Mayors' Council of Guam
Konsehelon Mahot Guåhan

August 3, 2018

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåtro na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagatña, GU 96910

GL# 34-18-2205
Speaker Benjamin J.F. Cruz

AUG 0 3 2018
Time: 2:00 [ ] AM [ ] PM File No. 34-2077
Received By:

Dear Speaker Cruz,

Buenas Yan Hafa Adai! Transmitted herewith for your information and file Resolution No. 2018-16-003 **"RELATIVE TO EXPRESSING THE MAYORS' COUNCIL OF GUAM'S SUPPORT FOR BILL 228-34 (LS), "AN ACT TO ADD NEW SUBSECTIONS 75122(c)(21) AND 75122(c)(21)(A) TO CHAPTER 75 OF TITLE 21, GUAM CODE ANNOTATED," WHICH AMENDS THE EXISTING LICENSE AGREEMENT BETWEEN THE CHAMORRO LAND TRUST COMMISSION (CLTC), AND KO'KO RECYCLING, TO PROVIDE AN ANNUAL CONTINUING APPROPRIATION FROM THE RECYCLING REVOLVING FUND TO PROVIDE PAYMENT FOR A PRIOR YEAR OBLIGATION RESULTING FROM A 2001 LICENSE AGREEMENT BETWEEN THE CLTC AND KO'KO RECYCLING FOR THE REMOVAL OF TWENTY-FIVE THOUSAND (25,000) METRIC TONS OF METALLIC WASTE FROM THE ISLAND OF GUAM AFTER THE ENORMOUS DEVASTATION OF TYPHOON PAKA."** which was duly and regularly adopted by the Mayors' Council of Guam on Wednesday, August 1, 2018.

2018 AUG -6 PM 1:17

Thank you for your attention regarding this matter. If you should have any questions or comments relative to the above resolution, please do not hesitate to call me.

Senseramente,

ANGEL R. SABLAN
Executive Director

Attachment

cc: File/Chrono

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CERTIFICATION OF THE ADOPTION OF A MAYORS' COUNCIL RESOLUTION

THIS IS TO CERTIFY THAT RESOLUTION NO. 2018-16-003 "RELATIVE TO EXPRESSING THE MAYORS' COUNCIL OF GUAM'S SUPPORT FOR BILL 228-34 (LS), "AN ACT TO ADD NEW SUBSECTIONS 75122(c)(21) AND 75122(c)(21)(A) TO CHAPTER 75 OF TITLE 21, GUAM CODE ANNOTATED," WHICH AMENDS THE EXISTING LICENSE AGREEMENT BETWEEN THE CHAMORRO LAND TRUST COMMISSION (CLTC), AND KO'KO RECYCLING, TO PROVIDE AN ANNUAL CONTINUING APPROPRIATION FROM THE RECYCLING REVOLVING FUND TO PROVIDE PAYMENT FOR A PRIOR YEAR OBLIGATION RESULTING FROM A 2001 LICENSE AGREEMENT BETWEEN THE CLTC AND KO'KO RECYCLING FOR THE REMOVAL OF TWENTY-FIVE THOUSAND (25,000) METRIC TONS OF METALLIC WASTE FROM THE ISLAND OF GUAM AFTER THE ENORMOUS DEVASTATION OF TYPHOON PAKA." WAS ADOPTED ON THE 1ST DAY OF AUGUST 2018.

MAYOR DORIS F. LUJAN, SECRETARY
Mayors' Council of Guam

MAYORS' COUNCIL OF GUAM

Resolution No. 2018-16-003

Introduced By:
Mayor R.M. Matanane
Mayor R.RDC Hofmann
Mayor P.M. McDonald
Mayor M.B. Savares
Mayor D.F. Lujan
Mayor J.L.G. Alig
Mayor D.E. Alvarez
Vice Mayor J.P. Bautista
Vice Mayor F.A. Benavente
Mayor J.M. Blas
Mayor J.U. Blas
Mayor E.T. Chargualaf
Mayor J.A. Cruz
Vice Mayor T.J. Duenas
Vice Mayor C.J. Fejeran
Mayor J.C. Gogue
Vice Mayor R.D. Iriarte
Mayor R.A. Paco
Mayor J.A. Quinata
Mayor L.C. Rivera
Mayor F.A. Salas
Vice Mayor K.C. Santos
Vice Mayor A.P. Sanchez
Mayor K.J.T. Susuico
Mayor V.S. Taitague
Mayor A.R.G. Ungacta

RELATIVE TO EXPRESSING THE MAYORS' COUNCIL OF GUAM'S SUPPORT FOR BILL 228-34 (LS), "AN ACT TO ADD NEW SUBSECTIONS 75122(c)(21) AND 75122(c)(21)(A) TO CHAPTER 75 OF TITLE 21, GUAM CODE ANNOTATED," WHICH AMENDS THE EXISTING LICENSE AGREEMENT BETWEEN THE CHAMORRO LAND TRUST COMMISSION (CLTC), AND KO'KO RECYCLING, TO PROVIDE AN ANNUAL CONTINUING APPROPRIATION

FROM THE RECYCLING REVOLVING FUND TO PROVIDE PAYMENT FOR A PRIOR YEAR OBLIGATION RESULTING FROM A 2001 LICENSE AGREEMENT BETWEEN THE CLTC AND KO'KO RECYCLING FOR THE REMOVAL OF TWENTY-FIVE THOUSAND (25,000) METRIC TONS OF METALLIC WASTE FROM THE ISLAND OF GUAM AFTER THE ENORMOUS DEVASTATION OF TYPHOON PAKA.

BE IT RESOLVED BY KONSEHELON MAHOT GUÅHAN:

WHEREAS, in the wake of Typhoon Paka, over ten thousand (10,000) buildings sustained damage to some degree, with nearly sixty (60) percent of our people reporting major damage to their homes. In addition to these dire straits, nearly five thousand (5,000) of our people were left homeless; Guam and her families were truly in a state of emergency; and

WHEREAS, still today, the devastation of Typhoon Paka is a difficult and traumatic memory to revisit, however, the Mayors' Council of Guam and its staff were on the front lines, working tirelessly to help the people of Guam recover from this tragedy. The Council has the collective institutional and operational memory to know and also remember what happened and who was there in a time of great need and who assisted the people of Guam to recover from one of the worst natural disasters to ever come to our shores; and

WHEREAS, it was through the resilience and the *Inafamaolek* spirit that our people embodied, so that when disaster stuck, the community rallied together as one, to overcome hardship, to endure and survive the way our people have always done; and

WHEREAS, it was against this backdrop that the Federal Emergency Management Agency (FEMA) arrived. Once their teams were on the ground the first thing they did was to mobilize and conduct professional assessments on the amount of disaster debris that needed to be picked up and removed from the island; and

WHEREAS, these island-wide assessments included all disaster debris located on government of Guam properties. After these disaster debris assessments, FEMA awarded the contract for mobilizing and staging the disaster debris to an off-island company; and

WHEREAS, the contract that FEMA awarded to the off-island company consisted only of collecting and bringing the disaster debris from Typhoon Paka to various sites around the island; and

WHEREAS, it was Ko'Ko Recycling that ultimately rose to the challenge – spending time, resources and manpower collecting the material from those staging sites, then delivering all of it to the Port Authority of Guam for shipment off our island to be recycled; and

WHEREAS, it is widely agreed that Ko'Ko Recycling played a crucial role in organizing and coordinating the off-island removal of debris off the island; in the process, Ko'Ko Recycling developed and in fact pioneered the first system of utilizing an inbound break bulk vessel, once it had been unloaded, to then ship out out-bound recycled material, thereby creating a framework for the sustainable removal of recyclables; and

WHEREAS, Benny Benavente Bello, President of Ko'Ko Recycling, spent countless days and nights in his truck at the Port Authority during those six (6) years to oversee a complex and hazardous operation of loading each vessel. Fortunately, there was never any serious injury or accident. Every ship that left was filled to capacity, with cars often stacked ten high on the deck; and

WHEREAS, in addition to the various sites around the island, Ko'Ko Recycling was given the responsibility to clean up and remove off-island all the material at the Dededo Transfer Station – a site that the people of Guam through CLTC have used for over forty (40) years to receive and store metallic debris from all nineteen (19) of Guam's villages; and

WHEREAS, this material also included abandoned vehicles, tires, batteries, white goods, and other debris, including green waste. Although the government of Guam made a request to have this site included as part of the overall disaster debris clean up, FEMA denied this request because it was not Typhoon Paka-related; and

WHEREAS, the United States Environmental Protection Agency (USEPA) had raised serious concerns with the CLTC about the looming environmental damage that could be caused if the property did not undergo a remediation process. This was because the site sits over Guam's northern aquifer, thereby potentially endangering Guam's precious water supply; and

WHEREAS, after the CLTC realized that FEMA would not assist in the cleanup of the Dededo Transfer Station, and again, against the backdrop of an extraordinary state of emergency, Ko'ko Recycling agreed to work with the CLTC on a non-cash basis; and

WHEREAS, CLTC made a proposal for services rendered in which Ko'Ko Recycling would be granted a license agreement for a six-acre property in Barrigada, Route 16. This license agreement was CLTC's vehicle to provide the framework for compensating Ko'ko Recycling for the work accomplished at the Dededo metallic waste site; and

WHEREAS, although the work remained ongoing, Ko'Ko Recycling did not receive the License Agreement until almost two years later. During that time, the President of Ko'Ko would contact CLTC, seeking explanations for the delay, and CLTC would consistently respond that it was working on it. Ko'Ko Recycling took the agency at its word, and in good faith, as it was still engaged in the operation and the island was still recovering from Typhoon Paka; and

WHEREAS, finally, after having received the license agreement, Ko'Ko Recycling realized that there were several issues that required clarification as outlined by its Attorney Fred Horecky; and

WHEREAS, over the years, former CLTC administrators, Ron Teehan, Joe Borja, Tom Elliott, and the Monty Mafnas, have acknowledged Ko'Ko Recycling's work and contribution, as well as the debt owed; and

WHEREAS, this project incidentally also sparked the annual island-wide cleanup program, which without a doubt is one of the island's true success stories. Ko'Ko Recycling's pioneering work ignited a call for greater local efforts at recycling and keeping our island clean and free of abandoned vehicles and white goods; and

WHEREAS, Despite the fact that Ko'Ko Recycling provided an invaluable service in removing tons of metallic debris after Typhoon Paka, and did so at great risk to itself, the company has still to be made whole for its Herculean historic efforts;

WHEREAS, Benny Benavente Bello, President of Ko'Ko Recycling, who was diagnosed with stage three (3) cancer earlier this year, and recently completed the last of ten sessions of chemotherapy, has yet to be justly compensated by the government of Guam and patiently awaits for clarity and understanding of the arrangement and the commitment from both sides, with the government acknowledging that Ko'Ko Recycling has gone above and beyond in fulfilling its commitments; and

WHEREAS, the management and staff of Ko'Ko Recycling have patiently endured years of delays and would like closure to finish this project by completing the environmental remediation of its CLTC property on Route 16, and would like to make whole all those who participated in this venture, gave up their precious time away from family, and gave from their hearts for our island and her people in a time of great crisis; and

WHEREAS, Bill 228-34 (LS) provides a reasonable statutory remedy to a 17-year-old debt resulting from a license agreement ("license agreement") between the Chamorro Land Trust Commission (CLTC) and Ko'Ko Recycling, Inc. in 2001; and

WHEREAS, CLTC stated in the license agreement that it had "been determined and agreed to be in excess of 25,000 metric tons." The CLTC recognized in March 2006 that "based upon a recent inspection of Lot. 10122-15, Dededo, better known as the Dededo Metallic Waste Station, it appears that the property has been substantially cleared of metallic waste." Moreover, Mr. Benny C. Bello, President of Ko'Ko Recycling, Inc., and Attorney Frederick J. Horecky have presented shipping receipts and documents to the Guam Legislature indicating that Ko'Ko Recycling, Inc. justified the removal and cleanup of junk cars, other metallic waste and old tires from CLTC's property and shipped them off the island as memorialized in the license agreement. Consequently, if Mr. Bello did not agree to be compensated only for the first twenty-five thousand (25,000) metric tons of metallic waste removal, this government of Guam liability could have been upwards of Fifteen Million Dollars ($15,000,000.00); and

WHEREAS, given the financial condition of the government of Guam, this solution is not only fair, just, equitable, and long overdue, it also develops a compromise that is a win-win solution for the government and people of Guam; and

WHEREAS, in accordance with this license agreement, the collection of twenty-five thousand (25,000) metric tons of junk cars, other metallic waste and old tires off the island for work satisfactorily completed amounts to Seven Million Five Hundred Thousand ($7.5M); and

WHEREAS, on May 23, 2017, Senators Dennis G. Rodriguez, Jr. and Joe S. San Agustin introduced Bill 98-34, which is an act to add new subsections 75122(c)(21), 75122(c)(21)(a), and 75122(c)(21)(b), to chapter 75 of Title 21, Guam Code Annotated, relative to authorizing the Chamorro and Trust Commission (CLTC) to amend the existing license agreement, to establish

CLTC credit in lieu of cash payment in accordance with the license agreement; and to provide the CLTC credits established herein are assignable to a third party or parties; and

WHEREAS, Bill 98-34 was publicly heard on September 6, 2017, by Senator Tom Ada. The public hearing established that the work was satisfactorily performed, and several senators even praised Ko'ko Recycling for its massive undertaking. The public hearing also established that the CLTC cannot and should not absorb the entire $7.5M liability. However, of this amount, CLTC testified that $1.6M can be provided to the licensee in the form of a CLTC credit since $1.6M is the total amount that will be paid pursuant to that license agreement; and

WHEREAS, in order to address the remaining balance of $5.9M, a suggestion was made at the public hearing to procure the balance from the Recycling Revolving Fund. Senators Rodriguez and San Agustin then introduced Bill 228-34 on February 13, 2018. Bill 228-34, as corrected by the Prime Sponsor: an act to add new subsections 75122(c)(21) and 75122(c)(21)(a) to chapter 75 of title 21, Guam code annotated, relative to approving an amendment to an existing license agreement with the CLTC, and to provide an annual continuing appropriation from the recycling revolving fund to provide payment for a prior year obligation resulting from a 2001 license agreement executed by CLTC for Twenty-five thousand (25,000) metric tons of metallic waste removal from the island of Guam; and

WHEREAS, in order to use the Recycling Revolving Fund to address the $5.9M balance, such payments would have to be spread out over a ten-year period since the Recycling Revolving Fund currently generates $2.9M annually. According to Bill 228-34, a legislative precedent was set in Fiscal Year 2009 wherein the Recycling Revolving Fund was used to pay all prior year obligations. The work, at that time, involved an island-wide collection and off-island disposal of abandoned vehicles, white goods, tires, and batteries program pursuant to GSA Bid No. 038-05. Specifically, 10 GCA § 51304, provides:

> "In Fiscal Year 2009 the Administrator shall expend monies from the Recycling Revolving Fund to first pay any remaining unpaid debt including any and all prior year obligations related to GSA 038-05 before any other expenditures are made to ensure that all previous accounts have been satisfied accordingly[.]"; and

WHEREAS, Bill 228-34 also seeks the statutory approval of an amendment to the existing CLTC Lease Agreement, and the Mayors and Vice Mayors of Guam particularly appreciate Section 5 wherein the Licensee, namely Ko'Ko Recycling, Inc., will immediately continue with its efforts to clean and remediate the property. Within sixty (60) days from approval of this Amendment, the Licensee will provide a detailed plan to the CLTC indicating how the property will be cleaned and remediated. The Licensee will submit periodic reports to the CLTC, no less than quarterly, indicating its progress in fulfilling its obligations under the license agreement; and

WHEREAS, a sum of Three Hundred Thousand ($300,000) resulting from cash payments appropriated from the Recycling Revolving Fund shall be held in trust by the Environmental Protection Agency (EPA) and such funds shall be released by EPA to contractors, selected by the Licensee, to implement an EPA approved plan prepared and submitted by the Licensee to remediate this property. Upon EPA's certification of satisfactory completion of the remediation work for this property, EPA shall release any remaining balances to the Licensee; and

WHEREAS, Section 3 of Bill 228-34 provides for a continuing appropriation of $590K for ten consecutive fiscal years, totaling $5.9M; and

WHEREAS, the Mayors' Council of Guam in Fiscal Year 2018 received an appropriation from the Guam Legislature totaling $2.2M; provided, however, that this financial arrangement is done through a Memorandum of Agreement (MOA) between the Mayors' Council of Guam and the Guam Environmental Protection Agency, tying these funds to the tenets and mandates of the Recycling Revolving Fund; and

WHEREAS, the Mayors' Council of Guam is proposing the following, in order to free up the funds necessary to accommodate the appropriation contained in Bill 228-34: (1) to amend Bill 228-34 so that the appropriation begins in FY19 and not FY18, as introduced; and (2) to urge the Guam Legislature to hold another public hearing on the amended Bill 228-34 so that it can either move forward as a stand-alone bill or be incorporated in the FY19 Budget Bill when it is reported out to Speaker Benjamin J.F. Cruz, who is also the Chairperson of the Committee on Appropriations and Adjudication. As a possible option should there not be a public hearing prior to the Committee on Appropriation and Adjudication reporting out the FY19 Budget Bill, the Mayors' Council of Guam

requests that the co-sponsors of Bill 228-34 move to include Bill 228-34 as a floor amendment to the FY19 Budget Bill; and

WHEREAS, the Mayors' Council of Guam is keen to resolve this issue of $5.9M debt owed to Ko'Ko Recycling because we, the Mayors and Vice Mayors of Guam, are undertaking village clean up and recycling with many other Guam-based recycling companies, and if the debt owed to Ko'Ko is not resolved, then there will be credibility issues with these Guam-based recycling companies, now and in the future; now therefore be it

RESOLVED, that the Mayors' Council of Guam does hereby, on behalf of the people of Guam support Bill 228-34; and be it further

RESOLVED, that the Mayors' Council of Guam believes that this matter must be redressed and resolved through implementation of the recommendations provided herein; and be it further

RESOLVED, that the President certifies to and the Council Secretary attest to the adoption hereof, and that copies of the same be thereafter transmitted to the following elected and appointed officials: the Chairman of the Guam Environmental Protection Agency, Robert Perron; to the Administrator of the Guam Environmental Protection Agency, Walter Leon Guerrero; to the Administrative Director of the Chamorro Land Trust Commission, Michael J.B. Borja; to the Director of the Department of Administration, Edward Birn; to the Deputy Director of the Department of Administration, Vince Arriola; to the Director of the Bureau of Budget and Management, Lester Carlson; to the Governor's Chief Fiscal Advisor, Bernadette Artero; to the Honorable Benjamin J.F. Cruz, Speaker of the 34th Guam Legislature and Legislative Chairperson of the Committee on Appropriations and Adjudication; to Senators Dennis G. Rodriguez Jr., and Joe S. San Agustin, co-sponsors of Bill 228-34; to all Senators of the 34th Guam Legislature; and to the Honorable Eddie Baza Calvo, *I Maga'lahi Guåhan*.

DULY ADOPTED ON THE 1ST DAY OF AUGUST 2018 IN THE CITY OF HAGÅTÑA, GUAM.

CERTIFIED BY:

MAYOR PAUL M. McDONALD
President

ATTESTED BY:

MAYOR DORIS F. LUJAN
Secretary