

I Mina Trentai Kuattro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
228-34 (15)	Dennis G. Rodriguez, Jr. Joe S. San Agustin	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 CHAMORRO LAND TRUST COMMISSION (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 25,000 METRIC TONS OF METALLIC WASTE REMOVAL FROM THE ISLAND	1/11/18 2:07 p.m. AS CORRECTED 2/13/18 10:58 a.m.						

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 228-34 (LS)

As Corrected by the Prime Sponsor.

Introduced by:

Dennis G. Rodriguez, Jr.

Joe S. San Agustin

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 CHAMORRO LAND TRUST COMMISSION (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 25,000 METRIC TONS OF METALLIC WASTE REMOVAL FROM THE ISLAND OF GUAM.

2018 FEB 13 AM 10:58 A.S.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative history and intent.** *I Liheslaturan Guåhan*
3 determines that in order to bring closure to a Seven Million Five Hundred
4 Thousand Dollar (\$7,500,000) liability resulting from the collection and shipment
5 of a minimum of 25,000 metric tons of junk cars, other metallic waste and old tires
6 off the island for work satisfactorily completed more than a decade ago enactment
7 of a new statute is required.

1 This license agreement established an ongoing legally binding contract
2 entered into between the Chamorro Land Trust Commission (CLTC) and Ko’Ku
3 Recycling in 2001. CLTC stated in the license agreement that it had “been
4 determined and agreed to be in excess of 25,000 metric tons.” The CLTC
5 recognized in March, 2006 that “based upon a recent inspection of Lot. 10122-15,
6 *Dededo*, better known as the Dededo Metallic Waste Station, it appears that the
7 property has been substantially cleared of metallic waste.” Moreover, Mr. Benny
8 C. Bello, President of Ko’Ku Recycling, Inc., and Attorney Frederick J. Horecky
9 have presented shipping receipts to the Legislature indicating that Ko’Ku
10 Recycling, Inc. has removed approximately 50,000 metric tons of junk cars, other
11 metallic waste and old tires from CLTC’s property and shipped them off the island.
12 Consequently, if Mr. Bello did not agree to only be compensated for the first
13 25,000 metric tons of metallic waste removal, this Government of Guam liability
14 could have been upwards of \$15,000,000.

15 CLTC is able to absorb \$1,600,000 in the form of credit in lieu of cash
16 payment from the Licensee since that amount is what is projected that the Licensee
17 will pay in total lease payments over the course of this amended agreement. Given
18 that it would be difficult, if not impractical, for the CLTC to issue rental credit as
19 compensation to Licensee to satisfy the remaining \$5,900,000 liability, the
20 Recycling Revolving Fund (RRF) has been identified as an available source to
21 provide for the remaining balance. However, such payments would have to be
22 spread out over a ten-year period since the RRF currently generates \$2.9M
23 annually. The Environmental Protection Agency (EPA) confirms that \$590,000 can
24 be allocated annually for a ten-year period to meet the remaining \$5,900,000, and
25 such allocation of funds is in concert with the RRF’s mandates. Furthermore,
26 legislative precedent was set in Fiscal Year 2009 wherein the RRF was used to pay
27 all prior year obligations. The work, at that time, involved an island-wide

1 collection and off-island disposal of abandoned vehicles, white goods, tires, and
2 batteries program pursuant to GSA Bid No. 038-05. Specifically, 10 GCA § 51304,
3 provides:

4 “In Fiscal Year 2009 the Administrator shall expend monies from the
5 Recycling Revolving Fund to first pay any remaining unpaid debt
6 including any and all prior year obligations related to GSA 038-05
7 before any other expenditures are made to ensure that all previous
8 accounts have been satisfied accordingly.”

9 **Section 2. Statutory Approval of an amendment to Existing CLTC**
10 **License Agreement.** New Subsections 75122(c)(21), and 75122 (c)(21)(A) are
11 hereby *added* to Chapter 75 of Title 21, Guam Code Annotated, to read:

12 “(21). Statutory Approval of an amendment to Existing License
13 Agreement Relative to Lot. No. 5219-1-1, Barrigada, Guam; and to
14 Establish CLTC Credit in Lieu of Cash Payment Resulting from the
15 provisions of § 75122(c)(21)(A), *Infra*. The Chamorro Land Trust
16 Commission (CLTC) shall execute, *in toto*, the following First Amendment
17 to a CLTC License Agreement for Lot. No. 5219-1-1, Barrigada, Guam:

18 FIRST AMENDMENT TO CHAMORRO LAND TRUST COMMISSION
19 LICENSE AGREEMENT

20 THIS FIRST AMENDMENT is entered into on this day of 2017,
21 by and between the Chamorro Land Trust Commission, whose mailing
22 address is Post Office Box 2950, Hagåtña, Guam 96932 (“Licensor”) and
23 Ko’Ku Recycling, whose mailing address is Post Office Box 25158 GMF,
24 Guam 96921 (“Licensee”).

25 RECITALS

26 WHEREAS, Licensor and Licensee previously entered into a
27 License Agreement regarding Lot No. 5219-1-1, Barrigada, Guam, a true

1 and correct copy of which is attached hereto as Exhibit "1"; and

2 WHEREAS, in accordance with said license agreement, Licensee is
3 authorized to conduct business related to solid waste management,
4 processing, recycling, disposal and a storage facility, so long as all uses
5 are legal and conforming; and

6 WHEREAS, parties wish to clarify certain matters set forth in the
7 License Agreement.

8 NOW, THEREFORE, in consideration of the mutual and dependent
9 promises set forth herein, the parties hereto agree as follows:

10 1. Except as expressly agreed to in writing in this First
11 Amendment, all provisions in the License Agreement between the
12 parties, attached hereto as Exhibit "1", will remain fully binding
13 and in full force and effect.

14 2. Pursuant to Section II, TERM, of the License
15 Agreement, the parties agree that the "initial term" of the License
16 Agreement shall be deemed to have commenced on September 4,
17 2005.

18 3. In Section V of the License Agreement,
19 COMPENSATION, the parties agreed that Licensee would receive
20 certain credit in exchange for rental payments for all cleanup
21 work; conducted by Licensee on Lot No. 10122-15, and that the
22 amount of the credit would be based upon work performed on Lot
23 No.10122-15, including but not limited to the removal of metallic
24 waste and other items. Licensor has already agreed that Licensee
25 is entitled to credit for the removal of at least 25,000 metric tons
26 from Lot No. 10122-15. In accordance with the formula set forth

1 in Section V, Licensor and Licensee hereby agree that the total
2 amount of credit currently due Licensee for work completed
3 pursuant to Section V is \$7,500,000. A total of \$1,600,000 will be
4 made available in the form of a CLTC credit, and shall be an offset
5 in favor of Licensee against any rental payments that would
6 otherwise be due to Licensor under this License Agreement, as
7 amended, or any other CLTC property available for lease or
8 license agreement, provided, however, that such lease or license
9 agreement be mutually agreed to by the CLTC and the Licensee.
10 Given that it would be difficult, if not impractical, for the CLTC to
11 issue rental credit as compensation to Licensee to satisfy the
12 remaining \$5,900,000 liability, the Recycling Revolving Fund
13 (RRF) has been identified as an available source to provide for the
14 remaining balance. However, such payments would have to be
15 spread out over a ten-year period since the RRF currently
16 generates \$2.9M annually. Therefore, both the CLTC and the
17 Licensee acknowledge herein that the balance of \$5,900,000 will
18 be provided for by way of a continuing appropriation from the
19 RRF, over a 10-year period and without any interest applied by
20 the Licensee because of delayed payment. The agreed upon
21 calculation of the credit due Licensee is set forth in the document
22 attached hereto is Exhibit "2". Benny B. Bello and Licensee further
23 agree that the license for Lot 10122-15 is terminated with respect
24 to Bello and Licensee. Bello and Licensee are released from any
25 further responsibility or liability for such lot.

26 4. Licensee shall be authorized to conduct the following

1 business activities on the real property, Lot 5219-1-1, Barrigada;
2 solid waste processing facility, solid waste management disposal
3 and recycling, hard fill, storage and warehousing, operation of
4 construction office and storage and sales of construction and
5 building materials and equipment, and lay down yard.

6 5. Licensee will immediately continue with its efforts to
7 clean and remediate the property. Within sixty (60) days from
8 approval of this Amendment, Licensee will provide a detailed plan
9 to the CLTC indicating how the property will be cleaned and
10 remediated. Licensee will submit periodic reports to the CLTC, no
11 less than quarterly, indicating its progress in fulfilling its
12 obligations under the license agreement. A sum of \$300,000
13 resulting from cash payments appropriated from the Recycling
14 Revolving Fund shall be held in trust by the Environmental
15 Protection Agency (EPA) and such funds shall be released by EPA
16 to contractors, selected by the Licensee, to implement an EPA
17 approved plan prepared and submitted by the Licensee to
18 remediate this property. Upon EPA's certification of satisfactory
19 completion of the remediation work for this property, EPA shall
20 release any remaining balances to the Licensee.

21 6. CLTC and Licensee may negotiate for the exchange of
22 another property, in substitution of the property licensed herein.
23 Any such substitution must be mutually agreed upon by the
24 parties. In the event that the parties agree to the substitution of
25 another property, the credit currently due to licensee shall be
26 transferable to such other property.

1 7. All provisions in the License Agreement, except as
2 expressly modified herein, shall remain in full force and effect.

3 8. Licensee will provide insurance coverage in
4 accordance with the original license.

5 9. Licensee shall pay any applicable real estate taxes.'

6 **(A) Statutory Creation of CLTC credit.** There is hereby
7 established CLTC credit of \$1,600,000 to be used by the Licensee in lieu
8 of cash payments to CLTC, and in order to satisfy the terms and
9 conditions of Subsection 75122(c)(21), *Supra*. Such CLTC credits
10 established herein shall NOT be assignable to a third party or parties
11 and shall only be used by the Licensee against any rental payments that
12 would otherwise be due to Licensor under the amended License
13 Agreement, pursuant to this Act. Furthermore, such CLTC credits
14 established herein shall remain valid and lawfully binding until fully
15 redeemed pursuant to this Act, and shall be honored by the CLTC
16 accordingly."

17 **Section 3. Continuing appropriation beginning on October 1, 2017**
18 **until October 1, 2027.** A new Subsection 51303(a)(6) is *added* to § 51303 of
19 Article 3, Chapter 51 of Title 10, Guam Code Annotated to read:

20 "(6) Beginning in Fiscal Year 2018 and for ten consecutive fiscal
21 years thereafter through Fiscal Year 2027, Five Hundred Ninety
22 Thousand Dollars (\$590,000.00) shall be appropriated annually to fund
23 a prior year obligation authorized in § 75122(C)21 of Chapter 75, Title
24 21, Guam Code Annotated."

25 **Section 4. Severability.** If any provision of this Act or its application to
26 any person or circumstance is found to be invalid or contrary to law, such

1 invalidity *shall not* affect other provisions or applications of this Act that can be
2 given effect without the invalid provisions or application, and to this end the
3 provisions of this Act are severable.

4 **Section 5. Effective Date.** This Act *shall* become effective upon
5 enactment.