authority is transitioned from the Receiver to the GSWA Board, the United States requests the Court to require the Receiver:

- (1) to submit a post-closure plan for the Ordot Dump that complies with applicable federal and Guam requirements, and to obtain both regulatory approval from Guam EPA and the United States' acceptance pursuant to the Consent Decree;
- (2) to contract with a third-party operator to perform post-closure care in accordance with the approved post-closure plan; and
- (3) to fully fund a dedicated post-closure account with a third-party trustee, subject to the Court's approval and oversight, for the first 30 years of post-closure care for the Ordot Dump.

III. CONCLUSION

As the Court noted at the evidentiary hearing, the Court had previously adopted the Receiver's recommended timeline for the transition of control in December 2015 from the Receiver to the GSWA Board. ECF No. 1132 at 1. However, the Receiver had expressly conditioned that timeline on the availability of funds to enable the Receiver to complete the work required by the Consent Decree. See ECF No. 1067-1 at 43 (shortfall of funds could alter the

⁶ EPA has not yet had the opportunity to review the Receiver's new cost estimate in detail. ECF No. 1531-1 at 35.

proposed schedule). In this case, GovGuam has consistently hampered the Receiver's efforts by failing to present a realistic financing plan and funding for the Route 4 safety enhancements, the Dero Road project, the transfer station upgrades, and the cost of post-closure care for the Ordot Dump. See, e.g., ECF No. 1535 at 3 (residential transfer station upgrades cannot be completed by the end of 2015 due to GovGuam's refusal to fund them). In addition, for the reasons stated herein, GovGuam's proposed interim maintenance plan for Route 4 is flawed and should be rejected.

At this point, the Receiver has presented the only viable financing plan for these projects. See ECF No. 1369-1 at 36-37 (Receiver's June 2014 financing plan). Based on developments since June 2014, the Receiver will need to revise its financing plan to account for some additional costs such as the environmental closure of the Dededo transfer station, the increased estimate for post-closure care at the Ordot Dump, and the construction needed to repair earthquake damage in the As-Alonso area (ECF No. 1531-1 at 35), as well as possible cost savings associated with the closure of the Dededo transfer station (e.g., the avoided costs of the planned upgrade), and any revision to the Dero Road construction plan (e.g., possible removal of bike lanes and sidewalks from the design). In light of these facts, the United States requests the Court to reject GovGuam's interim maintenance plan and to direct the Receiver to provide a revised financing plan and a revised transition timeline. The transition of authority to the GSWA Board should be delayed to reflect GovGuam's continued failure to provide funding for these capital projects and the cost of post-closure care for the Ordot Dump. See, e.g., ECF No. 1378 at 5-6 (Court determined that the Receiver's use of GSWA's operating revenue to fund these additional capital projects would delay the transition of authority to the GSWA Board).

Dated: March 18, 2015

/s/ Robert D. Mullaney
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Attorneys for United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CIVIL CASE NO. 02-00022
)	
Plaintiff,)	DECLARATION OF CELSO G.
)	HERMOGENES, P.E., IN SUPPORT OF
)	UNITED STATES' RESPONSE RE
)	GOVERNMENT OF GUAM'S INTERIM
v.)	MAINTENANCE PLAN
)	
GOVERNMENT OF GUAM,)	
)	
Defendant.)	
_____)	

I, Celso G. Hermogenes, declare:

1. I am a Licensed Professional Engineer for CH2M HILL, contractor to the U.S. Environmental Protection Agency, Region IX (“EPA”). I received my Bachelor of Science in Civil Engineering at De La Salle University, Manila. I have more than nineteen years of civil engineering and project management experience on diverse projects, including at the Naval Facilities Engineering Command, U.S. Naval Base, Guam. I am currently employed in CH2M HILL’s Transportation Business Group in Santa Ana, California. My transportation experience includes working as the lead design engineer and manager for various roadway and highway projects. One of my projects received a National Award of Merit in the transportation category from the Design-Build Institute of America (“DBIA”) for exemplary application of Design-Build delivery. I also have experience developing transportation-related project plans, specifications, schedules, budgets, and cost estimates, designing highway and roadway geometrics, designing storm water drainage systems, and providing quality assurance and quality control. A copy of my resume is attached as Exhibit 1 to this Declaration. I am knowledgeable in the federal highways policies and guidelines. If called upon to testify, I could and would competently testify thereto.

2. I have reviewed the Government of Guam (“GovGuam”), Department of Public Works (“DPW”) Interim Maintenance Plan, Route 4 Curves, Talofofu-Inarajan, which was attached as Exhibit A to Mr. Leon Guerrero’s declaration (ECF No. 1527-1). I am familiar with Winzler & Kelly’s Technical Report entitled “Layon Trash Haul Route Evaluation Route 4, From Ylig Bridge to Dandan Road,” dated August 10, 2011 (ECF No. 794-12); AECOM Technical Services, Department of Public Works 25-Percent Conceptual Plans and Engineer’s Estimate of Probable Project Costs for the Route 4 Curves, Villages of Talofofu and Inarajan, Guam, July 2014; and the EA Engineering, Science, and Technology, Inc., Duenas and Associates, Inc. et al., Final Supplemental Environmental Impact Statement (“SEIS”) for the Siting of a Municipal Solid Waste Landfill Facility, Guam, July 15, 2005 (ECF No. 1497-4 ff.)

3. According to the SEIS, Route 4 safety improvements were supposed to be implemented in time for the opening of the Layon Municipal Solid Waste Landfill

("MSWLF"). It is my understanding that these safety improvements have not been implemented, and that GovGuam has submitted the interim maintenance plan for Route 4 to address safety concerns in the interim. According to GovGuam, its interim maintenance plan for Route 4 is based on AECOM's 25% conceptual design, which in turn, is based on the August 2011 Winzler & Kelly report. The 2011 Winzler & Kelly report identified several interim measures that should be implemented without delay and follow-up interim improvements that should be implemented until such time that Route 4 could be upgraded to current design standards.

4. GovGuam's Interim Maintenance Plan includes some of the 2011 Winzler & Kelly safety measures but excludes others without any explanation. GovGuam's plan is a general proposal to clear brush, install signs, minimally widen select portions of the roadway and move centerline striping, and continue the pilot car program. GovGuam indicates that it will commence the work by April 2015 and complete it by April 2016. Although GovGuam appears to classify the proposed measures as maintenance activities, it is misleading to characterize all of the measures as maintenance. For example, widening the road and moving the roadway centerline would require design and supporting analyses and calculations to be developed, performed, and approved before implementation.

5. GovGuam's Interim Maintenance Plan excludes several safety measures in the 2011 Winzler & Kelly report and the AECOM 25% conceptual design. Specifically, GovGuam excludes all of the following: the removal of rock outcrop, the use of asphalt for paving, guardrails, retaining walls, barriers, impact attenuators, drainage and erosion control, and landscaping. The exclusion of such measures in GovGuam's proposal raises the concern for safety.

6. GovGuam's Interim Maintenance Plan does not adequately implement the 2011 Winzler & Kelly recommendation for roadside widening and pavement improvement, nor does it provide sufficient detail. GovGuam proposes adding 2-3 feet of roadway widening and at certain locations, moving the centerline striping. This proposal appears to be an attempt to avoid removing rock outcrops as recommended by the 2011 Winzler & Kelly report by shifting the

1 centerline to avoid such outcrops. In order to shift the roadway centerline, design analysis would
2 need to be performed, including a geometric evaluation of the proposed roadway, roadside
3 clearzone analysis, and a vehicle/truck off-tracking analysis (known as “AutoTurn”). These
4 analyses would need to be completed and reviewed to determine if GovGuam’s approach meets
5 roadway design and safety requirements, and incorporated into the preliminary and final
6 construction documents. Any deviations from design standards would need to be documented,
7 justified, and approved as part of this process. The Interim Maintenance Plan does not contain
8 any design or associated analyses and calculations to support GovGuam’s proposal, making it
9 impossible to determine whether GovGuam’s proposal to widen select portions of the roadway
10 and move centerline striping is technically sound, or meets safety requirements or the safety
11 intent of the 2011 Winzler & Kelly report. Implementing the GovGuam proposed interim
12 measures without proper design, based on the necessary analyses and calculations, could result in
13 an adverse impact to public safety.

14 7. GovGuam’s Interim Maintenance Plan does not commit to paving widened areas
15 with asphalt, but instead plans to place aggregate base (i.e., gravel) widening for truck off-
16 tracking. GovGuam’s proposal does not include a pavement design or Life Cycle Cost Analysis
17 (“LCCA”) to justify the proposed pavement section. An LCCA should be performed to ensure
18 the pavement installed will meet the design life and vehicle loading specific to the project. Soft
19 gravel roadways and shoulders increase maintenance requirements and raise safety concerns.
20 Typically, soft gravel shoulders are used for emergency purposes only and are not intended for
21 daily traffic use and loading. In some locations, the general public will be using the soft gravel
22 sections as part of its traveled lane, raising safety concerns and increasing rock debris and dust
23 pollution. The 2011 Winzler & Kelly report raised concern about off-tracking leading to further
24 deterioration of the existing roadway pavement edges. GovGuam’s proposed use of gravel
25 instead of an asphalt pavement section, in conjunction with the lack of drainage improvements in
26 its proposal, would likely exacerbate deterioration of the roadway condition.

27 8. GovGuam’s cost estimate is incomplete even for the work it includes in its
28 proposal, which significantly understates the costs of the project. For example, GovGuam does

1 not include a number of critical cost components such as design and maintenance. GovGuam did
2 not include costs for construction monitoring, construction management, design and construction
3 contingencies, right-of-way acquisition, construction bid package development, temporary traffic
4 control, mobilization, construction surveying, contractor testing, archaeological monitoring,
5 landscaping, construction scheduling, or annual maintenance as part of GovGuam's budget
6 estimate. In addition, GovGuam's Interim Maintenance Plan excludes several important design
7 elements and safety measures in AECOM's 25% conceptual design, such as removal of rock
8 outcrops, use of asphalt pavement sections, drainage swales, retaining walls, mitigation and
9 catchment areas, utility relocation, erosion control, and guardrail and roadside safety
10 improvements. GovGuam's exclusion of these elements from AECOM's conceptual design
11 results in a cost estimate that fails to account for significant costs of the Route 4 safety
12 enhancement project. For example, according to AECOM's 25% conceptual plan, the estimated
13 cost of rock outcrop removal alone is \$2.0 million.

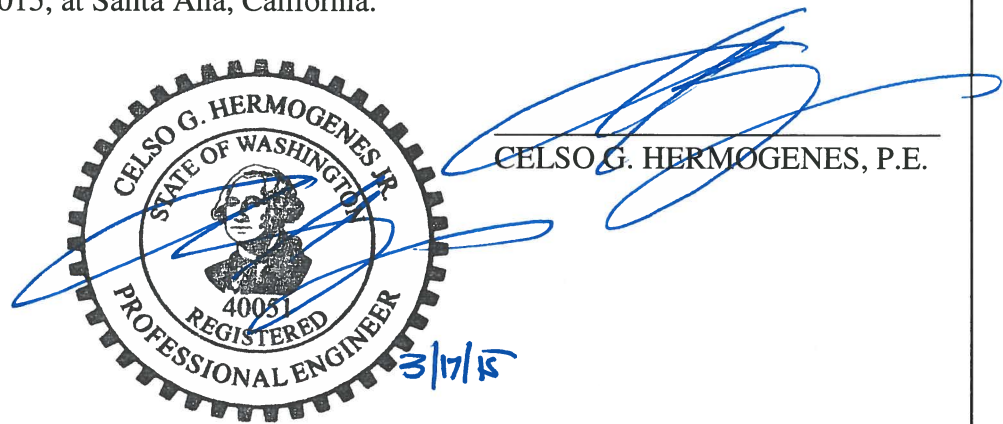
14 9. There is insufficient information in the GovGuam Interim Maintenance Plan to
15 confirm that the general schedule for starting construction in April 2015 and completing
16 construction in April 2016 is feasible. There is no detailed construction schedule, including
17 construction staging and traffic maintenance plan, for the activities that must be completed.
18 Given that design plans, analyses, calculations, and a detailed construction schedule would need
19 to be developed, reviewed, and approved prior to the start of construction, GovGuam's general
20 schedule for initiation and completion of construction appears unrealistic.

21 10. Based on my review of GovGuam's Interim Maintenance Plan, and my familiarity
22 with the 2011 Winzler & Kelly report, the AECOM 25% conceptual design, and the 2005 Final
23 Supplemental EIS associated with the siting of the Layon MSWLF, I have concluded that
24 GovGuam's Interim Maintenance Plan: (1) lacks roadway safety features, such as retaining
25 walls, guardrails, barriers, and impact attenuators; (2) fails to demonstrate, through proper
26 roadway design and supporting analyses and calculations, that its proposed minimal road
27 widening with centerline shift meets safety requirements; (3) improperly excludes key
28 improvements and safety measures in the 2011 Winzler & Kelly report and AECOM 25%

1 conceptual design; (4) inappropriately uses gravel pavement, leading to both a risk to safety and
2 an increase in rock debris and dust pollution, and exacerbating deterioration of the roadway
3 edges; (5) fails to include drainage and erosion control features; and (6) includes an incomplete
4 cost estimate and an unrealistic implementation schedule. In my opinion, GovGuam's Interim
5 Maintenance Plan does not adequately implement the roadway safety measures recommended in
6 the 2011 Winzler & Kelly report to reduce the hazards associated with the transit of trash haulers
7 on the curves of Route 4.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed this
9 17th day of March, 2015, at Santa Ana, California.

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CELSO G. HERMOGENES, P.E.

3/17/15

EXHIBIT 1
RESUME OF CELSO G. HERMOGENES, P.E.

Celso Hermogenes, PE

Project Manager, Sewer/Water/Storm Drain System Design Lead/Backland Civil Design

Professional Registrations/Certifications

Licensed Professional Engineer: WA

Education

BS, Civil Engineering, De La Salle University—Manila

Relevant Experience

Celso Hermogenes is a Project Manager/Senior Civil Engineer with CH2M HILL's Transportation Business Group in Santa Ana, California. He has more than 20 years of civil engineering experience with a diverse background which includes site development, utility conflict resolution and relocation, sanitary systems, storm water conveyance and treatment facilities, earthwork and grading, wetland mitigation, erosion and sedimentation control, freeways and highways design, local road improvements, bicycle and pedestrian trails, ADA facilities, construction staging and traffic control, construction scheduling, context sensitive solutions, and sustainable practices. He has served as Assistant Project Manager, Design Manager, Quality Control Manager, and Lead Design Engineer for various ports, highway/roadway and storm drainage design projects.

Representative Project Experience

Assistant Project Manager/Site Civil Lead; X-ray Wharf Improvements Berth 1 (Design-Build); Naval Facilities Engineering Command; US Naval Base, Guam. Assistant project manager on a project to rehabilitate and modernize the north berth at X-Ray Wharf to provide berthing and utilities for supply vessels and landside improvements including all utilities. Project management responsibilities included project schedule and budget development, cost and progress tracking, progress reporting and invoices, sub-consultant oversight, day to day coordination with the contractor and sub-consultants, design integration, comment tracking and coordination, quality assurance and quality control coordination. Site Civil Lead responsibilities included wharf deck design, demolition plans, grading and earthwork design, storm drainage design, sanitary sewer design oversight, utility conflict resolution, and fencing design.

Assistant Project Manager/Civil Lead; Fireboat Station 20; Port of Long Beach; Long Beach, CA. Assistant project manager/Site Civil Lead for the replacement of the existing Fireboat Station No. 20 with a new station with a waterside boat bay at Berths D-51 and D-52. Project management responsibilities included project schedule and budget development, sub-consultant oversight, day to day coordination with the sub-consultant, quality assurance and quality control coordination. Civil Lead responsibilities included conceptual site layout and development, grading and earthwork design, storm sewer system design, sanitary sewer design, utility conflict identification and resolution, quantity take-offs, and project technical memorandum, Harbor Development Permit and fencing design.

Roadway Design Lead; Santa Clara-Alum Rock Bus Rapid Transit; Santa Clara Valley Transportation Authority; Santa Clara, CA. Provided senior design oversight and review to deliver plans, specifications, and estimates of median bus way design along a major arterial including side-running and median BRT stations design in the city of San Jose, including constructing roadway improvements, Americans with Disabilities Act (ADA) compliance and design. Primary responsibilities include arterial and intersection design, station civil design, drainage design, pavement delineation design and signing design per City of San Jose and Caltrans standards. Also responsible for providing inter-disciplinary coordination with station design architect, utility, and traffic signal and lighting.

Civil Design Manager/Highway Design Lead; I-71/I-670 System Interchange Reconstruction Project; Design-Build; Ohio Department of Transportation (ODOT); Columbus, OH. Lead the civil design involving design and construction of 22 bridges, 29 retaining walls, 16 ramp reconfigurations, and 3 miles of interstate and local roadway reconstruction. Design responsibilities included oversight and review of the highway and interchange design, arterial design, pavement marking, utility conflict resolution, and grading design component. Responsibilities as Civil Design Manager included design integration, design package and schedule management, storm drainage design

oversight, and inter-disciplinary coordination with sub-consultants, as well day-to-day coordination with the contractor, the independent quality firm, sub-consultants and ODOT. The project received a National Award of Merit in the transportation category from DBIA which celebrates exemplary application of Design-Build project delivery for projects that achieved best value, while also meeting design and construction quality, cost, and schedule goals.

Deputy Design Manager/Roadway Design Lead; I-405 - I-5 to SR 169 Stage 2 Widening and SR 515 Interchange Design-Build; Washington State Department of Transportation; Renton, WA. Project management responsibilities included project schedule and budget development, cost and progress tracking, progress reporting and invoices, sub-consultant oversight, quality assurance and quality control coordination, and EAC/ETC for internal civil teams and sub-consultants. Design responsibilities included preparing highway and roadway geometrics, storm drainage design, the design documentation package, and channelization plans for approval and design variances, as well as coordinating with WSDOT and other discipline leads.

Deputy Project Manager/Design Manager; SR 520 West Lake Sammamish Parkway to SR 202 Interchange and HOV Project Stage 3A & 3B Widening; Washington State Department of Transportation; Redmond, WA. Deputy Project Manager/Design Manager for the construction of a flyover connection from SR 202 to SR 520 and for the final stage of the project that widened both directions of SR 520 and complete the SR 202 and West Lake Sammamish Parkway interchanges. Project management responsibilities included project schedule and budget development, cost and progress tracking, sub-consultant oversight, and progress reporting and invoices. Design responsibilities included preparing highway and roadway geometrics, storm drainage design oversight, design documentation package development, quality control oversight channelization plans for approval, design variance documentation, and design coordination with WSDOT and sub-consultants.

Project Engineer; Taxilane Kilo-2007; Snohomish County, Everett, WA. Project engineer for a new taxilane and airplane maintenance area for the airport. The project involved a large drainage basin swap to allow for future expansion of the site. Responsibilities included storm drainage conveyance system and detention facility design, utility coordination, site grading and earthwork calculations, and cost estimate development.

Drainage Design Engineer; Taxiway Kilo-1 and Future of Flight Apron at Paine Field; Snohomish County, Everett, WA. Project engineer for a new taxiway and parking apron for the Paine Field Future of Flight Museum. Responsibilities included storm drainage conveyance system and detention facility design, access road design, site grading and earthwork calculations, and cost estimate development.