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DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
GOVERNMENT OF GUAM,  
  
Defendant.

CIVIL CASE NO. 02-00022

**ORDER**  
re Route 4 Safety Enhancements

This matter came before the court for hearing on the Government of Guam’s Financing Plan and priority list (hereinafter, the “Financing Plan”). *See* ECF No. 1416. The Financing Plan was filed on September 30, 2014, to address the financing of various Consent Decree-related projects that were not included in the Receiver’s initial estimated cost of the Consent Decree projects. These projects included (1) upgrades to the residential transfer stations, (2) Route 4 safety enhancements, (3) upgrades to Dero Road and (4) post-closure care for the Ordod Dump. The court held several evidentiary hearings to discuss the various unfunded projects and the Government of Guam’s Financing Plan.<sup>1</sup> Having read the parties’ briefs and heard extensive testimony and oral argument on the matter, the court now issues the following Order that specifically addresses the last remaining issue – the Route 4 safety enhancements.<sup>2</sup>

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<sup>1</sup> *See* Minutes (Jan. 21, 2015), ECF No. 1496; Amended Minutes (Jan. 22, 2015), ECF No. 1499; Minutes (Feb. 3, 2015), ECF No. 1512; Minutes (Feb. 4, 2015), ECF No. 1513; Minutes (Feb. 5, 2015), ECF No. 1515; and Minutes (Feb. 6, 2015), ECF No. 1518.

<sup>2</sup> The court previously issued three Orders separately addressing the financing of each project. *See* Order (Apr. 20, 2015) (upgrades to transfer stations), Order (May 1, 2015) (Dero Road upgrades), Order (May 27, 2015) (post-closure care for Ordod Dump), ECF Nos. 1571, 1574 and 1582.

1 **BACKGROUND<sup>3</sup>**

2 1. The Consent Decree and Selection of the Landfill Site

3 The Ordot Dump, owned and operated by the Government of Guam, had a long history of  
4 operational and environmental problems. The U.S. Environmental Protection Agency (“EPA”)  
5 issued several administrative orders under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, directing  
6 the Government of Guam to cease discharges of leachate from the Ordot Dump into the Lonfit  
7 River, and to design and construct a cover system to eliminate discharges of untreated leachate.  
8 After years of inaction and noncompliance with EPA administrative orders, the United States  
9 initiated the present action on August 7, 2002.

10 On December 3, 2003, the United States lodged with the court a proposed Consent Decree,  
11 *see* Notice of Lodging of Consent Decree, ECF No. 46, which was thereafter approved by the court  
12 on February 11, 2004. *See* Consent Decree, ECF No. 55. Among other agreements between the  
13 parties, the Consent Decree established a schedule for the closure of the Ordot Dump and the  
14 construction and operation of a new conforming municipal solid waste landfill (“MSWLF”). *Id.* at  
15 ¶¶8-9. The Consent Decree mandated operations at the new landfill to begin by September 23, 2007,  
16 and operations at the Ordot Dump were to cease by October 23, 2007. *Id.* at ¶¶8(i) and 9(i).  
17 Additionally, the Department of Public Works (“DPW”) was required to submit a list of three  
18 potential landfill sites to the EPA and the Guam Environmental Protection Agency (“GEPA”) by  
19 March 2004. *Id.* at ¶9(a). The Consent Decree further required DPW to complete an environmental  
20 impact statement and thereafter advise the EPA of the preferred site for the new landfill. *Id.* at ¶9(b).

21 In the Consent Decree, the parties acknowledged that “the total amount of funding needed  
22 to complete the projects required under [the] Consent Decree [was] not currently available.” *Id.* at  
23

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24 <sup>3</sup> This action has been pending in this court for more than 13 years. Because the parties are  
25 familiar with the facts and procedural history of this case, the court will not recite them here in great  
26 detail except as necessary to provide a background for the issues discussed herein. For a more  
27 thorough recitation of the background of this case, including the events that led to the appointment  
28 of a Receiver, the court incorporates by reference the following prior decisions: Order re  
Appointment of Receiver, ECF No. 239; Order re Motion for Reconsideration, ECF No. 1157; Order  
re Motion to Intervene, ECF No. 1164; Order re Emergency Motion for a Stay Pending Appellate  
Review, ECF No. 1230; and Order re Motion to Stay and for Further Relief, ECF No. 1243.

1 ¶10(a). The Consent Decree thus required the Government of Guam to submit a financial plan  
2 which identified “the funding source or sources and a schedule to secure funds for the capital and  
3 operating costs necessary” to pay for the various compliance measures required under the Consent  
4 Decree.<sup>4</sup> *Id.* The Government of Guam agreed to “use its best efforts to obtain sufficient funding  
5 to fully implement the projects required by [the] Consent Decree.” *Id.*

6 In March 2004 a Preliminary Landfill Site Suitability Report was prepared by GEPA in  
7 association with DPW. *See* Ex. G-A, ECF No. 1497-1. The report set forth the screening process  
8 undertaken by said agencies to eventually identify the top three candidate landfill locations. *Id.*  
9 at 12. Thereafter, “[a]n investigation and analysis of each candidate site was conducted to establish  
10 site characteristics relevant to landfill development.” Final Site Selection Report, Ex. G-C,<sup>5</sup> ECF  
11 No. 1497-3 at ix.

12 The Landfill Site Evaluation Team<sup>6</sup> (“LSET”) comparatively rated the three candidate  
13 landfill sites and prepared a Municipal Solid Waste Landfill (Guam) Site Evaluation Report (the  
14 “Site Evaluation Report”) on January 28, 2005. *See* Ex. G-B, ECF No. 1497-2. The Site Evaluation  
15 Report stated that the “LSET revisited a number of transportation infrastructure (primary and  
16 secondary road improvements, bridge projects, secondary road requirements, etc.) as well as  
17 integrated solid waste management (*i.e.*, transfer stations, recycling, etc.) issues critical to support  
18 each of the candidate sites.” *Id.* at 2. Additionally, the LSET

19 discussed a number of transportation assumptions necessary for any of the three  
20 candidate sites, including that there will be no direct self-hauling of waste, highway  
21 improvements would [be] made using Federal Highway Administration funding and  
program flexibility, transfer stations would be developed, and transportation of waste  
could be strategically scheduled to occur during off-peak hours.

22 *Id.* The LSET determined that the Dandan site was “best suited for the development of a MSWLF,”

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23  
24 <sup>4</sup> The Government of Guam submitted its financial plan in June 2004 as required, and, after  
25 receiving the EPA’s comments, revised its financial plan and resubmitted it in October 2004. *See*  
Machol Decl. at ¶3, ECF No. 74.

26 <sup>5</sup> The complete name of Exhibit G-C is “Final Site Selection Report - Environmental Impact  
27 Statement for the Siting of a Municipal Solid Waste Landfill Facility, Guam.” For ease of reference,  
the court will refer this exhibit simply as the Final Site Selection Report.

28 <sup>6</sup> The LSET was comprised of seven members from DPW and GEPA.

1 but the eventual “decision on the location of Guam’s new MSWLF [would] be made by the Director  
2 of DPW with the concurrence of the Administrator of GEPA.” *Id.* at 1.

3 On January 31, 2005, the Director of DPW, with the concurrence of the GEPA  
4 Administrator, announced the selection of Dandan as the location for Guam’s new MSWLF. *See*  
5 Final Site Selection Report, Ex. G-C, ECF No. 1497-3 at ix. EPA accepted the Government of  
6 Guam’s selection of Dandan as the preferred landfill site on February 14, 2005. *Id.*

7 On March 14, 2005, a Final Site Selection Report was prepared for DPW. *See* Ex. G-C, ECF  
8 No. 1497-3. The Final Site Selection Report discussed 40 specific site characteristic factors used  
9 to comparatively evaluate the three candidate sites, however, two specific site characteristics are  
10 relevant to the discussion here:

11 Access - A preferred sanitary landfill site would have major or suitable highway  
12 access and no required upgrading to the access roads.

13 and

14 Highway Safety - a preferred sanitary landfill site would not cause hazardous road  
15 conditions to existing vehicle and pedestrian traffic during the transportation of solid  
waste. This would include highways, intersections, and main and secondary  
roadways.

16 *Id.* at 5. With regard to these specific site characteristics that fall under the Transportation category,  
17 the Final Site Selection Report noted the following:

18 Access to the Malojloj area will be via Route 4, the primary access road to the  
19 southern Guam.

20 . . .  
According to the Guam Highway Master Plan, Route 4, from Ylig Bridge to Inarajan  
21 Village, will undergo reconstruction and widening to current Department of Public  
Works standards as part of the Short Range Highway Improvement Program. The  
22 current Route 4 reconstruction program features full highway improvements from  
Yona Village to Ylig Bridge and the upgrading of the section from Agana to Route  
23 10 in Mangilao. Thus, the Route 4 reconstruction program appears to support the  
transportation corridor requirements for development of the Dandan candidate  
landfill site.

24 . . .  
**The upgrading of Dandan Road and the reconstruction of Route 4 will address  
25 any highway safety issues involved with the movement of traffic to and from the  
Dandan site.**

26 *Id.* at 35-36 (emphasis added).

27 On July 15, 2005, a Final Supplemental Environmental Impact Statement for the Siting of  
28 a Municipal Solid Waste Landfill Facility, Guam (the “SEIS”) was prepared for DPW. *See* Ex. G-D,

1 ECF No. 1497-4. “The SEIS evaluate[d] impacts of alternative site layouts at Layon located within  
2 the selected Dandan parcel.” *Id.* at 1-6. The SEIS noted the following:

3 Access to the Malojloj area is via Route 4, the primary access road to southern  
4 Guam, **which is currently in need of improvements.**

5 . . .  
6 The highway safety issues that are relevant to traffic flow to and from the site are  
7 mostly along Route 4. **Substandard geometrics and narrow travel lanes for  
8 certain segments of Route 4 exist**, as well as a lack of climbing lanes for the  
9 segment of Route 4 from Ylig Bridge to Inarajan. **There are no paved shoulders  
10 and the paved surface of Route 4 is in need of repair along certain segments.**

11 *Id.* at 3-28 (emphasis added).

12 2. The Appointment of a Receiver and Financing Consent Decree Projects

13 The Government of Guam failed to meet critical Consent Decree deadlines,<sup>7</sup> and the United  
14 States ultimately moved to enforce the Consent Decree. *See* ECF Nos. 68-69. Based on its concern  
15 over the lack of progress by the Government of Guam and after conducting numerous monthly status  
16 hearings and site visits, the court appointed a Receiver with “full power and authority to enforce the  
17 terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and  
18 authority of the Solid Waste Management Division of the Department of Public Works, and any and  
19 all departments, or other divisions of the Department of Public Works insofar as they affect the  
20 Government of Guam’s compliance with the Consent Decree.”<sup>8</sup> Order Re: Appointment of Receiver  
21 (Mar. 17, 2008) at 15-16, ECF No. 239. Among other powers, the court authorized the Receiver to  
22 “facilitat[e] the financing and/or borrowing of such funds necessary to carry out the duties relating  
23 to the Consent Decree as set forth in the Government of Guam’s Revised Financial Plan.” *Id.* at 16.

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24 <sup>7</sup> More specifically, the Government of Guam failed to meet the deadlines with regard to the  
25 opening of a new conforming landfill and the closure of the Ordot Dump. Instead, under the  
26 Receivership, the Ordot Dump stopped receiving trash for disposal on August 31, 2011, and the new  
27 landfill in Layon was not opened until September 1, 2011. *See* Minutes (Sept. 1, 2011), ECF Nos.  
28 795-96.

<sup>8</sup> Guam Public Law 31-020 converted the Solid Waste Management Division (“SWMD”) to the Guam Solid Waste Authority (“GSWA”), an autonomous, public corporation of the Government of Guam. 10 GUAM CODE ANN. § 51A103. The court thereafter vested the Receiver with “full power and authority over GSWA, to the full extent of its previously granted authority over SWMD.” Order (Sept. 2, 2011) at 9, ECF No. 798.

1 The court further ordered that “[i]f, in the best judgment of the Receiver, the Revised Financial Plan  
2 fail[ed] to provide the means or methods of financing necessary or would unreasonably delay the  
3 progress in meeting the mandates of the Consent Decree, the Receiver [was] authorized to modify  
4 the Plan to provide for alternative means or methods of debt financing it deem[ed] appropriate.” *Id.*

5 The Receiver initially estimated that approximately \$159.7 million would be needed to  
6 achieve compliance with the Consent Decree, of which approximately \$40 million would be required  
7 for the closure of the Ordot Dump. See Quarterly Report (Oct. 22, 2008) at 13, ECF No. 269-1. The  
8 Quarterly Report cautioned that the estimates were “subject to change as the competitive bidding  
9 process provide[d] the final measure of the cost for [the Consent Decree] projects.” ECF No. 269-1  
10 at 13. The Receiver further stated that the “estimates related to the Ordot Dump’s closure” would  
11 “require a full reexamination” as the time for the project to actually begin drew near because there  
12 was “a significant amount of remedial investigation that remain[ed] to be accomplished . . . to  
13 determine the extent of environmental damage that ha[d] occurred [at the Ordot Dump] and devise  
14 acceptable plans to mitigate the damage identified.” *Id.* at 14.

15 The Government of Guam eventually decided to finance the Consent Decree projects  
16 through the sale of approximately \$202.4 million in Limited Obligation (Section 30) Bonds,  
17 Series 2009A (the “Limited Obligation Bonds”).<sup>9</sup> See ECF No. 455 at 3.

### 18 3. The Route 4 Safety Enhancements and Other Unfunded Projects

19 On July 10, 2008, the court held the first status hearing with the Receiver, at which time the  
20 Receiver discussed various challenges it faced to achieving compliance with the Consent Decree.  
21 Among such challenges was the need for improvement to the roads and bridges leading to the Layon  
22 site as noted in the 2005 reports prepared for DPW. The Receiver noted that these highway projects  
23 were not under its control, and thus clear and unequivocal commitment from the Government of  
24 Guam was needed on these improvements. The court heard from then DPW Director Larry Perez  
25 and DPW Acting Highway Administrator Joaquin Blaz as to the status of the needed repairs and

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26  
27 <sup>9</sup> The Government of Guam had deposited an initial amount of \$20 million – obtained  
28 through a loan with the Bank of Guam – with a trustee designated by the Receiver and approved by  
the court. Thus, only about \$139.7 million from the Limited Obligation Bonds was allocated for  
deposit to the Project Construction Fund for the Receiver’s use. See ECF No. 455-1 at 16.

1 renovations to the bridges and roadways identified. *See* Minutes (July 10, 2008), ECF No. 251.  
2 DPW’s presentation included a slide presentation which acknowledged that “DPW Highways  
3 Division in conformance with the Consent Decree is to provide necessary roadway improvements  
4 to Route 4 from Route 10 to the Municipal Solid Waste Landfill turnoff.”<sup>10</sup> Mr. Blaz stated that the  
5 Route 4 projects<sup>11</sup> were scheduled for completion before the new landfill would be open. Both  
6 Director Perez and Mr. Blaz assured the court that funding – approximately \$13 million in federal  
7 highway funds – had been identified and set aside for these projects and DPW was committed to  
8 working with the Receiver to address other concerns it may have.

9 To facilitate review of the needed improvements to certain roadways and bridges and to  
10 ensure that the work associated with these improvements would not result in a delay to the opening  
11 of the new landfill or significantly higher costs to transport solid waste to the new landfill, the court  
12 ordered DPW to provide more frequent reports on the status of the bridges and roadway  
13 improvement projects. *See* Order (June 7, 2010), ECF No. 581.

14 At the status hearing held on August 11, 2010, the Government of Guam reported on the  
15 update to the Route 4 projects. *See* DPW Report on Progress of Road and Bridge Projects, ECF No.  
16 609. DPW stated that a transfer truck test was completed on June 2, 2010, from Harmon to the  
17  
18

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19  
20 <sup>10</sup> With DPW’s agreement, the Receiver posted on its website a copy of the slides presented  
21 by DPW at the July 10th hearing. A copy of these slides can be found at  
22 <http://www.guamsolidwastereceiver.org/pdf/Status%20Report%20on%20Bridges%20and%20Roads.pdf> (last visited June 26, 2015). These slides will hereinafter be referenced as the “2008 DPW Status Report.”

23 <sup>11</sup> DPW identified the Route 4 improvements as follows:

- 24 \* Based on transfer truck length, roadway geometry improvements  
25 required on Northern segment of Route 4[.]
- 26 \* Ylig bridge has insufficient load carry capacity and needs to be  
27 replaced[.]
- 28 \* Roadway embankment stabilization and channel slope protection  
required at As[-A]lonso area to prevent failure of roadway[.]

2008 DPW Status Report, Slide 10.

1 Layon Landfill, with employees from Parsons Transportation Group (“PTG”)<sup>12</sup> following the test  
2 vehicle. *Id.* at 5. PTG’s conclusion, as adopted by the Government of Guam, was that there were  
3 “no additional concerns with the trucks maneuvering along Route 4 (other than those already being  
4 mitigated by the [ongoing] projects).” *Id.* This conclusion would soon be contradicted by a report  
5 commissioned by the Receiver.

6 In preparation for the opening of the Layon Landfill, in August 2011 the Receiver and  
7 Guahan Waste Control conducted two test runs with unloaded trucks of the size that would transport  
8 waste to the landfill in order to identify safety or other issues that needed to be addressed prior to  
9 the opening of the landfill. *See* Quarterly Report (Aug. 31, 2011) at 31, ECF No. 794-1. As a result  
10 of issues identified (*e.g.*, narrow curves, rock outcrops and vegetation overhanging the roadway),  
11 the Receiver asked Winzler & Kelly to provide a professional engineer assessment of highway  
12 safety issues along the haul route.<sup>13</sup> The Winzler & Kelly Report identified a number of curves that  
13 presented navigation concerns. The Receiver stated that until a permanent solution could be  
14 implemented, it would use “pilot vehicles” to escort the haul trucks to ensure that other vehicles are  
15 sufficiently warned of an oncoming trash truck. *Id.* at 31, ECF No. 794-1.

16 On January 9, 2012, the Government of Guam filed its response to the Winzler & Kelly  
17 Report. *See* ECF No. 874-1. In its report, the Government of Guam stated

18 DPW generally agrees that safety would be enhanced on Route 4 by  
19 constructing the four foot shoulders at the curves indicated . . . , especially for  
20 transfer truck maneuvering. However, since the June 2, 2010 transfer truck test run  
21 concluded that there were no additional concerns with transfer trucks maneuvering  
22 along Route 4, the DPW has not programmed or budgeted any additional projects  
23 other than those that have been previously . . . reported to the [court].<sup>14</sup>

24 . . .  
25 Presently, there are no local funds available for the recommended shoulder  
26 construction work. However, DPW will discuss with the Federal Highway

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27 <sup>12</sup> PTG is a consultant to DPW.

28 <sup>13</sup> The Winzler & Kelly Report is attached to the Receiver’s Quarterly Report as Tab 10.  
*See* ECF No. 794-12.

<sup>14</sup> The previously identified projects were (1) the Ylig Bridge replacement, (2) rehabilitation  
of the Togcha and Talofofu bridges, (3) Route 4 widening and resurfacing (from Pago Bay to Route  
17), and (4) Route 4 resurfacing (from Togcha River to Ipan Beach Park). *See* ECF No. 874-1 at  
5.

1 Administration (FHWA) about the possibility of including such costs in a future  
2 highway project. Because this could take some time, another alternative could be for  
the Receiver (with the [c]ourt's approval) to provide the funding[.]

3 *Id.* at 5.

4 In response, the Receiver filed a Special Report stating that it

5 believe[d] that these safety improvements are necessary for public safety in general  
6 and for the safe operation of the Layon Landfill in particular and should have been  
7 included in the original package of enhancements to Route 4 that were identified and  
8 funded by the previous Administration[.] [The Receiver did] not believe that these  
9 safety enhancements should be dependent on the "possibility" of future funding.  
Like the other enhancements to Route 4 that were identified and funded through  
DPW, these enhancements will benefit the public in general and not just Solid Waste  
Customers.

10 Special Report (Feb. 14, 2012) at 3-4, ECF No. 885. The Receiver asked the court to order DPW  
11 to proceed, without delay, with the design and construction of the safety enhancements identified.

12 *Id.* at 4. The Receiver proposed that if DPW certified that it had neither the local funds nor federal  
13 funds to construct these safety enhancements, GSWA would pay for the enhancements, to the extent  
14 that funds were available and the court approved the expenditure, however, GSWA would not  
15 reimburse the Government of Guam for the debt service on any such capital funds used to pay for  
16 these road enhancements. *Id.*

17 On February 15, 2012, the court ordered DPW to immediately proceed with the design and  
18 construction of the Route 4 shoulder enhancements and to use its best efforts to obtain local or  
19 federal funding to pay for the enhancements. *See* Order (Feb. 15, 2012) at 3, ECF No. 888. The  
20 court also directed that if DPW could not obtain local or federal funds without significantly delaying  
21 the construction of the enhancements, then the Director of DPW shall certify such to the court and  
22 the court would authorize the Receiver to pay for the costs of the enhancements from capital funds  
23 that were available to the Receiver. *Id.* Finally, the court stated that if the Receiver provided capital  
24 to DPW to fund the enhancements, then GSWA would not reimburse the Government of Guam for  
25 the debt service on any such capital funds used to pay for the enhancements.<sup>15</sup> *Id.*

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26  
27 <sup>15</sup> The court's Order also addressed the related issue regarding the As-Alonso Slope Stability  
28 Analysis. *Id.* at 1-2. DPW previously reported that the As-Alonso area of Route 4 had sustained  
typhoon and earthquake damage and was in need of repair, so the court ordered DPW to engage a

1 In July 2012, DPW and GSWA entered into a Memorandum of Agreement.<sup>16</sup> See Ex. A to  
2 Joint Report, ECF No. 1391-1. Under the terms of this agreement, “subject to certification and  
3 approval by the Receiver,” GSWA agreed to “fully fund and certify the cost of the design and  
4 construction of the Route 4 shoulder enhancement project,” which was then estimated to be between  
5 \$4 to \$4.5 million.<sup>17</sup> *Id.* at Section 2, ¶B.

6 By May 2013, however, the Receiver reported that because the cost for the Ordot Dump  
7 closure had increased from the original estimate,<sup>18</sup> the Receiver had insufficient capital funds to pay  
8 for the Route 4 safety enhancements. In its Quarterly Report, the Receiver informed the court and  
9

10  
11 qualified engineering firm to conduct a slope stability analysis for the As-Alonso area, which was  
12 vital to the Layon Landfill access routes. See Order (June 28, 2011) at 2, ECF No. 759. On  
13 December 27, 2011, DPW reported that a topographic survey was necessary to gather data needed  
14 to properly model and perform the slope stability analysis. See DPW Special Report Re: Route 4,  
15 As-Alonso at 2, ECF No. 867. The slope stability analysis and the new topographic survey were  
16 estimated to cost approximately \$76,000, and DPW stated it did not have the funds necessary to  
17 proceed with this work. *Id.* at 2-3. Thus, on February 15, 2012, the court authorized the Receiver  
18 to pay for the costs related to the new topographic survey and slope stability analysis. See Order  
19 (Feb. 15, 2012) at 2, ECF No. 888.

16 <sup>16</sup> The agreement was signed by David Manning (on behalf of the Receiver and GSWA),  
17 Joanne Brown (then DPW Director), then Attorney General of Guam Leonardo Rapadas, and Lt.  
18 Governor Raymond S. Tenorio.

19 <sup>17</sup> According to the Receiver’s October 9, 2014 Quarterly Report, DPW’s revised cost  
20 estimates for the safety upgrades required to Route 4 increased to \$6,640,000. See Quarterly Report  
21 at 36, ECF No. 1422-1. This figure was further revised by DPW. According to the testimony of  
22 James Mischler, who is employed by Parsons Brinckerhoff but was serving a temporary duty  
23 assignment in 2014 with the Guam Transportation Program working for DPW, based on the  
24 information obtained from the development of the 25% conceptual design funded by the Receiver  
25 from bond proceeds, the estimates were further refined and increased to approximately \$8 million.

26 <sup>18</sup> The Receiver’s original estimates were made in October 2008, a few months after the  
27 Receiver had been appointed and without the benefit of extensive information available to it.  
28 However, once the Ordot Dump was closed, numerous field investigations, samplings and surveys  
of the Ordot Dump area were completed, and based on the information gathered, the Receiver  
reported that the cost of closing the Ordot Dump was greater than initially anticipated. As noted  
above, the Receiver originally cautioned that its original estimates would require full reexamination  
since there was “a significant amount of remedial investigation that remain[ed] to be accomplished  
. . . to determine the extent of environmental damage that ha[d] occurred [at the Ordot Dump] and  
devise acceptable plans to mitigate the damage identified.” Quarterly Report (Oct. 22, 2008) at 14,  
ECF No. 269-1.

1 the parties that “it is likely that there will not be enough money from the [Limited Obligation] Bonds  
2 to cover all of the projects” related to the Consent Decree. *See* Quarterly Report (May 21, 2013)  
3 at 33, ECF No. 1067-1. These unfunded projects included (1) upgrades to the residential transfer  
4 stations, (2) Route 4 safety enhancements, (3) Dero Road upgrades and (4) post-closure care for the  
5 Ordot Dump. Thus, the Receiver intended to “complete the planning and design phases for all the  
6 projects, but defer contracting for any additional construction for those projects until [the Receiver]  
7 successfully bid the final Dump closure project and [was] confident that [it had] sufficient resources  
8 to complete the projects as designed.” *Id.* The Receiver stated it would only complete the additional  
9 projects “[t]o the extent that funds remain available, or the Government of Guam makes additional  
10 funds available.” *Id.* at 34.

11 The court directed the Receiver and the Government of Guam to meet and discuss the  
12 development of a plan to pay for the unfunded projects. The Receiver and the Government of Guam  
13 did not reach an agreement with regard to the financing of these projects, and thus on September 30,  
14 2014, the Government of Guam filed its Financing Plan. *See* ECF No. 1416.

### 15 DISCUSSION

16 The Government of Guam maintains that it does not have the funds necessary to complete  
17 the Route 4 safety enhancements, so it proposes to continue the pilot vehicle escort program until  
18 such time as federal funding for the Route 4 project becomes available, which the Government of  
19 Guam anticipates to occur “within the next decade.”<sup>19</sup> *See* Financing Plan at 6-7, ECF No. 1416.

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20  
21 <sup>19</sup> The Government of Guam’s statement is misleading. According to the testimonies of its  
22 own witnesses and the 2030 Guam Transportation Plan (“GTP”), the enhancements to Route 4 are  
23 not scheduled until “2028 to 2031,” which is at least 13 years from now. *See* GTP Table S-8 at page  
24 S-25.

25 A copy of the GTP, prepared and approved by the Government of Guam on December 19,  
26 2008, is available at <http://www.guamtransportationprogram.com/guam-transportation-plan-2030>  
27 (last visited June 26, 2015).

28 The purpose of the GTP is “to present a comprehensive strategy to improve transportation  
infrastructure throughout Guam.” GTP at Section 1.1, page 1-1. The GTP acknowledges that it “is  
a financially constrained vision that is linked to available and foreseeable funding sources.” *Id.*  
According to the GTP:

Development of the GTP was guided through an extensive community outreach  
effort. Two major series of public meetings were held throughout Guam during

1 The Government of Guam notes that it costs about \$12,000 per month for the pilot vehicle escort  
2 program, and over the course of ten years will be approximately \$1.44 million.<sup>20</sup> When compared  
3 to the revised estimate for the Route 4 project of about \$8 million, the Government of Guam states  
4 that the continuation of the escort vehicle program is the “most immediately available and feasible  
5 alternative that makes the most economic sense.” Joint Report at 18-19, ECF No. 1391. Aside from  
6

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7 February and October 2008. Members of the public were encouraged to identify  
8 existing issues and needs, review and comment on proposed transportation  
9 improvements, and develop new ideas for solutions. Meetings were also held with  
10 village mayors, civic and business groups, and a range of federal agencies.

11 *See* GTP Executive Summary at page S-1.

12 The Government of Guam’s witnesses testified that the Route 4 safety issues should have  
13 been considered in the drafting of the GTP, especially if these issues were identified in  
14 environmental studies prepared for DPW in 2005. Based on the court’s review, the entire 192-page  
15 report never discusses the need to improve Route 4 to address highway safety issues identified in  
16 the 2005 studies. Furthermore, several of the Government of Guam’s witnesses testified that the  
17 first time they had heard about the 2005 studies was during the course of the evidentiary hearings.

18 <sup>20</sup> The Government of Guam states that if GSWA is unable to continue to absorb the pilot  
19 vehicle escort program as a regular operational expense, the Government of Guam is willing to  
20 consider crediting the cost of the program against the debt reimbursement GSWA owes it. *See*  
21 *Financing Plan* at 7, ECF No. 1416.

22 The court notes that when the Government of Guam obtained financing through the Limited  
23 Obligation Bonds, it anticipated that fees collected from solid waste customers would allow GSWA  
24 to reimburse the Government of Guam approximately 75% of the Section 30 money used to pay the  
25 debt service on said bonds. *See* Quarterly Report (Dec. 9, 2010) at Tab 6 (Aug. 16, 2010 letter from  
26 GEDA Administrator to Receiver), ECF No. 646-6 and Quarterly Report (July 18, 2012) at 40, ECF  
27 No. 972-1. The Government of Guam maintains that the Receiver is obligated to provide debt  
28 service reimbursement to the Government of Guam in accordance with the bond indenture. The  
Government of Guam continuously asserts that the Receiver is required to charge a user rate that  
would ensure the Government of Guam was fully reimbursed for the debt service paid on the Solid  
Waste Bonds. This contention is not supported by past statements made by bond counsel Stanley  
J. Dirks, who stated

The Indenture does not contain a System rate covenant requiring the maintenance of  
any particular level of System Revenues. For example, there is no covenant of the  
customary type to maintain rates, fees and charges for System services at a level that  
would produce System Revenues sufficient to pay system expenses and bond debt  
service and to provide an additional specified level of “coverage” (often an amount  
equal to 25% or more of bond debt service.

*See* Ex. A (Feb. 24, 2011 Letter from Bond Counsel) at 3, ECF No. 681.

1 the financial aspect, the Government of Guam states that “the experts consulted by the Government  
2 . . . have all determined that Route 4 is *no more dangerous than other roads on Guam*<sup>21</sup> that have  
3 been prioritized ahead of it.” Financing Plan at 6, ECF No. 1416 (emphasis added).

4 Phillip Slagel, an engineer, authored the Winzler & Kelly Report in 2011. In August 2014,  
5 he was hired as the Chief Engineer for DPW. *See* Slagel Decl. at ¶1, ECF No. 1466. He stated that  
6 [w]hile safety can always be improved on Guam’s roadways, the proper use of pilot cars and signage  
7 is a reasonable solution and would reduce the hazard potential to an acceptable level.” *Id.* at ¶8.  
8 He further stated that the Route 4 safety enhancements project could take “up to five (5) years or  
9 more to complete.” *Id.* at ¶9. Mr. Slagel asserted that “[b]ased on the overall effectiveness of the  
10 pilot car alternative, and other factors generally considered (*e.g.*, cost efficiency, availability of  
11 funding, and the time required to complete a construction project), [he] . . . strongly recommend[ed]  
12 that the pilot car alternative be left in place until such time as a complete and appropriate project  
13 developed under DPW’s current process can be put into place.” *Id.* at ¶11.

14 While the continued use of pilot vehicles to escort the tractor trailers<sup>22</sup> to the Layon Landfill  
15 makes sense from a financial standpoint for the Government of Guam – especially when compared  
16 to the revised estimate of \$8 million – the United States and the Receiver believe this is simply not  
17 an acceptable solution to address the safety concerns raised by the southern residents as voiced by  
18 the Mayor of Inarajan, the Honorable Doris F. Lujan, and the Speaker of the 33rd Guam Legislature,  
19 Judith T. Won Pat. *See also* Notice of Receipt of Letter, ECF No. 1420.<sup>23</sup> Even the Government  
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21  
22 <sup>21</sup> DPW’s Chief Engineer testified that he could neither agree or disagree with this statement.  
23 He further stated that he could not quantify that statement from an engineering point of view since  
24 he did not have sufficient information to make such a representation.

25 <sup>22</sup> According to the statements of Chace Anderson, these tractor trailers each haul to the  
26 Layon Landfill a load of waste averaging between 20-25 tons. The tractor trailers travel from the  
27 Harmon Industrial Park to the Layon Landfill six days a week (Monday through Saturday) and run  
28 as early as 5:30 to 6:00 a.m. and as late as 2:00 p.m. Usually Monday is the busiest day with up to  
20 tractor trailer runs, but the number of runs decreases every day thereafter to as low as five (5).

<sup>23</sup> Attached thereto was a letter dated October 7, 2014, signed by various mayors of the  
southern villages.

1 of Guam's own witness, Michael Lanning,<sup>24</sup> testified that if he was a policymaker, he would not  
2 recommend the use of the pilot cars until 2028.

3       The concerns of the southern residents are supported by the findings of the Winzler & Kelly  
4 Report. According to this report, "portions of the roadway, in the subject area, did not appear  
5 traversable by the Trash Hauler trucks without encroachment into oncoming lanes." Winzler &  
6 Kelly Report at 1, ECF No. 794-12. The Winzler & Kelly Report further noted the following field  
7 observations:

8       There are portions of the study area where encroachment of vegetation into the  
9 roadway necessitates, or at least contributes to, encroachment of large vehicles into  
the opposing traffic lane in order to avoid a collision with the vegetation. . . .

10       Small radius horizontal curves, in combination with little or no shoulders in some  
11 areas, have resulted in tracking of the design vehicle rear tires either off of the  
12 roadway pavement or into the opposing traffic lane. At other times it appeared  
necessary for the design vehicle to over steer the front wheels into the opposing  
traffic lane in order to avoid or lessen the rear wheel encroachment.

13       Off tracking (tracking off of the outside edge of the pavement) to avoid encroaching  
14 into the oncoming lane is limited, in some areas, as a result of rock outcrops, ditches,  
steep cut slopes, and guardrails.

15       Areas where off tracking is attainable is also not without concern. The necessity of  
16 repetitive off tracking in the same area, especially during the rainy season, could lead  
17 to rutting, disruption of drainage patterns and may ultimately develop into a safety  
hazard.

18 *Id.* at 2. Furthermore, concern was expressed by Chief Engineer Phillip Slagel, who testified that  
19 even if the tractor trailers were centered in their respective lanes of travel, there would only be  
20 inches between the mirrors of passing trucks. The findings of the Winzler & Kelly Report were  
21 consistent with the observations of those in attendance at the site visit to Route 4 conducted on  
22 January 16, 2015, and the testimony of the witnesses at the evidentiary hearings.

23       In addition to the economic aspect of this project, the Government of Guam argued that the  
24 "Route 4 safety enhancements are not required under the Consent Decree" and therefore they are  
25 not within the jurisdiction of the court to impose on the Government of Guam. Financing Plan at  
26 8, ECF No. 1416. The United States and the Receiver disagreed and asserted that the Route 4 safety

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28       <sup>24</sup> Mr. Lanning is the Program Manager for PTG and oversees the work PTG does for DPW  
with regard to roads on Guam.

1 enhancements are directly related to Government of Guam’s obligation to provide a safe route to the  
2 Layon Landfill. *See* U.S. Response at 3, ECF No. 1431. As Mr. Mullaney noted during closing  
3 arguments, when the Government of Guam selected Layon in 2005 as the site for the new landfill,  
4 it assured EPA and this court that improvements to Route 4 would be implemented in time to  
5 support the opening of the new landfill, which was then slated for 2007. Now, ten years later, the  
6 necessary improvements have not been completed. The United States stated that this is yet another  
7 “broken promise” by the Government of Guam.

8         The court reminds the parties that this action was initiated as a result of the Government of  
9 Guam’s violations of the Clean Water Act. The parties entered into the Consent Decree with the goal  
10 of ceasing the discharge of leachate from the Ordot Dump into the Lonfit River. To accomplish this  
11 goal, the Government of Guam agreed to three primary projects: (1) open a new conforming  
12 MSWLF, (2) close the Ordot Dump and (3) perform and complete a Supplemental Environmental  
13 Project (“SEP”).<sup>25</sup> Consent Decree at ¶¶8, 9 and 17, ECF No. 55. The Government of Guam also  
14 agreed to prepare a financial plan for funding the closure of the Ordot Dump and the opening of a  
15 new MSWLF. *See* Consent Decree at ¶10, ECF No. 55. The Consent Decree required the  
16 Government of Guam to fund “the costs and expenses directly related to the closure of the Ordot  
17 Dump and the development, design, construction and operation of a new sanitary landfill.” *Id.*  
18 While the Route 4 safety enhancements project would certainly improve access to the new landfill,  
19 it is not directly related to Ordot Dump nor to the development, design, construction, and operation  
20 of the Layon Landfill, particularly when all the engineers that testified at the evidentiary hearings  
21 agreed that the proper use of pilot cars and signage appear to be a reasonable, albeit temporary,  
22 solution under the circumstances.

23         In so holding, the court clarifies that the request by the United States, the Receiver and

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25         <sup>25</sup> In Appendix C to the Consent Decree, the Government of Guam stated that the SEP’s goal  
26 was to “develop a comprehensive waste diversion strategy to eliminate the land disposal and  
27 prolonged storage of household hazardous waste on Guam.” Consent Decree, app. C at 1, ECF  
28 No. 55. One component of the project was the “construction and operation of a household  
hazardous waste receiving facility.” *Id.* at 4. On January 23, 2015, the Receiver satisfied this  
requirement of the Consent Decree with the opening of the Harmon Residential Transfer Station  
and Household Hazardous Waste Facility.

1 Guam’s southern residents to prioritize the necessary improvements to segments of Route 4 is  
2 reasonably justified. That is, the proposed Route 4 project would indeed ameliorate the safety of  
3 the roadway between Ylig Bridge and Dandan Road. However, similar to the decision to close the  
4 Dededo Residential Transfer Station, the decision to prioritize certain highway projects over Route 4  
5 is a policy decision best left to the discretion of Guam’s elected leaders. The Government of Guam,  
6 in exercising its discretion, has determined that the Route 4 project does not merit as high a priority  
7 as other roadway projects and should be postponed until sometime between 2028 to 2031. Given  
8 the significant safety issues highlighted by the Winzler & Kelly Report and the testimony of the  
9 witnesses, the court can do no more than encourage the Government of Guam to immediately  
10 proceed with the design and construction of these safety enhancements along Route 4. The Consent  
11 Decree simply does not require that the Route 4 safety enhancements be funded by the Government  
12 of Guam because such project is not directly related to the closure of the Ordot Dump and the  
13 operation of the Layon Landfill.

#### 14 CONCLUSION

15 The Consent Decree required the Government of Guam to fund all costs “directly related to  
16 the closure of the Ordot Dump and the development, design, construction and operation of a new  
17 sanitary landfill.” Consent Decree at ¶10, ECF No. 55. The Route 4 project would certainly  
18 enhance access to the new landfill, however, under these circumstances, the court finds that the  
19 project is not directly related to the Ordot Dump nor is it directly related to the operation of the  
20 Layon Landfill. Accordingly, the court is without authority to order the Government of Guam to  
21 fund the safety enhancements along Route 4. Such authority and discretion rests with the  
22 Government of Guam.

23 In light of the court’s ruling, the court directs the Receiver to cease all funding previously  
24 authorized by the court for the As-Alonso and Route 4 projects.

25 IT IS SO ORDERED.



26 /s/ Frances M. Tydingco-Gatewood  
27 Chief Judge  
28 Dated: Jun 29, 2015