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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

November 29, 2019

Director of Council Services
Traci N. T. Fujita, Esq.

RECEIVED

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OFFICE OF THE
COUNTY CLERK

Mr. Josiah K. Nishita, County Clerk
Office of the County Clerk
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Nishita:

SUBJECT: **SPECIAL COUNSEL FOR THE COUNCIL IN
MCKELVEY V. VICTORINO REGARDING THE
AUTHORITY TO SETTLE LAWSUITS (PAF 19-361)**

May I request the attached proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO ADVISE AND REPRESENT THE MAUI COUNTY COUNCIL IN THE CASE OF MCKELVEY V. VICTORINO," be placed on the next Council meeting agenda.

Sincerely,

Kelly T. King
KELLY T. KING
Council Chair

paf:jbf:19-361b

Enclosure

COUNTY COMMUNICATION NO. 19-492

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL
COUNSEL TO ADVISE AND REPRESENT THE
MAUI COUNTY COUNCIL IN THE CASE OF
MCKELVEY V. VICTORINO

WHEREAS, plaintiffs Angus L.K McKelvey, Joanne Johnson Winer, Archie Kalepa, Ke`eaumoku Kapu, and Maui Tomorrow Foundation, Inc. filed a lawsuit in the Circuit Court of the Second Circuit on October 28, 2019, Civil No. 2CCV-19-1012(3), against the Mayor and the Corporation Counsel, seeking a declaratory judgment on the Maui County Council's authority to settle a lawsuit; and

WHEREAS, the plaintiffs amended their complaint in the case, known as McKelvey v. Victorino, on November 1, 2019, adding the Council as a party; and

WHEREAS, the Council and the Executive Branch, and specifically the Corporation Counsel, have a difference of opinion regarding the interpretation of the Maui County Code and the Revised Charter of the County of Maui (1983), as amended, and generally, regarding the Council's authority to settle lawsuits; and

WHEREAS, Section 3-6(6) of the Charter authorizes the Council, by a two-thirds vote, to retain or employ special counsel for any special matter presenting a real necessity for such employment; and

WHEREAS, without the employment of special counsel, the Council would be left without independent representation in the case; and

WHEREAS, the Council finds it to be in the best interest of the County of Maui to provide special counsel to the Maui County Council in McKelvey v. Victorino; and now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council Chair is authorized to retain and oversee special counsel to advise and represent the Maui County Council in McKelvey v. Victorino in the Circuit Court of the Second Circuit and any appellate courts;

Resolution No. _____

2. That the total compensation for the employment of special counsel may not exceed \$30,000;
3. That the special counsel is required to regularly report to and consult with the Council Chair and the Council's Governance, Ethics, and Transparency Committee on the case's status;
4. That compensable costs for the special counsel include fees for printing and witnesses; fees for copies necessarily obtained for use in the case; fees of the clerk and marshal; fees of the court reporter for necessary transcripts; docket fees; compensation of court-appointed experts and interpreters; and pre-approved travel;
5. That non-compensable costs for the special counsel include telephone calls; facsimile charges; postal charges; messenger charges; fees for computerized legal research; investigative expenses; and other costs reasonably considered part of a law firm's overhead; and
6. That certified copies of this resolution be transmitted to the Chair of the Maui County Council, the Director of Finance, and the Corporation Counsel.

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