

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

May 5, 2014

Mr. David L. Manning
Receiver Representative
Gershman Brickner & Bratton, Inc.
c/o Guam Solid Waste Authority
542 North Marine Corps Drive
Tamuning, Guam 96913

Dear Mr. Manning,

I am writing in response to your letter of April 30, 2014. First, I wish to thank you for making yourself available, with legal counsel, to discuss alternatives to financing the unbudgeted costs arising from the closure of the Ordot Dump and the opening of the Layon Landfill. As I said during the call, despite our differences on a myriad of issues, I hope we can agree that the overriding concern to all should be to provide an efficient solid waste collection and disposal system at the most reasonable and affordable cost to the people of Guam.

As for the options that you have proposed to finance the unbudgeted costs, I feel it is necessary to point out that you have only identified what I see to be a fraction of all of the additional unbudgeted costs. During our phone call, you itemized only the following: (i) the **\$21,000,000** cost for the Route 4 Safety Project, the Dero Road Improvements, and the residential transfer station upgrades; and (ii) the approximately **\$30,000,000** cost for the Layon property condemnation. The latter might be a moot or partially moot issue given the settlement agreement to issue tax credits. However, as I am not sure what portion of that has been "paid," I will assume the full \$30,000,000 remains outstanding.

As I have read and reviewed the Receiver's Quarterly Reports, other unbudgeted costs that must be absorbed by the taxpayers or ratepayers include at least the following: (iii) **\$14,292,170** in 2016 to reserve for the cost of the Ordot Dump post-closure care (GBB's May 21, 2013 Quarterly Report, p. 40); (iv) **\$5,500,000** to close Layon cells 1 and 2 (GBB's Nov. 20, 2013 Quarterly Report, p. 32); and (v) between **\$10,800,000-\$21,900,000** to open one or two new cells at Layon (*Id.*).

In addition to these unanticipated future costs, I believe that GSWA also has a current deficit of **\$13,508,757** for unpaid debt-service reimbursements through the end of FY2013. Further, if GSWA continues to reimburse the Government of Guam through FY2014 at its

current annualized rate of \$4,497,097, that deficit will increase by an additional **\$7,483,397** by the end of FY2014 and every fiscal year thereafter.

Although I appreciate your desire to start addressing these unanticipated costs, your suggested proposals only addresses \$51,000,000 of the total **\$92,692,170** shortfall that the Receiver has already projected in its Quarterly Reports. It also fails to account for the current deficit and projected deficit in debt service payments through the end of FY2014 of **\$20,992,154**.

I am sure you will agree that trying to resolve this daunting financial issue on a piecemeal basis is probably not the most cost-efficient way to deal with the issue. For one, it already discounts your first proposal for a "small" rate increase. In addition, with respect to your proposals to incur additional debt, borrowing costs, if that is the route that the Government elects, will multiply with each additional borrowing. The Government will already have to shoulder additional borrowing costs that could have been avoided if these new costs had been anticipated from the outset. There is little sense in repeating the mistake of piecemeal borrowing.

This raises another concern with your suggestion to borrow additional funds, and that is the suggestion itself. As I brought to your attention during our phone call, the Government of Guam is at its debt ceiling. Two of your suggestions to borrow more money will require the raising of the Government's debt ceiling, which you appear to believe is possible. Guam's debt ceiling is calculated using the "assessed valuation" of real property. Prior increases in the Government's debt ceiling have raised the assessed valuation to its current figure of 100%. The only way to increase the debt ceiling is for the Government to start assessing real property at a rate in excess of the property's full market value. This is a political ceiling that even the U.S. Supreme Court was confident would never be breached.

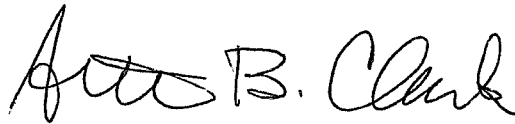
Accordingly, as a practical matter, I think this forces us to revise your suggestions as follows, although more may be later considered by the Government: (i) a substantial, not small, rate increase in the fees charged to GSWA customers to assist in financing; (ii) reordering priorities to allow DPW to pay directly for the improvements to Dero Road and the safety enhancements for Route 4 instead of funding these projects through the Consent Decree; and (iii) in lieu of all of the above options, finance all of the additional projects along with refinancing all of the previously financed Consent Decree Projects through a revenue bond, as the Receiver originally recommended, with the rates adjusted to reflect the full cost of the system, less any general fund subsidy the Government chooses to include.

To directly respond to your request for a commitment from the Government to making meaningful progress to provide additional funds, you hereby have that commitment. However, the time frame within which you have insisted on an election of a specific option is unrealistic, especially in light of these additional costs which your proposals have failed to address. It does not provide us with enough time to evaluate the full impact of any of the options on the taxpayers and/or the ratepayers.

We are seriously exploring your proposals, and we are further examining additional options. I suggest we have a follow-up call at your convenience to discuss whether you agree that the additional issues I have raised need to be part of our conversation.

I hope this sufficiently satisfies your request such that there will not be any disruption in the partial reimbursement schedule. On that issue, although you state in your letter that you believe you have the Court's approval to immediately start withholding the partial \$4.5 million debt-service reimbursement, if your interpretation is that you may withhold all of the \$4.5 million, I must disagree with your conclusion. The March 17, 2014 *Order* from the Court says that the Receiver is authorized to retain counsel and "to pay for those legal fees from GSWA's revenues, even if the expenditure of the funds will negatively impact GSWA's annual reimbursement of \$4.5 million to the Government of Guam." It may be that I am misreading your intent, and your intent is to withhold only a portion equal to the amount you need to pay your counsel. If so, I would appreciate clarification on that point. But even if that is your meaning, the court's order is that you must first pay your legal fees from revenues. The decision to withhold any portion of the debt service reimbursement cannot be made until after a determination that your revenues are inadequate to absorb the modest cost of legal representation. Please do not misinterpret the foregoing legal analysis as an indication of our level of commitment to continue these discussions. As stated above, we are fully committed to working with you on this issue.

Regards,



ARTHUR B. CLARK
Chief Policy Advisor

cc: Ms. Sandra Miller, Esq.
Mr. Rawlen Mantanona, Esq.
Ms. Joyce Tang, Esq.