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DISTRICT COURT OF GUAM

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

CIVIL CASE NO. 02-00022

ORDER
re Joint Report on Transition Issues

This case came before the court for a continued status hearing on May 8, 2019, during which the court and the parties discussed the remaining transition issues as set forth in the parties’ Joint Report Regarding Receiver Transition Issues (the “Joint Report”). *See* ECF No. 1881, The court issues the following Order to further clarify the Receiver’s remaining duties as the Guam Solid Waste Authority (“GSWA”) Board transitions into full control over all aspects of the agency.

In its previous Order, the court authorized the Receiver to oversee and control all work associated with the post-closure of the Ordot Dump. *See* Order (Apr. 29, 2019) at 2, ECF No. 1880. In addition to the powers previously granted, the court also authorizes the Receiver to pay for any required services from consultants and contractors to complete the work associated with the post-closure of the Ordot Dump, including continued oversight of the current operator performing post-closure work.

As for meeting the federal regulations regarding financial assurances for post-closure care at the Ordot Dump, the parties have agreed to establish a trust fund to be administered by a RCRA-compliant trustee. *See* Joint Report at 2, ECF No. 1881. The parties have agreed on the process for selecting this trustee. *Id.* at 3. At the conclusion of the Receivership, the Guam Environmental

1 Protection Agency (“GEPA”) will be responsible for reviewing and approving invoices related to
2 post-closure care of the Ordot Dump and for directing the trustee to pay approved invoices.¹ *Id.* at
3 2-4. The services of an independent engineer are necessary to assist GEPA to undertake these
4 responsibilities. *Id.* at 3. Accordingly, the court orders the Receiver to negotiate and contract
5 directly with an independent engineer who can provide GEPA with the technical expertise necessary
6 to review and approve invoices post-Receivership.² The Receiver shall assign the contract to GEPA
7 at the conclusion of the Receivership.

8 As for the construction of Cell 3 at the Layon Landfill, the Government of Guam has passed
9 legislation that authorizes it to issue General Obligation Bonds to construct the new cell, with a
10 pledge of GSWA tipping fees as repayment of the debt service. The court strongly supports the
11 government’s efforts to finance the construction of a new cell in this manner, especially since
12 GSWA’s financial projections reflect no expected increase to the tipping fees as a result of this
13 bond borrowing scheme and because there is limited air space remaining at the existing cells. In
14 this regard, the court and the parties agree that the construction of Cell 3 at the Layon Landfill is
15 a time-sensitive project. Construction of the new cell requires at least two dry seasons, which
16 necessitates that construction begin as soon as possible and no later than July 2019. It is critical that
17 this project begin timely. Accordingly, during this transition period, the Receiver, in consultation
18 with GSWA, shall continue negotiating with the bidder/contractor for the construction of Cell 3.
19 The Receiver, on behalf of GSWA as the contracting party, is hereby authorized to sign the contract
20

21 ¹ The parties have agreed to a procedure by which GEPA will approve these invoices for
22 payment. *See id.* at 5-6.

23 ² Pursuant to the agreement of the parties, the Receiver’s negotiations with the independent
24 engineer should include a requirement that the independent engineer secure a website accessible
25 to GEPA, GSWA and U.S. EPA so that all technical reports prepared by the independent engineer
26 for GEPA may be posted to set website. *Id.* at 6. These technical reports should include all
27 invoices and supporting documents submitted to GEPA from GSWA’s contractors and consultants
28 providing post-closure care at the Ordot Dump. *Id.* The independent engineer shall also send an
email to GEPA, GSWA and U.S. EPA on the same day a technical report is uploaded, so that these
parties will have an adequate opportunity to object in writing to any payments proposed by GEPA
before they are made. *Id.*

1 upon completion of the negotiations, and the Receiver shall assign the Cell 3 construction contract
2 to GSWA upon complete termination of the Receivership or upon further order of the court.
3 Furthermore, the Receiver, in consultation with GSWA, shall negotiate construction management
4 services with GHD, Inc. under the contract recently assigned by the Receiver to GSWA for the
5 construction of Cell 3.

6 Finally, based on the scheduling needs of the parties, the next status hearing previously set
7 for August 14, 2019, is hereby rescheduled to Wednesday, July 31, 2019, at 8:30 a.m.

8 IT IS SO ORDERED.



9 /s/ Frances M. Tydingco-Gatewood
10 Chief Judge
11 Dated: Jun 11, 2019
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