GBB
SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER

February 2, 2010

Mr. Anthony C. Blaz
Administrator
Guam Economic Development Authority
ITC Building, Suite 511
590 South Marine Corps Drive
Tamuning, Guam 96913

Dear Mr. Blaz:

Thank you for sharing your memo dated January 12, 2009, addressing the Issues raised by the Receiver in our October 21, 2009 Quarterly Report to the District Court. Your memo also acknowledges the additional issues outlined in our January 14, 2010 Quarterly Report and comments on them, as well. We appreciate your work to address these issues and your efforts to work with us to understand our concerns.

We have reviewed your memo and want to share with you additional comments with respect to your responses. For the purpose of this letter, we will summarize the aspects of your response upon which we wish to provide additional comment, after which we will state our additional comment.

Receiver Issue 1: *Refinancing.* GEDA states that Sandi Boughton of USDA has verbally clarified that the USDA did not consider the Section 30 bonds issued for the landfill portion of the project as being on "reasonable rates and terms" because USDA determined that tipping fees could not be collected at rates sufficient to pay landfill operating expenses and debt service on the Section 30 bonds. It is also noted that USDA stated in a letter dated November 27, 2009 that the "tax-exempt bonds obtained by GovGuam was not at reasonable rates and terms"

> **Additional Receiver Comment:** While the somewhat lower interest rate and the grant will reduce the cost of the landfill to its customers, it should be noted that the rates which have been set and are presently being collected, are sufficient to pay the operating expense and debt service of the bonds.

Receiver Issue 2: *Applicant Contributions.* GEDA states in its response that it understands that all applicant funding must be disbursed prior to any funding from USDA. GEDA further states that $39,874,646 "has been identified and is available for immediate drawdown to fund the Consent Decree projects". GEDA also states that the parties have "verbally agreed to the process and the timing involved" for drawdown of the funds. It is also noted that USDA "may" accept the projects existing A/E contracts subsequent to a cursory review.

Additional Receiver Comment: The Receiver does not understand the source of the applicant contributions nor have the differences noted in the Court approved capital budget and the USDA project budget been explained. We assume that the source of applicant funding must be the Section 30 bonds that the USDA loan seeks to replace, but this has never been confirmed. We need confirmation of the source of these funds and an explanation of the differences between the Court approved capital budget and the USDA approved project budget. The verbal agreement mentioned on the drawdown of funds must be put into writing. With respect to the contract issue, more than the A/E contracts are involved. Construction contracts are the primary concern and assurance is needed that the contracts are acceptable, not just that they "may" be acceptable.

Receiver Issue 3: *Interim Construction Financing.* GEDA cites a verbal agreement reached on a conference call with respect to this issue.

Additional Receiver Comment: The agreement with USDA described by GEDA must be put in writing before it can be reasonably evaluated by the Receiver.

Receiver Issue 4: *Disbursement Procedures.* GEDA cites a verbal agreement with respect to this issue.

Additional Receiver Comment: The agreement described by GEDA must be put in writing before it can be reasonably evaluated by the Receiver.

Receiver Issue 5: *Section 30 Security.* GEDA states that USDA has agreed to a 5th position lien on Section 30 funds and that this is already authorized by law.

Additional Receiver Comment: The agreement with USDA described by GEDA must be put in writing before it can be reasonably evaluated by the Receiver. The Attorney General will need to confirm that existing law authorizes such a lien.

Receiver Issue 6: *Reserves.* GEDA cites written clarification for two of the three reserves but describes a verbal agreement with respect to the third reserve.

Additional Receiver Comment: The agreement concerning the Interim Financing Interest Reserve described by GEDA must also be put in writing

Receiver Issue 7: *Required Customers.* GEDA cites written clarification on this issue that is sufficient from the Receiver's perspective.

Additional Receiver Comment: It is clear from the comments made by USDA that they expect the Military to be the "large volume user" of the system. The only way to assure that this is accomplished is to enter a binding agreement with the Government prior to the closing of the USDA loan. Clarification is needed about the USDA's position on this matter.

It is also clear that representations have been made to USDA that all of Guam's waste, other than that which is recycled using traditional means of recycling, will go to the Layon Landfill. The Government of Guam, however, has taken no steps to implement the control of all waste within its jurisdiction (i.e. known as flow control) to assure that this representation is effective. Does USDA understand this and do they expect the Government to exert its authority to assure that all of Guam's waste goes to the Layon Landfill? What is the timing of any such requirement?

Receiver Issue 8: *Third Party Management.* GEDA states that an RFP is in the development stage for third party management and cites written communication from the USDA stating that the Receiver may participate in the bidding.

Additional Receiver Comment: This evidences a serious misunderstanding by GEDA and USDA of the Receivership. The Order creating the Receivership states:

*"**IT IS FURTHER ORDERED** that the Receiver shall have the authority required or necessary for the complete management and control of the Consent Decree projects, including but not limited to:*

(a) The supervision of all of Government of Guam's employees associated with the Consent Decree projects;
(b) The performance of existing contracts;
(c) The entering into future contracts deemed necessary. In awarding any future contracts, the Receiver shall follow the procedures required in Guam's statutes and regulations, unless, in the best judgment of the Receiver, such compliance would unreasonably delay the progress in meeting the mandates of the Consent Decree;"

The above provisions of the Court's Order placing the Solid Waste Management Division into Receivership places it under the "complete management and control" of the Receiver. The Court explicitly places the performance of existing contracts and entering into future contracts under the authority of the Receiver. Under the Order, the Receiver is the responsible authority for entering into contracts. As such, neither GEDA nor any other entity has the authority to enter into a contract for third party management of the new landfill independent of the Receiver. Since the Receiver is responsible for the procurement of any contracts relative to solid waste, the Receiver cannot possibly bid on such a contract.

Receiver Issue 9: *Operating Budget and Rate Analysis.* GEDA states that USDA is to provide acknowledgement documenting that this requirement cannot be complied with until 2011 at the earliest and that non-compliance would not be subject to a default of the loan conditions. GEDA also notes that USDA is currently reviewing the executed contracts for compliance with their requirements, including modifications needed for compliance with the ARRA and Davis-Bacon prevailing wage requirements. It also states that these requirements will be incorporated as needed via amendments to contracts.

Additional Receiver Comment: The described acknowledgement must be provided in writing. In addition, it should be understood that neither the

Receiver nor the Government of Guam are in a position to force the contractors to accept contract amendments since these contractors already have valid and binding contracts. Retroactive amendments of this complexity are difficult to effectuate. This is especially true with respect to the Maeda contract, since most of the work under this contract has already been completed.

Receiver Issue 10: *Real Property Insurance.* GEDA states that USDA will provide the Government of Guam with the amount and type of insurance required.

Additional Receiver Comment: Written confirmation needs to be provided.

Receiver Issue 11: *Audit Agreement*. GEDA states that these audit services will be the responsibility of the Department of Administration in coordination with the Office of the Public Auditor.

Additional Receiver Comment: This issue is resolved from the Receiver's perspective.

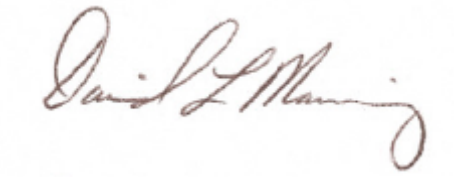
Receiver Recommendations: GEDA accurately describes the Receiver's recommendations and discussions with GEDA concerning these recommendations and other issues, including the timing of the loan, the Buy American and Davis Bacon requirements, the USDA prohibition of free service and the our concern about GEDA's consideration of financing for a private company to build a landfill and waste to energy plant on Guam.

Additional Receiver Comment: We have no additional comments other than those contained in this letter and our Quarterly Report to the District Court dated January 14, 2009.

We look forward to continuing our work with you to assist the Government of Guam in achieving its goals with respect to the USDA Loan/Grant without compromising the vital work of achieving full compliance with the Consent Decree.

Thank you.

Sincerely,



David L. Manning
GBB's Receiver Representative

c.c.
The Honorable Felix P. Camacho, Governor of Guam
The Honorable Alicia G. Limtiaco, Attorney General of Guam