

COUNCIL OF THE COUNTY OF MAUI
**GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE**

September 6, 2019

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on August 6, 2019, and August 20, 2019, makes reference to County Communication 19-29, from Council Chair Kelly T. King, relating to litigation matters.

By correspondence dated June 13, 2019, the Department of the Corporation Counsel requested consideration of the possible settlement of Kamoku Contracting, LLC v. County of Maui, Civil 18-1-0180(2). Attached to the request is a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF KAMOKU CONTRACTING, LLC VS. COUNTY OF MAUI CIVIL NO. 18-1-0180(2)," along with a copy of the complaint. The purpose of the proposed resolution is to authorize the Department to settle the case.

Your Committee notes the complaint alleges breach of a contract between Kamoku Contracting LLC (identifying itself in the complaint as Kamoku Contracting, LLC) and the County of Maui relating to a construction project at Papohaku Park, Wailuku, Maui, Hawaii.

Your Committee also notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement of claims or civil litigation in excess of \$7,500.

At the request of the Chair of your Committee, the Department transmitted a revised proposed resolution, entitled "AUTHORIZING SETTLEMENT OF KAMOKU CONTRACTING, LLC VS. COUNTY OF MAUI, CIVIL NO. 18-1-0180(2)," incorporating nonsubstantive revisions.

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A Deputy Corporation Counsel provided a brief overview of the case. The Deputy said the case involves a contract for the demolition, removal, and replacement of a fence and backstop at Papohaku Park. He said the breach of contract dispute relates to the value of work performed by the contractor beyond the contract cost. He advised your Committee the trial was set to begin on August 26, 2019. The Deputy said the County had received a settlement offer he wished to present to your Committee.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 9-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye."

Based on additional information received by the Department that would affect the terms of the settlement agreement already voted on by your Committee at its August 6, 2019 meeting, the Deputy requested the opportunity to present new terms at your Committee's next scheduled meeting.

At the request of the Chair of your Committee, the Department transmitted a further revised proposed resolution that specifies an executive meeting to be held on August 20, 2019 to discuss the new terms.

At its meeting of August 20, 2019, a Deputy Corporation Counsel requested an executive meeting to discuss additional information affecting the terms of the settlement agreement.

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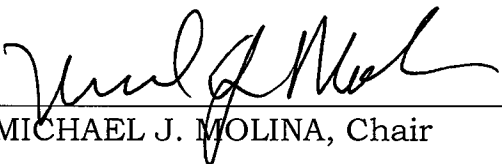
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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 7-0 to recommend adoption of the further revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, Lee, Paltin, and Sinenci voted "aye." Committee members King and Sugimura were excused.

Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF KAMOKU CONTRACTING, LLC VS. COUNTY OF MAUI, CIVIL NO. 18-1-0180(2)," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF
KAMOKU CONTRACTING, LLC VS. COUNTY OF MAUI,
CIVIL NO. 18-1-0180(2)

WHEREAS, Plaintiff Kamoku Contracting, LLC filed a lawsuit in the Circuit Court of the Second Circuit in the State of Hawaii on April 25, 2018, Civil No. 18-1-0180(2), against the County of Maui, claiming a breach of contract regarding a construction project at Papohaku Park, Wailuku, Maui, Hawaii; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee on August 20, 2019; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

Resolution No. _____

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

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Governance, Ethics, and Transparency Committee on August 20, 2019; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Parks and Recreation, and the Corporation Counsel.

APPROVED AS TO FORM
AND LEGALITY:



THOMAS KOLBE
Deputy Corporation Counsel
County of Maui
Lit 5720