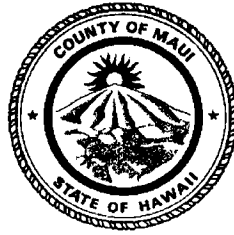


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

August 12, 2016

MEMO TO: Donald Guzman, Chair
Committee of the Whole

FROM: Gary Y. Murai, Deputy Corporation Counsel

SUBJECT: LITIGATION MATTERS – (COW-1)
AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN THE
MATTER OF INTEREST ARBITRATIONS BETWEEN THE HAWAII
FIRE FIGHTERS ASSOCIATION AND COUNTY OF MAUI

Our Department respectfully requests the opportunity to present a resolution and ordinance to the Committee of the Whole to consider the employment of special counsel and entering into intergovernmental agreements with regard to the above-referenced matter.

A copy of the proposed resolution and ordinance are attached.

Because this matter is the product of confidential mediation, it is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities and liabilities of the County, the Council, and the Committee.

We request that a representative from the Department of Personnel Services and the Central Purchasing Agent be present to answer any questions that may arise.

Thank you for your attention to this matter.

cc: David Underwood, Director of Personnel Services
Greg King, Central Purchasing Agent

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF
TORKILDSON KATZ MOORE HETHERINGTON & HARRIS
AS SPECIAL COUNSEL IN THE MATTER OF THE
INTEREST ARBITRATION BETWEEN BARGAINING UNIT 11,
REPRESENTED BY THE HAWAII FIRE FIGHTERS ASSOCIATION, AND
THE STATE OF HAWAII, CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAII, COUNTY OF MAUI, AND COUNTY OF KAUAI

WHEREAS, the Council of the County of Maui (“Council”) alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, the Hawaii Labor Relations Board (“HLRB”) has issued an Order Declaring Impasse and Appointment of Mediator in In the Matter of Hawaii Fire Fighters Association, IAFF, Local 1463, AFL-CIO, and David Y. Ige, et al., HLRB Case No. I-11-157; and

WHEREAS, it is anticipated that the disputed articles of the Bargaining Unit 11 collective bargaining agreement will be decided by an arbitration panel, pursuant to §89-11, Hawaii Revised Statutes; and

WHEREAS, the State of Hawaii, City and County of Honolulu, County of Maui, and County of Kauai (“Employer Group”) wish to be jointly represented by special counsel and to equally share in the fees and costs for said special counsel; and

WHEREAS, the Employer Group has identified Robert S. Katz, Esq., of the law firm Torkildson Katz Moore Hetherington & Harris (“the Torkildson law firm”) as having the requisite skill and experience to serve as special counsel; and

Resolution No. _____

WHEREAS, the Employer Group believes that a retainer of \$200,000 will be sufficient to retain the Torkildson law firm, with each of the four jurisdictions contributing \$50,000; and

WHEREAS, Mr. Katz would serve as lead counsel, and may utilize an associate attorney and paralegal staff; and

WHEREAS, the other members of the Employer Group have indicated their agreement to jointly retain the Torkildson law firm and pay the firm's fees and costs on a pro rata basis; and

WHEREAS, the County of Hawaii may join in retaining the Torkildson law firm as special counsel and contribute to the Employer Group's legal fees, thereby reducing the pro rata share for the Employer Group members; and

WHEREAS, Ordinance 4334 (2016), as amended, provides an appropriation to the Department of the Corporation Counsel of \$100,000 for professional services to assist the Department of Personnel Services with collective bargaining contract negotiations; and

WHEREAS, the Council finds there is a real necessity to retain the Torkildson law firm to represent the County of Maui in the arbitration hearing because of the complexity of the issues; and

WHEREAS, Mr. Katz and the Department of the Corporation Counsel, County of Maui, shall work as a team and take all necessary steps to minimize special counsel's fees and costs; and

WHEREAS, Mr. Katz's conduct shall reflect his understanding that the County of Maui is a public entity that has obligations, concerns, and interests that extend beyond those of a private litigant; now, therefore,

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

Resolution No. _____

1. That the Council hereby approves and authorizes the employment of the law firm Torkildson Katz Moore Hetherington & Harris, with Robert S. Katz, Esq. serving as lead counsel, to provide legal services related to the arbitration of disputed articles of the Bargaining Unit 11 collective bargaining agreement in HLRB Case No. I-11-157; and

2. That the County of Maui's pro rata share of the total compensation for special counsel's fees and costs shall not exceed \$50,000; and

3. That Mr. Katz shall direct the legal services as lead counsel at an hourly rate not to exceed \$450; and

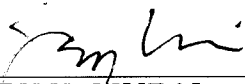
4. That associate Kendra Kawai shall provide services at an hourly rate not to exceed \$320; and

5. That paralegal services shall be provided at an hourly rate not to exceed \$160; and

6. That the compensable costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

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

APPROVED AS TO FORM
AND LEGALITY:



GARY Y. MURAI
Deputy Corporation Counsel
County of Maui

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO A COOPERATIVE PURCHASING AGREEMENT WITH THE STATE OF HAWAII, CITY AND COUNTY OF HONOLULU, AND COUNTY OF KAUAI FOR LEGAL SERVICES RELATING TO THE INTEREST ARBITRATION HEARING OF THE CONTESTED ARTICLES OF THE BARGAINING UNIT 11 (FIRE FIGHTERS) COLLECTIVE BARGAINING AGREEMENT, AND TO ENTER INTO AN EXPERT CONSULTING AND SUPPORT SERVICES AGREEMENT WITH THE STATE OF HAWAII, CITY AND COUNTY OF HONOLULU, COUNTY OF KAUAI, AND COUNTY OF HAWAII FOR CONSULTATION SERVICES RELATING TO THE INTEREST ARBITRATION HEARING OF THE CONTESTED ARTICLES OF THE BARGAINING UNIT 11 (FIRE FIGHTERS) COLLECTIVE BARGAINING AGREEMENT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The State of Hawaii, City and County of Honolulu, County of Maui, and County of Kauai (hereinafter referred to as "Employer Group") anticipate that the contested articles of the Bargaining Unit 11 collective bargaining agreement will be decided by an arbitration panel, pursuant to §89-11, Hawaii Revised Statutes. The matter is entitled Hawaii Labor Relations Board Case No. I-11-157, In the Matter of Hawaii Fire Fighters Association, IAFF, Local 1463, AFL-CIO, and David Y. Ige, et al.

The Employer Group wishes to be jointly represented by special counsel and to equally share in the fees and costs for said special counsel. Each member of the Employer Group will execute a Cooperative Purchasing Agreement with the County of Maui. An example of the proposed Cooperative Purchasing Agreement between the County of Kauai and County of Maui is attached hereto and incorporated herein by reference as Exhibit "1."

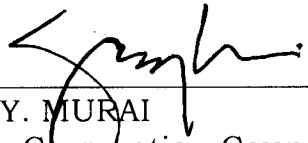
The Employer Group and County of Hawaii wish to retain Patrick Kilbourne of the Berkeley Research Group to provide consulting and support services. An Expert Consulting and Support Services Agreement between the members of the Employer Group and the County of Hawaii is attached hereto and incorporated herein by reference as Exhibit "2" (with internal exhibits omitted).

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



GARY Y. MURAI
Deputy Corporation Counsel
County of Maui

**COOPERATIVE PURCHASING AGREEMENT
SPECIAL DEPUTY SERVICES FOR INTEREST ARBITRATION**

- I. PURPOSE of this Agreement is to provide government entities with the opportunity to participate in a multi-jurisdictional cooperative contract. It is a means by which government entities subject to HRS chapter 103D, may join together in order to achieve cost-effective and efficient acquisition of quality goods or services. Additional benefits of the cooperative procurements are the potential administrative and contract management savings of a single cooperative contract, rather than multiple contracts for various governmental entities.
- II. EFFECTIVE DATES OF THIS AGREEMENT shall remain in effect until the term of the contract, identified in Section V, has expired or been extended, or has been terminated for cause.
- III. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION: The County of Maui is authorized by agreement of the participants to act as the procurement officer for this multi-jurisdictional cooperative solicitation, resulting in a master contract, pursuant to Chapter 103D, Hawaii Revised Statutes (HRS) and Chapter 3-128 Hawaii Administrative Rules (HAR) for the following services described. Jurisdictions will only be allowed to join prior to effective date of the master contract.
- IV. TYPE OF CONTRACT: OPTIONAL
Purchasing agencies of the jurisdiction named in Section VII are not required, but may use the resulting contract.
- V. TERM OF THE CONTRACT: Tentatively, the master contract is scheduled to be effective add dates with an option to extend for as extensions.
- VI. POINT OF CONTACT INFORMATION: Provide contact information below for response to inquiries regarding this cooperative purchasing agreement or regarding the resulting master contract.

Cooperative Purchasing Agreement (CPA)

Master Contract (if different than CPA contact)

Name: Janine Rapozo
Phone Number: (808) 241-4915
E-Mail Address: jrapozo@kauai.gov

Name: Greg King
Phone Number:
E-Mail Address: Greg.King@co.maui.hi.us

- VII. PARTIES TO THIS AGREEMENT have affixed their signatures in execution of this Agreement.

County of Kauai

County of Maui

By: _____
(signature)

By: _____
(signature)

Name: Ken Shimonishi

Name: Insert name

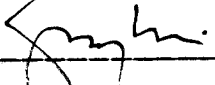
Title: Chief Procurement Officer

Title: Chief Procurement Officer

Date: _____

Date: _____

**APPROVED AS TO FORM
AND LEGALITY**



GARY Y. MURAI
Deputy Corporation Counsel
County of Maui

EXPERT CONSULTING AND SUPPORT SERVICES AGREEMENT

Hawai'i Interest Arbitration 2016 - Bargaining Unit 11 "Firefighters"

This agreement will confirm that the State of Hawai'i, the County of Hawai'i, the City and County of Honolulu, the County of Kaua'i, and the County of Maui ("Client group") have agreed to retain and engage Berkeley Research Group, LLC ("BRG") to provide expert consulting and support service(s) in the Hawai'i Interest Arbitration 2016 – Bargaining Unit 11 ("Matter").

Patrick Kilbourne ("Expert") will provide expert consulting services and will lead this engagement. Should Expert require support in order to perform tasks required by this engagement efficiently, Expert will utilize the support staff of BRG. If specific support is required which cannot reasonably be provided by the support staff of BRG, Expert may employ or contract for additional support personnel. Client group acknowledges that Expert's opinions are independent and objective, and not necessarily those of other employees or affiliates of BRG. It is understood that prior to the submission of any statement describing the nature of any opinions of Expert in this matter to any third party, Expert will be provided with the opportunity to review such statement for accuracy.

Client group shall compensate BRG for professional services provided, which shall include Expert's fees and backup support hourly fees. In addition to professional fees, Client group will reimburse BRG for direct external project-related expenses and taxes. Expert's hourly billing rate is \$540.00. BRG hourly billing rates are set forth on Attachment "A". Professional fees are estimated to be \$85,000.00 for this Matter. Client group agrees to share equally all Professional fees and costs incurred for this Matter.

A copy of BRG's Standard Commercial Terms, which Client group accepts and which is incorporated herein, is attached.

The Client group has had the opportunity to investigate and verify Mr. Kilbourne's credentials and agrees that Mr. Kilbourne is qualified to perform the services described in this agreement.

BRG and Expert shall not disclose any confidential or privileged information to any third party; provided, however, that BRG and Expert may disclose confidential or privileged information (a) to BRG's employees, affiliates, vendors or agents who provide services in connection with this engagement, (b) with Client group's written consent, or (c) when legally required to do so. Both parties agree that confidential and proprietary information will not be construed to include information that is available from public sources or sources not subject to obligations of confidentiality to Client group. Should a written report be required in this matter, Client group agrees to provide Expert access to all relevant documents which Expert identifies within a timeframe requested by Expert that is sufficient for Expert to prepare any report.

This agreement may be executed in one or more counterparts, each of which may be signed and transmitted via facsimile or PDF electronic delivery with the same validity as if it were an ink-signed document.

Client group or BRG may terminate this engagement upon seven (7) days' written notice.

This agreement shall be interpreted under the laws of the State of Hawai'i. Any litigation under this agreement shall be resolved in the trial courts of Hawai'i County, State of Hawai'i.

AGREED AND ACCEPTED:

COUNTY OF HAWAI'I

COUNTY OF MAUI

By _____
Name: Christopher Schlueter
Title: Deputy Corporation Counsel

By _____
Name: _____
Title: _____

Dated: _____

Dated: _____

CITY AND COUNTY OF HONOLULU

STATE OF HAWAI'I

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Dated: _____

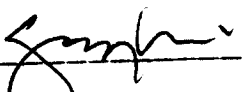
Dated: _____

COUNTY OF KAUAI

By _____
Name: _____
Title: _____

Dated: _____

APPROVED AS TO FORM
AND LEGALITY



GARY Y. MURAI
Deputy Corporation Counsel
County of Maui