

Resolution

No. 23-225, CD1

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL MCCORRISTON MILLER MUKAI MACKINNON, LLP, IN LITIGATION MATTERS ARISING FROM THE AUGUST 2023 WILDFIRES ON THE ISLAND OF MAUI

WHEREAS, in August of 2023, several large wildfires (“Wildfires”) devastated the island of Maui causing significant loss of life, immense damage to public and private property, and untold economic damage; and

WHEREAS, under Section 3-6 of the Revised Charter of the County of Maui (1983), as amended (“Charter”), the Maui County Council alone is authorized to retain, employ, or designate special counsel as legal representative for any special matter presenting a real necessity for such employment by resolution adopted with a two-thirds vote of its entire membership; and

WHEREAS, under Section 127A-13(b)(2), Hawai‘i Revised Statutes, the Mayor may suspend any County law that impedes or tends to impede, or that may be detrimental to, the expeditious and efficient execution of, or conflict with, emergency functions; and

WHEREAS, through his Third Emergency Proclamation Relating to Wildfires dated August 15, 2023, the Mayor, on advice of Corporation Counsel, suspended Section 3-6(6) of the Charter to eliminate the Council’s exclusive authority to retain, employ, or designate special counsel; and

WHEREAS, the Mayor, or his designee, signed a representation agreement on August 25, 2023, with McCorriston Miller Mukai MacKinnon, LLP (“Firm”), relating to litigation matters arising from the August 2023 wildfires on the island of Maui; and

WHEREAS, through his Fourth Emergency Proclamation Relating to Wildfires dated September 8, 2023, the Mayor lifted the suspension of Section 3-6(6) of the Charter, to reinstate the Council’s exclusive authority to retain, employ, or designate special counsel; and

WHEREAS, the Council wishes to ratify the Mayor’s employment of the Firm, and finds that there is a necessity and a public purpose to retain the Firm as special counsel to represent the County of Maui as a defendant in current and

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anticipated legal actions relating to the Wildfires because of the complexity and anticipated volume of the litigation; and

WHEREAS, the Firm and the Department of the Corporation Counsel will work as a team in this matter and take all possible steps to minimize the level of attorney's fees and costs; and

WHEREAS, the Firm's conduct in this matter must reflect the Firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now therefore,

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

1. That it ratifies and authorizes, as of August 25, 2023, the retention of McCorriston Miller Mukai MacKinnon, LLP, as special counsel, to represent the County of Maui in litigation matters as described in this Resolution;
2. That total compensation for the employment of McCorriston Miller Mukai MacKinnon, LLP, as special counsel, must not exceed \$250,000;
3. That partner David J. Minkin, Esq., must provide the bulk of the legal services in the actions;
4. That the hourly rate for partners must not exceed \$350;
5. That the hourly rate for associates must not exceed \$225;
6. That the hourly rate for paralegals must not exceed \$100;
7. That the compensability of costs must be in general accord with the intent of 28 U.S.C. § 1920;
8. That the compensable costs include: (a) fees for printing and witnesses; (b) fees of the clerk and marshal; (c) fees of the court reporter for necessary transcripts; (d) docket fees; and (e) compensation of court-appointed experts and interpreters;
9. That the non-compensable costs include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) investigative expenses; and (g) other costs reasonably considered part of a law firm's overhead;

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10. That in instances of travel, both inter-island and out-of-state travel includes travel on regular coach economy fare and must be pre-approved by the Corporation Counsel;
11. That all invoices presented by McCorriston Miller Mukai MacKinnon, LLP, to the County for payment under this Resolution must identify each task performed, by whom, when, and over what duration of time without any block billing entries;
12. That the expenditures of additional funds or substantial changes to the responsibilities of McCorriston Miller Mukai MacKinnon, LLP, or David J. Minkin, Esq., requires prior Council approval; and
13. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and McCorriston Miller Mukai MacKinnon, LLP.

APPROVED AS TO FORM AND LEGALITY:



VICTORIA J. TAKAYESU
Corporation Counsel
County of Maui

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INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.