

1 VANESSA L. WILLIAMS, ESQ.
2 LAW OFFICE OF VANESSA L. WILLIAMS, P.C.
3 414 WEST SOLEDAD AVENUE
4 GCIC BLDG., SUITE 500
5 HAGÁTÑA, GUAM 96910
6 TEL: 671-477-1389
7 EMAIL: VLW@VLWILLIAMSLAW.COM

8 *Attorney for the Guam Solid Waste Authority (“GSWA”)*
9 *By and through Receiver Gershman, Brickner & Bratton, Inc. (“GBB”)*

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

13 UNITED STATES OF AMERICA

CIVIL CASE NO. 02-00022

14 Plaintiff,

15 v.

**SUPPLEMENTAL STATUS REPORT
RE: TRANSITION ISSUES**

16 GOVERNMENT OF GUAM,

17 Defendant.

18 The Receiver submits this Supplemental Status Report in anticipation of the May 11, 2018
19 Status Hearing, to provide the Court with the status of the various transition issues.

20 Respectfully submitted this 9th day of May, 2018.

21 /s/ Vanessa L. Williams
22 VANESSA L. WILLIAMS, ESQ.
23
24
25
26
27
28

Supplemental Status Report of the Receiver

Update of the Transitional Issues with GSWA

Civil Case No. 02-00022

United States of America v. Government of Guam
Guam Solid Waste Management Division

Prepared for:

U.S. District Court of Guam



Submitted by:



Gershman, Brickner & Bratton, Inc.
2010 Corporate Ridge Drive, Ste 510
McLean, Virginia 22102

May 9, 2018

Printed on recycled paper

Guam Solid Waste Authority

In this supplemental report, we will provide the Court with the status of various matters related to the transition from the Receivership to the Guam Solid Waste Authority.

I. Trustee and Independent Engineer Procurements

Planning for the procurement of the services of a Trustee¹ and Independent Engineer have continued with a goal to issue these procurements on a schedule that puts the services in place with a reasonable but limited overlap that will coincide with the termination of the Receivership. The goal should be a minimum overlap between the end of the Receivership and the initiation of these services to ensure that any period of time GSWA is required to pay for the services of both the Receiver and these new contractors simultaneously, is minimized.

Should the Court determine it is appropriate to proceed with the Transition on June 30, 2018, the Receiver will immediately initiate the procurement process to acquire the services of the Trustee and the Independent Engineer. Should the procurement take longer than the time available, the Receiver will provide these services during any interim period necessary to complete these procurements and allow the Trustee and Independent Engineer to assume their responsibilities. The draft Request for Proposals for the Independent Engineer together with the draft contract for services are available for review at the following address on the Receiver Website: <http://www.guamsolidwastereceiver.org/pdf/Independent-Engineer-Draft-RFP.pdf>.² The draft Request for Proposals for the services of the Trustee and the draft Trust Agreement for the Ordot Closure Facility are available for review at the following address on the Receiver Website: <http://www.guamsolidwastereceiver.org/pdf/Document-1.pdf>. Input from the parties on both sets of documents is welcome.

II. Post-Closure Operator

After extensive negotiations we are pleased to report that we have completed negotiations and the contract for the Post-Closure Operator for the Ordot Dump Closure Facility has been awarded to Brown and Caldwell. The contract with all of its appendices is posted to the Receiver Website at: <http://www.guamsolidwastereceiver.org/pdf/Document-2.pdf>. This is an important milestone in the final environmental closure of the Ordot Dump and will allow us to

¹ Final selection of the Trustee will be made by the District Court.

² Several of the documents we will reference in this report are large documents. To facilitate review by all interested parties they are available for viewing or downloading on the Receiver Website at the web addresses shown in this report.

phase out GHD's services as the interim provider of these post-closure services. The contract has been executed and the transition is beginning immediately for implementation effective June 1, 2018³.

III. **Contracts**

Passage of legislation that allows GSWA to continue certain Receiver contracts for up to three years Post-Receivership is an important part of the transition strategy adopted by the GSWA Board. These contracts include the contract with Pacific Human Resource Services, Inc. and several others.

With respect to the Pacific Human Resource Services, Inc. contract the Receiver's Special Report dated November 28, 2017, stated the following:

"The Receiver continues to believe the legal advice provided by Deputy Attorney General Pat Mason is correct, however, we understand the Court's decision not to take a position in this matter. As we understand it, the result is that it will now be the Board's responsibility to enter into its own contracts with Pacific Human Resource Services for the continued services of the temporary workers presently employed by the Receiver pursuant to the Receiver's contract with the company. This would also be the case for the current employee employed by direct contract with the Receiver. Based on the time it took for the Receiver to put these contract arrangements in place for the original contracts, it is unlikely in our opinion that these matters will be completely resolved by December 31, 2017."

To the best of our knowledge there have been no steps taken to address this matter to date. Addressing this issue is absolutely vital to any successful transition and we find it perplexing that the new management team does not appear to be addressing this matter.

The same can be said for other critical contracts. **Exhibit 2** shows the Consent Decree Contracts⁴ as of September 30, 2017. We have highlighted the Contracts we believe to be critical and that GSWA will need to continue. While the legislation passed by the Guam Legislature authorizes the contracts to continue, we believe the contracts should be formally assigned and in some cases some renegotiation may be needed to reach agreement with the various contractors to continue. Other than the contract with Pacific Human Resource Services, the Receiver has no objection to these contracts continuing Post-Receivership. However, to the best of our

³ In an Order dated November 24, 2017 the Court made the following statement with respect to this contract: "Thus, while the court will allow the GSWA Board to provide its input, the court finds that it would be more appropriate for the Receiver to make the ultimate decision on the post-closure operator." On April 1, 2018 the final draft agreement for the Post-Closure Operator was made available to the Board and the Office of the Attorney General (see **Exhibit 1**). No recommendations for any change to the Agreement was received.

⁴ Consent Decree Contracts are those entered into by the Receiver for the expressed purpose of achieving compliance with the Consent Decree. This listing is current through September 30, 2017 for expenditures but is complete with respect to the number of contracts and the contractors.

knowledge no action has been taken to reach any agreement with the contractors involved or with the Receiver to actually make this happen.

IV. Transition of Contract Employees

GSWA continues to operate with a large number of Receiver contract employees. As of the date of this report, we can inform the Court that under the Receivership there are now 37 employees in permanent full-time GovGuam positions. However, 26 remain as contract employees with no provision in place or clear path to continue them beyond the end of the Receivership. Resolution of this issue is vital to any successful transition.

V. Operating Rules of GSWA

The New Management Team reports, that the rules and regulations are positioned to become effective no later than June 29, 2018. It is, however, our understanding that the Legislature may be considering amending these rules. We are not clear on what such amendments may include. It is further our understanding that the Legislature intends to hold an additional public hearing on the rules, but that this hearing has not yet been scheduled. It appears to the Receiver that these circumstances may have the potential to delay the effective date of the rules beyond June, 29, 2018. The Court may wish to seek further clarification of this matter.

VI. Approval of the Post-Closure Plan for the Ordot Dump

As noted by the Court, this matter is still pending with the U.S. Environmental Protection Agency (EPA) and the Guam Environmental Protection Agency (GEPA). We continue to work with both agencies toward final approval at the earliest possible date.

We thank the Court for its consideration of our views in this matter.

I declare that under the penalty of perjury under the laws of Guam and the United States that the foregoing is true and correct.

Dated this 9th day of May, 2018.



David L. Manning
Receiver Representative

EXHIBIT “1”

Ordot Dump Closure Facility Operator

David Manning <dmanninggbb@gmail.com>

Sun, Apr 1, 2018 at 10:42 AM

To: Andrew Gayle <agayle@gta.net>, Jonathan M Denight <jdenight@pepsi.com.gu>, "Minakshi V. Hemlani, Esq." <mvhemlani@mvlaw.net>

Cc: Elizabeth Barrett-Anderson <ebanderson@guamag.org>, Georgette Bello Concepcion <gbc@guamlaw.net>, Chris Lund <CLund@gbbinc.com>, Chace Anderson <candersongbb@gmail.com>, Ken Orcutt <korcutt@guamag.org>

Board Members,

The Receiver is ready to finalize its selection of Brown and Caldwell as the post-closure Operator of the Ordot Dump Closure Facility. We have completed contract negotiations and expect to finalize the contract by mid-April with Brown and Caldwell beginning work as the Operator on May 1, 2018. Prior to finalizing the contract, we are submitting the Final Draft to you for any input you may wish to have in this matter, in compliance with the Court's Order dated November 24, 2017.

This is a complex Agreement to manage a complex site under the oversight of a Trustee and the District Court of Guam. We will also be selecting an Independent Engineer to assist the Trustee and the Court in their work to oversee the Operator and the facility. The Agreement calls for a basic operating fee to be paid on a monthly basis. Attached is a summary of that fee. The Brown and Caldwell fee is substantially lower than the fee proposed by the other contender for this contract, E.A. Science and Technology, Inc.

This is not the full cost of Post-closure care. Additional cost will include, but may not be limited to, the following:

1. The cost of utilities for the site. The most expensive of these is treatment of leachate from the site which is currently running about \$220,000 annually. There will also be a small markup to cover overhead when the operator pays such bills on behalf of the facility;
2. Non-routine repairs, replacement and maintenance of the facility which must be either negotiated on a case by case basis or put out to bid;
3. The cost of the Independent Engineer;
4. The cost of the Trustee.

The final draft contract, Brown and Caldwell's original proposal, their letter dated January 26, 2018 are available to you at the following link: <https://gbbinc.sharefile.com/d-s8cd3327f9a3453fa>. Please let me know if you have any problems accessing these documents.

The deadline for providing any input you wish us to consider is the close of business, April 16, 2018. You may direct your input to me via email.

Thank you.

David L. Manning

Receiver

Gershman, Brickner & Bratton, Inc. for

The United States District Court

Territory of Guam

www.guamsolidwastereceiver.org

Guam Office: 671-473-9149

Nashville Office: 615-830-1200

email: dmanninggbb@gmail.com

EXHIBIT “2”

Consent Decree Contracts as of September 30, 2017

Highlighted Contracts should be continued Post-Receivership

Contractor	Purpose of Contract	Total Purchase Order/Contract Amount	Cumulative Expenditures as of September 30, 2017	Remaining Amount	Work Status
Alpine Technology Corporation	Customer Service Software	\$ 500,000	\$ 439,607	\$ 60,393	On-going
Asia Tiger Construction	Emergency Repairs at Transfer Stations	\$ 33,378	\$ 33,378	\$ -	Closed
Bend Mailing Service	Provider of Online and Paperless Residential Account Services	Indefinite	\$ 53,143	N/A	On-going
Black Construction Corporation	Layon Landfill - Construction of Entrance Facilities and Cells 1 and 2	\$ 25,277,787	\$ 25,277,787	\$ -	Closed
Black Construction Corporation	Environmental Closure of the Ordot Dump	\$ 42,569,001	\$ 42,569,001	\$ -	Closed
Brown And Caldwell	Planning Environmental Monitoring for Final Closure of Ordot Dump	\$ 8,575,563	\$ 8,537,435	\$ 38,128	On-going
Core Tech International	Layon Landfill - Construction of Access Road and Utility Improvements for Community	\$ 28,369,411	\$ 28,360,499	\$ 8,912	Closed
Core Tech International	Upgrades to Residential Transfer Stations	\$ 5,815,386	\$ 1,878,257	\$ 3,937,130	On-going
EA Science and Technology	Groundwater Quality Monitoring Services	\$ 4,572,101.76	\$ 4,100,998	\$ 471,103	On-going
Ella Builders	Improvements to GSWA Building	\$ 129,801	\$ 129,801	\$ -	Closed
Far East Equipment Co.	New Trucks, Roll-off Containers and Trash Carts	Gov Guam Purchase Orders	\$ 5,794,973	N/A	On-going
Fleet Services	Crane Qualification and Rigging Course	Gov Guam Purchase Orders	\$ 24,983	N/A	Closed
G4 Security Services (Guam), Inc	Security Services for the Solid Waste Compound	Indefinite	\$ 16,904	N/A	Closed
GHD (formerly Winzler & Kelly)	Construction Management Services for Layon Landfill and related projects	\$ 8,446,084	\$ 7,630,298	\$ 815,786	On-going
GHD, Inc.	Construction Management Services for Ordot Dump Closure and Other Consent Decree Projects	\$13,347,361.20	\$ 10,852,682	\$ 2,494,679	On-going
Guahan Waste Control	Hauler-only Transfer Station	Minimum Monthly Charge Plus Per Ton Excess Charge	\$ 16,735,571	N/A	On-going
Hawaiian Rock Products	Rehabilitation of Dero Road (resurfacing and stormwater improvements)	\$ 1,870,151	\$ 1,870,151	\$ -	On-going
Hawthorne Pacific Corp	New Trucks	Gov Guam Purchase Orders	\$ 191,916	N/A	Closed
GGH Guam, LLC (formerly Herzog Environmental, Inc)	Operation of the Layon Landfill	Minimum Monthly Charge Plus Per Ton Excess Charge	\$ 19,711,195	N/A	On-going
Kevin And Steve Corporation	GSWA Power Sevice Separation	\$ 113,256	\$ 113,256	\$ -	Closed
Maeda Pacific Corporation	Layon Landfill - Construction of Landfill Operations Road and Mass Grading for Cells 1 and 2	\$ 10,045,245	\$ 10,045,245	\$ -	Closed
Maeda Pacific Corporation	Construction of Harmon Residential Transfer Station and Household Hazardous Waste Facility	\$ 2,410,000	\$ 2,015,901	\$ 394,099	Liquidated Damages Assessed
Morrico Equipment Co.	Roll-off Containers and Equipment Rental	Gov Guam Purchase Orders	\$ 194,137	N/A	Closed
Nippo Corporation	Safety Improvements for Dero Road	\$ 19,134	\$ 19,134	\$ -	Closed
Pacific Data Systems	New Computers and Software for GSWA Administration	Gov Guam Purchase Orders	\$ 39,583	N/A	Closed
Pacific Human Resource Services, Inc.	Temporary Staffing Services for the Solid Waste Management Division	Indefinite	\$ 6,650,057	N/A	On-going
Pacific Island Security Agency	Security Services for the Solid Waste Compound (replaced G4 Security Services of Guam)	Indefinite	\$ 1,087,706	N/A	On-going
Pacific Trucking Co.	Water Truck Rental for Fire Suppression	Gov Guam Purchase Orders	\$ 14,900	N/A	Closed
Shaw Environmental, Inc	Technical Assistance	\$ 26,275	\$ 26,275	\$ -	Closed
TG Engineers, PC	Layon Landfill - Design and Engineering Services	\$ 3,337,558	\$ 3,337,558	\$ -	Closed
Triple J Enterprises, Inc.	New Trucks	Gov Guam Purchase Orders	\$ 151,475	N/A	Closed
Unlimited Service Group	Operation of Household Hazardous Waste Facility	Minimum Monthly Charge Plus Disposal Cost	\$ 1,427,121	N/A	On-going

Note: The contract with TG Engineers is a contract that pre-existed the Receivership. Substantial amounts were expended under this contract before the Receiver was appointed.