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9 *By and through Receiver Gershman, Brickner & Bratton, Inc. (“GBB”)*

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF GUAM**

12 UNITED STATES OF AMERICA, ) CIVIL CASE NO. 02-00022  
13 )  
14 Plaintiff, )  
15 )  
16 v. ) **RECEIVER’S REPORT RE:**  
17 ) **TRANSITION ISSUES**  
18 )  
19 GOVERNMENT OF GUAM, )  
20 )  
21 Defendant. )

22 **I. INTRODUCTION**

23 The Receiver filed a quarterly status report on August 23, 2017 (ECF No. 1749), and  
24 began to present the report at the August 23, 2017 hearing before the Court. At the August 23,  
25 2017 hearing, the Court changed the format of the usual presentation by the Receiver in order to  
26 focus on the more significant issues that may impact the transition of operations and management  
27 of the Guam Solid Waste Authority (“GSWA”) from the Receiver to the Board of Directors (the  
28 “GSWA Board”). The Court continued the hearing to September 14, 2017 to permit the Receiver  
to finish its presentation. (ECF No. 1750).

On August 31, 2017, the Court ordered several entities to file status reports to address  
certain issues before the September 14, 2017 hearing. On September 8, 2017, the United States,  
the GSWA Board, and the Government of Guam each filed Reports pursuant to the Court’s  
August 31, 2017 Order. (ECF 1753 & 1754). At the September 14, 2017 hearing, the Court  
questioned the parties regarding their latest filed reports. The Court continued the Status

1 Conference re Transition Issues to October 19, 2017, and instructed the parties to continue  
2 working on the transition issues.

3 On October 18, 2017, the Receiver filed a Report re: Transition Issues. (ECF 1761). The  
4 Government of Guam also filed a Status Report in response to the September 14, 2017 hearing.  
5 (ECF 1762). At the October 19, 2017 hearing, the Court questioned the parties on the status of  
6 transition issues as outlined in the Receiver and Government of Guam's most recent filed reports.  
7 (ECF 1763). The Court scheduled the next status hearing regarding the transition for November  
8 7, 2017.

9 On October 26, 2017 the Board of Directors' filed a Statement with the District Court The  
10 next hearing on the transition issues is set for November 7, 2017. The Receiver now submits this  
11 Report to update the Court on the status of the transition issues.

## 12 13 **II. STATUS OF TRANSITION ISSUES**

### 14 15 **A. The Temporary Employees and the May 28, 2009 AG Opinion**

16 This issue is based on the legal advice provided to the Receiver by Deputy Attorney  
17 General Pat Mason in a letter dated May 28, 2009. Since the issue has been fully briefed and  
18 discussed before the Court, the Receiver will not restate the issue here, except to note that the  
19 issue has not been resolved. No progress toward resolution of the issue has been made since the  
20 last hearing before this Court.

21 The Receiver has a contract with Pacific Human Resources (PHR) to provide temporary  
22 services to GSWA. The Receiver and PHR met on November 1, 2017, and agreed that PHR would  
23 initiate work on November 6, 2017 to work in association with GSWA's Alicia Fejeran and Greg  
24 Martin to update personnel classifications.

### 25 26 **B. Transition Legislation**

27 The Attorney General informed the Receiver that the legislation that addresses the rates,  
28 the assumption of contracts from the Receiver, and certain other issues has passed the Legislature

1 and been signed into law by the Governor. The language to which the Governor objected  
2 concerning debt service was removed from the legislation, thus removing any legal barrier to the  
3 Government of Guam draining most or all of the cash from GSWA to reimburse itself for debt  
4 service already paid from federal Section 30 funds. This matter will be addressed in more detail  
5 in the section of this report on the FY 2018 Budget.

### 6 7 **C. Trusteeship and the RFP for Post Closure Operator Contract**

8 Two proposals have been received for the Post Closure Operator of the Ordot Closure  
9 Facility. These proposals are currently being evaluated and negotiations will commence with  
10 both proposers in the coming days to complete a contract award in this matter. With respect to  
11 the procurement for the Trustee and Independent Engineer, no progress can be made on their  
12 selection until the uncertainty created by the Government's continuing effort to change this  
13 provision of the transition plan is finally resolved.

14 On October 26, 2017 the GSWA Board filed a Statement with the District Court  
15 requesting that it be allowed to participate in the selection of the "Trustee, engineer and operator"  
16 and that it have prior review authority with respect to all of the duties of the Trustee as outlined  
17 in the Receiver's Quarterly Report dated October 21, 2015.

18 The Trustee should report exclusively to the District Court. This Court has often cited the  
19 biblical wisdom from Matthew 6 that "No one can serve two masters." Just as this was applicable  
20 to the Receiver and has proven to be wise counsel during the course of the Receivership, it is also  
21 true for the Trustee. The duties of the Trustee fall into two broad categories: 1) ministerial duties  
22 and (2) fiduciary duties. Any party, has the right to challenge the Trustee if it believes the Trustee  
23 is not properly exercising these duties. This Court has always been generous with its time,  
24 allowing anyone with a concern to be heard. To impose additional layers of prior review on the  
25 work of the Trustee makes it at the very least unnecessarily cumbersome or at worst, unworkable.

26 With respect to the selection process, the Receiver welcomes any input the Board or others  
27 wish to share, but the selection must be made on a professional and efficient basis. The process  
28 for the Ordot Operator is already underway. When the Court's disposition of the continuing

1 discussion about the Trustee is final, the Receiver will commence the procurement process for  
2 the Trustee and Independent Engineer. These selections ultimately depend on the professional  
3 judgement of the evaluators. If the Board is to be involved, then the United States should also be  
4 involved, and this makes for an unnecessarily cumbersome process. The Receiver respectfully  
5 urges the Court not to change the procurement process as requested by the Board.

6 Finally, the Board requests that it be provided with estimates of the cost of the Trustee  
7 and the Independent Engineer. The Board indicates that these numbers are important considering  
8 the Receiver's "insistence" that the Board adopt an FY 2018 Budget and submit it to the  
9 Legislature. It is important to note that it is not the insistence of the Receiver, but the requirement  
10 of Guam Law that requires the Board to approve a budget and submit it to the Legislature for  
11 approval. *See* 10 G.C.A. § 51A101, et. seq. In any event, the Board is mistaken about the effect  
12 these costs will have on the FY 2018 Budget for GSWA. Both fees will be paid from the fixed  
13 amount currently deposited monthly to the Reserve for Unfunded Expenses<sup>1</sup> and this amount will  
14 not change. These fees will have no relevance to the FY 2018 Operating Budget.

#### 15 16 **D. FY2018 Operating Budget**

17 No progress has been made on this issue. The matter was scheduled for consideration at  
18 a Board meeting scheduled for November 1st but the meeting was cancelled for lack of a quorum.  
19 The Receiver continues to believe that this issue must be addressed prior to the transition, pursuant  
20 to the Guam Solid Waste Authority Act. *See* 10 G.C.A. § 51A101, et. seq.

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21  
22 <sup>1</sup> This is the basic funding for the financing plan approved by the District Court in its Orders dated  
23 4-20-2015, 5-1-2015, 5-27,2015, 6-29-2015 and 5-2-2016. It is the \$4.5 million annually  
24 (\$374,758.08 monthly) utilized by the Receiver to fund the refurbishing of Dero Road, the  
25 upgrades to the Residential Transfer Stations, the environmental closure of the Dededo  
26 Residential Transfer Station, the Post-Closure Care of the Ordot Dump and certain legal expenses  
27 of the Receiver. The total amount needed for the Post-Closure Care of the Ordot Dump will need  
28 revisions based on: (1) changes required by USEPA to the Post-Closure Care Plan; (2) the fees of  
the Trustee and Independent Engineer; and (3) the cost of the landfill gas mitigation plan. These  
revisions will need to be funded and can be funded by extending the total time that the monthly  
allocation cited above is allocated to funding the Post-Closure Care Plan. However, this requires  
no change in the amounts deducted monthly or annually to fund post-closure care.

1           The Receiver’s authority for spending comes from the District Court. As a consequence,  
2 it is the Court that has been the approval authority for the budget since the beginning of the  
3 Receivership. With the end of the Receivership approaching, the budget approval process will  
4 soon change for GSWA to that which is provided by Guam Law.

5           Earlier in the year, the Receiver had discussions with Court staff concerning the FY 2018  
6 Operating Budget. The Receiver developed the FY 2018 Budget to guide its spending while the  
7 Receivership was still in place, but suggested that the FY 2018 Budget not be formally submitted  
8 to the Court for approval since the Receiver was not scheduled to be in charge of GSWA for most  
9 of FY 2018. The Receiver believed it would be better if the Board independently developed a  
10 budget, with our assistance, to give them valuable experience in this area. In addition, doing so  
11 would provide the Board with a budget to submit to the Legislature for approval as required by  
12 the GSWA Act.

13           Since the last hearing, the Receiver received a request from a member of the GSWA Board  
14 for a copy of the Receiver’s budget. Since this budget was produced by the Receiver under the  
15 authority conferred on it by the Court, the Receiver does not believe it can release it until the  
16 Court formally approves. Accordingly, it is submitted to the Court as **Attachment “1”** to this  
17 status report with the request that it be approved as the GSWA budget for the period of time the  
18 Receivership remains in control of GSWA during FY 2018. The Receiver further requests it be  
19 authorized to make any adjustments in the budget needed to address circumstances not anticipated  
20 in the budget, that may arise during the time the Receiver remains in control of GSWA.

21           But approval of the Receiver’s FY 2018 Operating Budget can only protect GSWA for as  
22 long as it remains in Receivership. When the Receivership ends, GSWA must rely on the budget  
23 as enacted pursuant to Guam Law. As we now know, based on the testimony of Lester Carlson  
24 at the last hearing on October 17, 2017, the Governor’s Office submitted a budget for GSWA to  
25 the Legislature and it was enacted. There was no consultation with the Receiver<sup>2</sup> on this budget  
26 and, to the best of the Receiver’s knowledge, none with the GSWA Board of Directors. The  
27 budget adopted provides less than half the funds needed for operation of GSWA during FY 2018,

28 <sup>2</sup> There was a request from BBMR to GSWA for a staffing pattern which was provided, but no meaningful  
consultation with the Receiver.

1 using the rest of the budget to reimburse the Government of Guam for the debt service it pays  
2 from federal Section 30 funds. If this budget is implemented after the Receivership ends, it will  
3 have disastrous consequences for GSWA, stripping it of the ability to pay its bills or fund its  
4 required reserves ensuring that the transition will fail almost immediately. This matter must be  
5 addressed before the transition occurs.

#### 6 7 **E. Hiring a Controller**

8 A candidate for the position recently came to Guam for interviews with the General  
9 Manager and the GSWA Board. To the best of our knowledge, no background check has yet been  
10 conducted, and no formal offer has been made. The GSWA Board was to have discussed this  
11 position at its November 1st meeting but the Board did not have enough members attend to meet  
12 the required quorum, so the discussion should take place at the GSWA Board's next meeting  
13 which is scheduled November 14th. However, it appears to the Receiver that should an offer be  
14 made and accepted, it is unlikely that this person could complete his relocation to Guam in  
15 November, and given that late November and December are dominated by holidays and holiday  
16 activities, completing this hiring process and relocation during December also seems unlikely.

#### 17 18 **F. Post-Closure Plan Approval**

19 The post-closure plan is still pending approval before the United States Environmental  
20 Protection Agency and the Guam Environmental Protection Agency.

#### 21 22 **G. Residential Transfer Station Upgrades**

23 The work on Residential Transfer Stations Upgrades is progressing, and should be  
24 completed in December 2017. The environmental closure of the Dededo Residential Transfer  
25 Station is now complete.



# **ATTACHMENT**

**“1”**



Expenses/Revenue	Budget	Estimated	Actual
	FY 2018	FY 2017	FY 2016
Salaries and Wages	\$ 1,000,000.00	\$ 987,377.00	\$ 980,036.67
Overtime	\$ 75,000.00	\$ 95,718.00	\$ 52,950.72
Fringe Benefits	\$ 400,000.00	\$ 373,859.00	\$ 367,740.08
Total Personnel Costs	\$ 1,475,000.00	\$ 1,456,954.00	\$ 1,400,727.47
Receiver Fees	\$ 175,000.00	\$ 700,000.00	\$ 691,662.52
Landfill Operations	\$ 3,500,000.00	\$ 3,294,367.14	\$ 3,387,308.55
Hauler-only Transfer Station	\$ 3,000,000.00	\$ 2,914,745.25	\$ 3,002,930.28
HHW Operator	\$ 600,000.00	\$ 568,355.08	\$ 505,755.76
Personnel	\$ 1,400,000.00	\$ 1,275,000.00	\$ 1,333,820.25
Repairs and Maintenance	\$ 1,000,000.00	\$ 1,068,039.84	\$ 1,065,008.18
Security Services	\$ 90,000.00	\$ 78,630.91	\$ 64,668.68
Legal services	\$ 150,000.00	\$ 118,268.71	\$ 90,044.13
Other Services	\$ 1,236,000.00	\$ 1,200,000.00	\$ 1,130,105.41
Total Contract Services	\$10,976,000.00	\$10,517,406.93	\$10,579,641.24
Fuel	\$ 250,000.00	\$ 202,862.37	\$ 192,423.66
Others	\$ 100,000.00	\$ 88,000.00	\$ 185,259.34
Total Supplies and Materials	\$ 350,000.00	\$ 290,862.37	\$ 377,683.00
Host Community Premium Benefits	\$ 350,000.00	\$ 350,000.00	\$ 301,193.00
Equipment	\$ 20,000.00	\$ 20,000.00	\$ 11,393.00
Utilities	\$ 90,000.00	\$ 75,000.00	\$ 73,355.22
Capital Outlay	\$ 25,000.00	\$ 25,000.00	\$ 1,553,551.00
Miscellaneous	\$ 90,000.00	\$ 88,000.00	\$ 86,850.00
<b>Total Expenditures</b>	<b>\$13,551,000.00</b>	<b>\$13,523,223.30</b>	<b>\$15,076,056.45</b>
Required Reserves:			
Cell Closure Account	\$ 50,000.04	\$ 50,000.04	\$ 50,000.04
Equipment Replacement Account	\$ 680,644.56	\$ 680,644.56	\$ 680,644.56
New Cell Development Account	\$ 50,000.04	\$ 50,000.04	\$ 50,000.04
Post-Closure Account	\$ 99,999.96	\$ 99,999.96	\$ 99,999.96
Reserve for Unfunded Expenses	\$ 4,497,096.96	\$ 4,497,096.96	\$ 4,497,096.96
Transfers out to General Fund	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$18,928,741.56</b>	<b>\$18,900,964.86</b>	<b>\$20,453,798.01</b>
Commercial Tipping Fees	\$10,100,000.00	\$10,096,966.77	\$10,262,368.98
Government Tipping Fees	\$ 1,690,000.00	\$ 1,688,551.53	\$ 1,607,083.63
Residential Fees	\$ 7,000,000.00	\$6,866,964.56	\$ 6,583,967.09
Host Community Premium Surcharge Fees	\$ 350,000.00	\$ 350,349.67	\$ 345,719.00
Interest Income	\$ 20,000.00	\$ 30,000.00	\$ 53,524.00
<b>Total</b>	<b>\$19,160,000.00</b>	<b>\$19,032,832.53</b>	<b>\$18,852,662.71</b>
<b>Surplus/(Deficit)</b>	<b>\$ 231,258.44</b>	<b>\$ 131,867.67</b>	<b>\$ (1,601,135.31)</b>

Note: Deficits are covered by an allocation accumulated of Fund Balance.

\*Actual numbers are audited in total but the breakdown of contractual services and supplies is an estimate based on actual data not included in the audits.