

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

March 7, 2023

Online Only via BlueJeans Link

CONVENE: 1:34 p.m.

PRESENT: Councilmember Nohelani U‘u-Hodgins, Chair
Councilmember Tamara Paltin, Vice-Chair
Councilmember Tom Cook, Member (arrived at 2:28 p.m.)
Councilmember Gabe Johnson, Member
Councilmember Tasha Kama, Member (left at 3:50 p.m.)
Councilmember Alice L. Lee, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
(left at 4:31 p.m.)
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member

STAFF: Kasie Apo Takayama, Senior Committee Analyst
Ana Lillis, Legislative Analyst
Pauline Martins, Senior Committee Secretary
Richard Mitchell, Legislative Attorney
Lenora Dinneen, Council Services Assistant Clerk

Maria Leon, Committee Secretary
Jocelyn Moniz, Committee Secretary
David Raatz, Deputy Director, Office of Council Services
Shelly Espeleta, Supervising Legislative Analyst
Nalani Fujihara, Hawaiian Language Communications
Specialist
Richelle Kawasaki, Legislative Attorney
Ellen McKinley, Legislative Analyst
Jarret Pascual, Legislative Analyst

Zhantell Lindo, Council Aide, Moloka‘i Residency Area Office
Roxanne Morita, Council Aide, Lāna‘i Residency Area Office
Mavis Oliveira-Medeiros, Council Aide, East Maui Residency
Area Office
Jade Rojas-Letisi, Makawao-Ha‘ikū-Pā‘ia Residency Area
Office
Christian Balagso, Council Aide, West Maui District Office

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Stacy Takahashi, Executive Assistant to Councilmember
Cook

Jared Agtunong, Executive Assistant to Councilmember
Cook

Axel Beers, Executive Assistant to Councilmember Johnson
Laura McDowell, Executive Assistant to Councilmember
U'u-Hodgins

Evan Dust, Executive Assistant to Councilmember Kama
Davideane Sickels, Executive Assistant to Councilmember
Kama

Noelani Ahia, Executive Assistant to Councilmember
Rawlins-Fernandez

Braedon Wilkerson, Executive Assistant to Councilmember
Rawlins-Fernandez

Susan Clements, Executive Assistant to Councilmember
U'u-Hodgins

ADMIN.: Keola Whittaker, Deputy Corporation Counsel, Department
of the Corporation Counsel
Victoria J. Takayesu, Acting Corporation Counsel,
Department of the Corporation Counsel
Jordan Molina, Acting Director, Department of Public Works
John Smith, Highways Division Chief, Department of Public
Works
Gregg Okamoto, Assistant Chief, Department of Police
Glen Pascual, Deputy Corporation Counsel, Department of
the Corporation Counsel
Brian Bilberry, Deputy Corporation Counsel, Department of
the Corporation Counsel
Thomas Kolbe, Deputy Corporation Counsel, Department of
the Corporation Counsel
Mariana Lowy-Gerstmar, Deputy Corporation Counsel,
Department of the Corporation Counsel

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR U'U-HODGINS: . . .*(gavel)*. . . Will the GREAT Committee meeting of March 27
[sic], 2023, please come to order. It is 1:34 p.m. Good afternoon, and Happy
Aloha Tuesday, everybody. I am your Chair, Nohelani U'u-Hodgins. Members,
in accordance with the Sunshine Law, please identify by name who, if anyone, is
in the room, vehicle, or workspace with you today. Minors do not need to be
identified. Let's start with Committee Vice-Chair Tamara Paltin. Aloha.

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VICE-CHAIR PALTIN: Aloha ‘auinalā, Chair, and everybody else. Broadcasting live and direct from sunny Lāhainā Town. I have with me today Angela Lucero and Christian Balagso. And we have no testifiers waiting to testify at this time. Thank you.

CHAIR U’U-HODGINS: Thank you, Member Paltin. Member Tom Cook is excused for a while. He will be joining us in a little bit. Good afternoon, Councilmember Gabe Johnson.

COUNCILMEMBER JOHNSON: Good morning, Chair, Councilmembers, Committee Members. There are no testifiers at the Lāna‘i District Office. I'm alone in my workspace, and the birds are singing, and the dog is snoring, so I'm here and ready to work. Mahalo, Chair.

CHAIR U’U-HODGINS: Awesome. Thank you. Councilmember Tasha Kama, aloha.

COUNCILMEMBER KAMA: Aloha ‘auinalā, Chair, and Aloha Po‘alua to everyone else. And I'm looking forward to this GREAT meeting. Thank you.

CHAIR U’U-HODGINS: Thank you. Council Chair Alice Lee, aloha.

COUNCILMEMBER LEE: Madam Chair, hola qué tal. Hope everyone is well today. I'm looking forward to your meeting.

CHAIR U’U-HODGINS: Thank you. Aloha, Councilmember Keani Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha, mai Moloka‘i nui Ahina. I'm at the Moloka‘i District Office, alone on my side of the office, and we have our Community Outreach Specialist Zhantell Lindo on the other side of the office. Reporting no testifiers here at the Moloka‘i District Office, but lots of rain. Uwē ka lani, ola ka honua.

CHAIR U’U-HODGINS: Well, thank you. Okay. Councilmember Shane Sinenci, aloha.

COUNCILMEMBER SINENCI: Aloha Po‘alua kākou from the Hāna District Office, 4974 Uakea Road. I'm here with District Staff Members Mavis Medeiros, Dawn Lono, and Don Atay. And currently there are no testifiers, Chair.

CHAIR U’U-HODGINS: Thank you. I like that you share the address. That's awesome. And last, but not least, Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good afternoon, Chair. Nice to see you in the Chambers. I love your Aloha Tuesday --

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CHAIR U’U-HODGINS: Thank you.

COUNCILMEMBER SUGIMURA: -- mu’u mu’u, and you look very happy and cheerful. So, looking forward to a GREAT meeting.

CHAIR U’U-HODGINS: Thank you. The sun is finally shining, so I'm very happy. Today we have, as you can tell, a whole bunch of people with us in Chambers. From Corporation Counsel, we have Keola Whittaker, Glen Pascual, Brian Bilberry, and Thomas Kolbe. And we also have Acting Director Tori Takayesu as well. Representing Department of Public Works, we have John Smith, Highways Division Chief. We have...representing the Police Department is Chief Gregg Okamoto. Representing the Water Department, we will either have Acting Director John Stufflebean or Deputy Director James Kimo Landgraf. We also have our very committed and amazing Committee Staff, Kelsey [sic] Apo Takayama, Ana Lillis, Pauline Martins, Remi Mitchell, Richelle Kawasaki, Jocelyn Moniz, and Lei Dinneen. If you are watching us on *Akakū*, please see the last page of the agenda for information on the meeting connectivity. Okay, gang, we have a couple things on the agenda today, so let's begin with public testimony. Oral testimony via phone or video conference will be accepted. Please note that if you are signed in, you are on the list to testify, even if you did not request to testify. Please let Staff know in the chat if you are signed on and do not intend to testify. Testifiers wanting to provide audio or video testimony should have joined the online meeting via BlueJeans link or phone number noted on today's agenda. Written testimony is encouraged, and can be submitted via the eComment link at mauicounty.us/agendas. So, in accordance with the Sunshine Law, testimony can occur at the beginning of the meeting, but cannot be limited to the start of the meeting. We will receive oral testimony for agenda items at the beginning of the meeting, and as the item is called up on the agenda. When testifiers sign up to testify, they must let Staff know whether they wish to testify at the beginning of the meeting or before the agenda item, otherwise the Staff will assume the testifier will testify at the beginning of the meeting. Oral testimony is limited to three minutes per item. And if you are still testifying beyond those three minutes, I will kindly ask you to complete your testimony. We ask that you state your full name and organization, but if you prefer to testify anonymously, please notify Staff, and they will identify and refer to you as Testifier and assign you a number. Please also indicate the agenda item or items you wish to testify on. You may indicate in the chat if you do not wish to testify. However, chat should not be used for discussion or comments. Please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you are done testifying, if you do not wish to testify any further, you can also view the meeting on *Akakū* Channel 30...53, Facebook Live, or mauicounty.us/agendas. Thank you for your cooperation. Staff has been monitoring video...individuals joining today's meeting by phone and by video, and will do our best to take each person up in an orderly fashion. At this time, we

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will call on testifiers wishing to testify at the beginning of the meeting. Staff, can you please call the first testifier.

MS. LILLIS: Chair, there's no one currently signed up to testify in BlueJeans or in the Council Chamber. I will do a brief countdown. If you would like to testify, please let us know now. Three, two, one. Chair, no one has indicated that they would wish to testify.

CHAIR U'U-HODGINS: Thank you. If there are no objections, I will now close public testimony for the beginning of the meeting and proceed with our first item on the agenda.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TC)

**GREAT-11(5) LITIGATION MATTERS (RESOLUTION 23-34, RELATING TO
SPECIAL COUNSEL AUTHORIZATION: NEGOTIATING AN
AMENDMENT TO THE ENERGY PERFORMANCE CONTRACT
WITH JOHNSON CONTROLS, INC.)**

CHAIR U'U-HODGINS: Thank you. Thank you. Okay. So, item on the...first item. We have before us Resolution 23-34, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RELATED TO THE ENERGY PERFORMANCE CONTRACT." Mr. Whittaker will now introduce our first item. Mr. Whittaker.

MR. WHITTAKER: Thank you, Chair. As...Councilmembers, as you are aware, Section 3-6, subsection 6 of the Charter gives you the power to retain special counsel by a two-thirds vote if you find a real necessity for such employment. We are requesting that Council appoint, as special counsel, the Katten Muchin firm to review and provide advice on amendments to the energy performance contract. The attorney that we're working with, you're very familiar with. His name is Craig Scully, he is the same attorney that is our bond counsel. So, you know his work, and you know how much our office appreciates his work on bonds. So, let me first describe what the energy performance contract is, which will help give you an idea of what the real necessity is. In the last Administration, we signed the energy performance contract with Johnson Controls. And Johnson Controls, through that contract, did an energy audit of multiple County facilities, I think almost every County facility, to determine where we could find energy savings for the future. And this is a complex agreement that is a 20-year term and involves multiple steps. So the energy audit was the first step, and then each part of the contract in which Johnson Controls realizes energy savings by making changes to these County facilities requires an amendment to that first contract. So, for example, there is an amendment that deals specifically with the purchase and use of solar panels, and then other forms of energy savings will require further

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amendments to this contract. Craig Scully has already been involved in helping us review amendments to the energy performance contract by virtue of his...of your retaining him as special counsel to review anything that's related to bonds, because we had to obtain bonds for one of the amendments to the energy performance contract. We were very happy with Craig Scully's work. He's also worked with other municipalities within the State, specifically the City and County of Honolulu in their energy performance contract and amendments thereto. So, he has the experience and the knowledge to deal...help us deal with this very complex agreement that would be difficult for our office to review on our own. So, he has special and unique knowledge. The amendments to the energy performance contract are somewhat time sensitive because sometimes we have to sign them quickly to obtain a good interest rate on the bonds, or to obtain tax savings, which are sometimes time sensitive. The proposed resolution did not include costs. We apologize for that. That was...we should have included that. But the reason it was not included is that we were able to negotiate with Johnson Controls that Johnson Controls would pay Craig Scully's fees through...as a cost to the contract, and that we would...you know, those fees would be paid through the savings that we would see on our energy costs. So, that's why it wasn't included. But we have provided to OCS Staff a proposed amendment to the resolution which would indicate that the estimated fees for review of amendments to the energy performance contract is a total of \$30,000, but we're not asking for Council to set aside any funds because that would be...those fees would be paid entirely by Johnson Controls at this point. And that's all I have, but I'm available to answer any questions. Thank you, Chair.

CHAIR U'U-HODGINS: Thank you. Okay. So, after some discussion with Corp. Counsel, we've decided to defer this item until a later point. And to discuss deferral, I'm going to ask either Remi or David to enlighten us to that. Thank you.

MR. RAATZ: Thank you, Chair. David Raatz with Office of Council Services. As Mr. Whittaker mentioned, the resolution that's before the Committee doesn't specify compensation for the special counsel, and that's one of the requirements under the Charter that this Charter section was referenced, 3-6. So, we would recommend that the Committee defer action today because we are missing that information. Thank you, Chair.

CHAIR U'U-HODGINS: Thank you. Okay. Before we complete our deferral, I would like to do a last call for testimony for GREAT Item 11(5), Litigation Matters (Resolution 23-34). Staff, do we have anybody wishing to testify on this item?

MS. LILLIS: Chair, no one has indicated that they wish to testify. I can do a brief countdown.

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CHAIR U’U-HODGINS: Please.

MS. LILLIS: Three, two, one. Chair, no one has indicated that they wish to testify.

CHAIR U’U-HODGINS: Thank you. Members, seeing there are no individuals wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TC)

CHAIR U’U-HODGINS: Member Paltin.

VICE-CHAIR PALTIN: No objection to the closing oral testimony. Before you defer, would we be able to just ask a few questions?

CHAIR U’U-HODGINS: Yeah, sure. Yeah. Let me just complete my thing about closing up the testimony, and then...for sure. Yeah, we're going to...we can continue to discuss this item, we just wanted to let the public know that we will be deferring it and not taking action today so they can decide whether or not they want to testify. But we can still discuss. Thank you. Okay. So, we will now close oral testimony. And as a reminder, written testimony will be...continue to be accepted.

ACTION: Close oral testimony for GREAT-11(5).

CHAIR U’U-HODGINS: And now, with testimony closed, we can discuss. Member Paltin, followed by Member Sugimura.

VICE-CHAIR PALTIN: Thank you, Chair. I'm not sure who the question is for, but I was wondering, do we know the cost now? And if we do know the cost now, then would it be possible to move ahead...or we don't know the cost at all, I guess would be my question.

CHAIR U’U-HODGINS: Sure. Great question. Mr. Whittaker?

MR. WHITTAKER: Thank you, Chair. Yes, the total cost will not exceed \$30,000. And that is...and we've provided language to OCS for an amendment that can be added to the resolution. It's just one paragraph in the be it resolved section that will indicate that the fees will not exceed \$30,000, and that those fees will be paid by Johnson Controls. I don't know if OCS has opined on whether that amendment can be done on the floor today. That would be our preference, if that's possible.

VICE-CHAIR PALTIN: Okay. And so you don't know the exact cost, but up to \$30,000 is what you're saying.

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MR. WHITTAKER: Yes, Councilmember Paltin. And that's generally what we see in resolutions that appoint special counsel. We see basically a cap on estimated fees, you know, rather than a specific dollar number because it will just depend on how many hours it takes to do the work that's necessary.

VICE-CHAIR PALTIN: Okay. I mean, I guess if our legislative attorneys agree, I would be willing to make that amendment.

CHAIR U'U-HODGINS: Would you please answer? Thank you.

MR. RAATZ: Thank you, Chair. Again, we recommend deferral. We see a notice issue because compensation wasn't specified, so the public didn't have an ability to testify on that issue.

CHAIR U'U-HODGINS: Thank you.

VICE-CHAIR PALTIN: Oh, okay.

CHAIR U'U-HODGINS: Thank you, David.

MR. WHITTAKER: Chair, may I make a request?

CHAIR U'U-HODGINS: Sure.

MR. WHITTAKER: I would request that the Councilmembers ask as many questions as they can today, you know, with the understanding that the compensation...due to the compensation not being listed on the agenda, that deferral may be necessary. The reason is I've worked with Craig Scully on this, and have worked on this contract. And this will be my last Committee meeting, so I just want to make myself available to answer all the questions, you know, before I depart. I'm sure Tory and the rest of the Department will have the answers for you, but because I've worked with him, I can, you know, give you more specific answers.

CHAIR U'U-HODGINS: Thank you. We appreciate your dedication, but we are so sorry to see you leave us, Mr. Whittaker. Thank you. Member Sugimura, and then followed by Member Rawlins-Fernandez. Thank you.

COUNCILMEMBER SUGIMURA: Thank you. Yeah, my sentiments also, Keola. We're going to miss you with Corp. Counsel, but I hope to see you in this Chamber working in a new capacity if that opportunity comes around. So, my question is this, is that, is it a conflict of interest that Johnson Controls is paying for the legal fees of the attorney that they are hiring regarding their contract...or that...are they hiring it for us, or is it for them?

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CHAIR U’U-HODGINS: Yes, please answer. Thank you.

MR. WHITTAKER: Thank you, Chair. That's a very, very good question. And so, this is not abnormal, and it could create ethics issues. So, what we do to guard against that is we have a written agreement that we've made with Craig Scully and with Johnson Controls which indicates that although Johnson Controls is paying his fee, that he owes, you know, the fiduciary duties to us, and that we are the client, and we direct his actions, not Johnson Controls. All they are doing is paying his fees. So, because we have that written agreement in place, that prevents some potential ethics issues.

COUNCILMEMBER SUGIMURA: And one last question tied to that then. Do you know why we wouldn't pay for it? Besides saving money, but I mean, why do that if there might be some ethical questions?

MR. WHITTAKER: We are not afraid of our ethical issues. We've worked with Craig Scully. We know him. We know his loyalty to Maui County. You know, I was on the phone with him constantly for the parts of this that related to bonds, and he did excellent work. So, we have no concerns. We could pay for this out of the existing funds, but because the Mayor's Office was able to negotiate a lower rate, even than the rate that was negotiated during the last Administration, we had some of those savings, and we just thought that it would be beneficial to the County to pay these...this small amount of legal fees through the energy savings.

COUNCILMEMBER SUGIMURA: Oh, I see. That's how it's coming. Okay. Thank you.

CHAIR U’U-HODGINS: Thank you. Thank you. Member Rawlins-Fernandez, you had a question earlier?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, I'm so sad that this is your last meeting, Mr. Whittaker. My question is, is there like a deadline or a time sensitivity to this?

CHAIR U’U-HODGINS: Mr. Whittaker.

MR. WHITTAKER: Yeah. Thank you, Councilmember Rawlins-Fernandez. We would appreciate if this could pass the main Council prior to the budget session because there is some time-sensitive issues that are coming up, as I indicated. So, there are certain tax savings that we need to capture because some of the tax rules are changing, and some of that work doesn't relate directly to bonds. You know, we've used Craig because a lot of the work did relate to bonds, but we want to make sure he can do some of that other work that is time sensitive. And if we wait until May, I think that would be too late.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo. 30,000, and it's being paid by not the taxpayers. So, I have, I guess, a procedural question for Mr. Raatz or our attorneys, whoever wants. So, hearing the time-sensitive nature of this item, and that we're very quickly going to be going into budget, procedurally, would it make sense to...for us to instead of defer and keep it in Committee to discharge and let it go to Council...I guess it doesn't have the amount still attached to it. Okay. So, I guess in order...sorry. I'm just like playing it out through...in my head how we could help them. So, if they reintroduced...or if they transmitted another resolution with the 30,000 to Council, we could take it up on the Council floor hearing the discussion now. And then just waive Committee referral and report, and Mr. Whittaker could have the \$30,000 cost to it, and then we could pass it before we go into budget. Is that one way we could do it?

CHAIR U'U-HODGINS: Mr. Raatz?

MR. RAATZ: Thank you, Chair. And thank you for the question, Councilmember. Yes, in fact, we've had preliminary discussions with the Department of Corporation Counsel on that approach that you just referenced.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, is that something that Mr. Whittaker would be...would entertain...is that something we want to do?

MR. WHITTAKER: Yes, and thank you so much for that suggestion. I think that's the best way to move forward with this. I know Chair Lee does not like to do Committee work on the Council floor, but I don't think this item will require a lot of work, especially since we're kind of working through the issues now. Hopefully, you know, we can just get the two-thirds vote at the Council meeting.

CHAIR U'U-HODGINS: Chair Lee.

COUNCILMEMBER LEE: You're absolutely right.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Whittaker. Mahalo, Chair.

CHAIR U'U-HODGINS: Thank you, Member Rawlins-Fernandez.

COUNCILMEMBER LEE: You're absolutely right, Mr. Whittaker. However, we can make an exception as your parting gift.

CHAIR U'U-HODGINS: Thank you. Member Sinenci.

COUNCILMEMBER SINENCI: Mahalo, Chair. And mahalo, Mr. Whittaker, and mahalo for your service. I just had a question. You know, our office is working on a bill

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for special counsel billing standards to be in line with industry practice. You mentioned that even though we are not paying for special counsel, but we will still be...OCS will still be managing the...those funds; is that correct?

CHAIR U’U-HODGINS: Mr. Whittaker?

MR. WHITTAKER: Thank you for that question. The Department of Corporation Counsel will be managing it. And, you know, we will review Craig Scully's bills, even though we are not paying for them directly, it's sort of indirectly through the energy savings. So, we will review them. This is an attorney that, you know, we've had a long relationship with, that Council has had a long relationship with. We haven't had a problem with his bills in the past. I talk to him a lot. He doesn't generally bill me for those quick phone calls. He's, you know, been a fantastic attorney to work with, so we're confident that the bills will be fine. But yes, our Department will review them, even though Johnson Controls is paying for them.

COUNCILMEMBER SINENCI: Okay, great. Thank you, Mr. Whittaker. Because in the past, special counsels, they've charged us all the way down to Xerox copies and everything else. So, okay. I'm glad you're...you're on it. Thank you. Thank you, Chair.

CHAIR U’U-HODGINS: Thank you. Do we have any further discussion? Again, this is our chance to have Mr. Whittaker answer anything we need from him before he sadly departs us. Member Paltin.

VICE-CHAIR PALTIN: Thanks. I just was answering your call of any more questions, but I'll yield if any other Members had questions that they didn't get a chance to ask.

CHAIR U’U-HODGINS: Thank you. It doesn't look like it, so go ahead.

VICE-CHAIR PALTIN: Okay. I just was wondering about the part about negotiating an amendment. What exactly do we need to be amended?

MR. WHITTAKER: Thank you, Councilmember Paltin. That's a good question. So, the way that we've set up this contract is, there's...the main contract is just generally about the energy savings performance contract and the energy audit. And then after they do that audit, there are various steps that need to be taken so that the County can realize the energy savings. So, for example, it could be as simple as taking out existing lights and replacing them with, you know, more energy efficient lights. Or it could be adding a solar panel, or it could be changing out equipment. But each of those steps...the way that we've done it legally is, each of those steps requires an amendment to the main contract. And what has happened so far is Johnson Controls will send us their draft contract, and of

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course, it's pretty favorable to them, and we've needed to dig into, you know, sometimes a 20-page-plus amendment to make sure that we've negotiated terms that are good for the County. And, you know, Craig is an essential...Craig Scully is an essential part of that process. So, that's the negotiation process, is that each step requires a new negotiation just because the nature of this...of this 20-year agreement.

VICE-CHAIR PALTIN: Okay. Can I just ask a follow-up question on that one?

CHAIR U'U-HODGINS: Sure.

VICE-CHAIR PALTIN: I know that we like Mr. Scully, and he stays up late nights with us, even though he's on the other side of the continent. I just was wondering if he has the sufficient expertise in like solar and energy, as well as bonds and financing...like what...do we have a copy of his credentials in that category? Or are we more hiring him for his legal...like what is his expertise in this matter? Like we know his expertise in the bond world.

MR. WHITTAKER: That's a very good question, Councilmember Paltin. So, this agreement does involve a lot of bonds, so there's that piece of it. But in addition, he has done this exact same type of agreement and performed this role for the City and County of Honolulu. And the nice part is the counterparty in the City and County of Honolulu's energy performance contract was Johnson Controls. So, he knows the players, he knows the type of contract this is, and has done it already for another municipality, and has done it successfully. So, we did go through a procurement process and look at, you know, other possible firms to hire for this. And given his experience in Hawai'i doing this exact same type of agreement, and the fact that there is a bond component, we found that his firm would be the best firm to hire special counsel.

VICE-CHAIR PALTIN: Okay, great. Thank you. I seen somebody else had a question, so I'll yield.

CHAIR U'U-HODGINS: Thank you. Member Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. So, Mr. Whittaker, I would imagine just the nature of their work with Johnson Controls, as well as Mr. Scully, then the Departments...how involved would the Departments be once his contract is executed, implemented, and what is the big picture of all that would be involved?

MR. WHITTAKER: Thank you, Councilmember Sugimura. The Departments...or all the Departments have been involved in this contract in one way or the other. They helped identify the County facilities for purposes of the audit, and each Department has items that will be involved in the amendments, you know,

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placing of solar panels on a facility, for example, even at a fire station. The Mayor's Office is coordinating this through the Innovation's Office. So, the Innovation's Office is charged with communicating with each of the Departments, letting them know what the contract says, and how the Departments will be affected, and to get feedbacks from the Directors on that contract.

COUNCILMEMBER SUGIMURA: Oh, that's fabulous. So, who is in charge of that Innovation Office, I think there was a change? Was anybody --

MR. WHITTAKER: We'll have to get back to you on that. Yeah, there has been some changes there.

COUNCILMEMBER SUGIMURA: I'm sure we'll meet this person. Yeah, thanks.

CHAIR U'U-HODGINS: Thank you. Any further discussion? No? Okay. Okay, we will...if there are no objections, I will now defer this item, GREAT-11(5).

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TC)

ACTION: DEFER.

CHAIR U'U-HODGINS: Thank you very much. Defer is fine...that language? Okay. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR U'U-HODGINS: We will...Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR U'U-HODGINS: Hi.

COUNCILMEMBER RAWLINS-FERNANDEZ: Hi. Just a procedural question again.

CHAIR U'U-HODGINS: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: For Mr. Raatz or with our attorneys or whoever. Okay. So, if we defer, then this item will stay in Committee. And then if Mr. Whittaker transmits a new resolution with the cost item associated, then this item will just languish in Committee. Procedurally, is it better for us to just defer, and then it automatically gets filed at the end of the term, or should we just like file this if we're expecting to have another resolution? And if we do a Committee report and filing, would we be able to change the Committee report

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like to substitute the resolution for the resolution that Mr. Whittaker is doing?

CHAIR U’U-HODGINS: Great question. Mr. Raatz or Remi?

MR. RAATZ: Thank you, Chair. Yeah, there are a few different procedural mechanisms to get to the point that it seems like Councilmembers want to get to. We do think the simplest approach probably would be to simply defer today, have a new resolution posted for the March 24th Council meeting, and take that up as a fresh item, as Councilmember Rawlins-Fernandez alluded to, that would leave this initially submitted resolution sitting on the docket of the Committee, and that might not feel good to the Committee Chair perhaps, but there's no real harm in that. The item would automatically expire at the end of the term. Thank you, Chair.

CHAIR U’U-HODGINS: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then, Chair?

CHAIR U’U-HODGINS: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mr. Raatz...and then...you know, like so, there's like some really important discussion points that we had today. And if we move to file, then there would be a Committee report generated documenting some of the discussion that we had, and then that way it would be part of the Committee report for this item. And it does have some value if we do take some kind of action.

CHAIR U’U-HODGINS: Thank you. Mr. Raatz.

MR. RAATZ: Thank you, Chair. Those are good points, certainly. I would suggest...as part of our work with the Department of the Corporation Counsel on the new resolution, some of the discussion points for today we recommend being included in the resolution, either as recitals in the whereas clauses or as the action clauses for be it resolved. Not necessarily just compensation, but the type of expenses that would be covered, as Councilmember Sinenci alluded to, types of expenses that wouldn't be covered, maybe a recital to the fact that there was a procurement process that transpired, perhaps more information about Mr. Scully's expertise, and the special necessity. So, again, there's various approaches, but we could have simply a more robust resolution so that all that information is documented in the new resolution. But certainly, Councilmember Rawlins-Fernandez is correct. A Committee report being generated through action today is another way to get that information before the Council. A Committee report, again, could recommend filing of this particular resolution, and could allude to the body's interest in having that other resolution submitted. So, again, there's policy

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choices for the body here today. Thank you, Chair.

CHAIR U’U-HODGINS: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Raatz. Mahalo, Chair.

CHAIR U’U-HODGINS: Thank you.

**GREAT-11(7) LITIGATION MATTERS (RESOLUTION 23-81, RELATING TO
SETTLEMENT AUTHORIZATION: CHRISTINE M. LACHANCE
V. COUNTY OF MAUI; CIVIL 17-1-0428(1))**

CHAIR U’U-HODGINS: Okay. We will now move on to GREAT-11(7). So, before us we have Resolution 23-81, entitled "AUTHORIZING SETTLEMENT OF CHRISTINE M. LACHANCE V. COUNTY OF MAUI, CIVIL 17-1-0428(1)." So, the Resolution 23-81's purpose is to authorize the settlement of the claim filed on October 5th, 2017. The claim alleges personal injury that occurred while the Claimant was jogging, and struck the base of a signpost that was protruding 3.5 inches out of the middle of the sidewalk near the intersection of South Kihei Road and Auhana Road in Kihei, Maui, Hawai‘i on July 30th, 2016. We will now request opening comments from Deputy Corporation Counsel Glen Pascual. Mr. Pascual, when you're ready. Thank you.

MR. PASCUAL: Good afternoon, Chair U’u-Hodgins, Vice-Chair Paltin, and Members of the GREAT Committee. Again, my name is Glen Pascual, I am a Deputy Corporation Counsel. The Lachance v. County of Maui matter involves a lawsuit filed by Christine Lachance for injuries and damages she suffered while jogging on the sidewalk on Auhana Road near the intersection of South Kihei Road on July 30, 2016. Her left foot had struck the remnant of a broken bike route signpost that was protruding about three and a half inches from the sidewalk. She allegedly suffered a fracture of her first metatarsal head of her left toe, which required surgery. She also developed permanent left foot pain and compensatory hip pain, resulting in orthoscopic surgery on her left hip in December of 2019. In addition to her physical injuries, Plaintiff has claimed special damages for her past and future medical expenses, travel expenses, and loss of earnings. Plaintiff is also claiming general damages to her physical, psychological, and emotional health and well-being, and has experienced pain and suffering, mental and emotional distress, limitations on her activities, and diminution of her enjoyment of life. Plaintiff filed a lawsuit against the County of Maui and Third Reef Incorporated. Third Reef Incorporated owns and operates a surf school at the corner of Auhana Road and South Kihei Road. The claims against the County are for: (1) negligence in placing the signpost in the middle of the sidewalk; (2) negligent construction of the sign; (3) negligence for failing to remove the sign

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base; (4) negligence for failing to restore the sign; and (5) failing...negligence for failing to warn of a dangerous condition. This matter was set for jury trial on January 30, 2023. Prior to trial, on January 3rd, 2023, Third Reef Incorporated reached a confidential settlement with the Plaintiff. The Court approved the settlement on February 6, 2023. The County of Maui is the lone remaining Defendant left in this case. The County and Plaintiff participated in a settlement conference with Judge Hamman on January 12, 2023. At the settlement conference, it was decided that the January 30 trial date would be postponed to allow the County of Maui time to obtain authority to settle from the County Council. A status conference is scheduled for April 13th, 2023 to reset the trial date if the parties are unable to settle. Because this case involves ongoing litigation, we request the opportunity to convene in executive meeting to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, as well as settlement related matters. Thank you.

CHAIR U’U-HODGINS: Thank you. At this time we're also going to request opening comments from Highways Division Chief John Smith.

MR. SMITH: Aloha, Chair. No comments at this time.

CHAIR U’U-HODGINS: Okay. Thank you. Before we go into discussion, I'd like to do a last call on testimony for GREAT Item 11(7). Staff, do we have anyone wishing to testify on this item?

MS. LILLIS: Chair, no one has signed up to testify. Proceeding with a brief countdown. If you would like to testify, please make yourself known to us now. Three, two, one. Chair, no one has indicated that they wish to testify.

CHAIR U’U-HODGINS: Thank you. Members, seeing there is no one wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TC)

ACTION: Close oral testimony for GREAT-11(7).

CHAIR U’U-HODGINS: Thank you, thank you. As a reminder, written testimony will continue to be accepted into the record. Members, we're going to move on to our discussion portion. We're going to have a three-minute questioning period with a one-minute follow-up round. Also, before we continue to discuss, I would like to remind the Members to ask all the questions that we can ask during open session now before we convene into executive session if the body deems necessary. Okay. Questions, discussion? Member Paltin.

VICE-CHAIR PALTIN: Thank you, Chair. I think my question would be for Mr. Smith,

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but I'm not sure. So, if I'm wrong, somebody else jump in. I just was wondering, did the Third Reef Inc. get permission to install our sign in the middle of the sidewalk?

MR. PASCUAL: Thank you for that question.

MR. SMITH: Aloha, Chair.

MR. PASCUAL: Oh, I'm sorry.

MR. SMITH: Go ahead, go ahead.

VICE-CHAIR PALTIN: Oh, was it for Mr. Pascual, or...sorry. Whomever.

CHAIR U'U-HODGINS: Thank you. Mr. Smith, could you answer? And if Mr. Pascual has anything to follow up, can we do that please? Thank you.

MR. SMITH: Yes, I will have to defer to Mr. Pascual on this particular question. Can you hear me?

VICE-CHAIR PALTIN: Yes. Thank you.

MR. SMITH: Okay. Yeah, I'm sorry. Go ahead.

CHAIR U'U-HODGINS: Thank you, Mr. Smith. Mr. Pascual.

MR. PASCUAL: Thank you, Chair. The sign was...let me just try to get that information. Third Reef had installed the bike route sign as part of the condition of an SMA permit that was granted by the County in 2010. It was in connection with some construction that the...Third Reef had...was seeking to do in that intersection. After the construction was completed, the County inspected the work and deemed it satisfactorily complete in February of 2014. So, Third Reef had installed the sign under that SMA permit.

VICE-CHAIR PALTIN: So, the purpose was because they were doing other construction, but that other construction was finished at 2014, and that other construction is what was inspected, and nobody inspected the removal of the sign? Is that...I'm just trying to clarify the answer.

MR. PASCUAL: Thank you for the question. The incident occurred in 2016, July 30th. So, the...when the sign was broken, it was after the completion of the construction.

VICE-CHAIR PALTIN: Oh, sorry, I'm a little confused. The construction, did they...I'm

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confused why they still needed the sign after the construction was finished. I thought the construction was the reason for the sign.

MR. PASCUAL: One of the conditions of the SMA permit was that bike route sign be installed.

VICE-CHAIR PALTIN: So, okay. Thank you, Mr. Pascual. Thank you, Chair.

CHAIR U’U-HODGINS: Thank you. Members? Any further discussion before we move on to executive session? Remi, you look like you have something to say. Okay. You sure? Member Sugimura.

COUNCILMEMBER SUGIMURA: So, do any of the other cases require executive session?

CHAIR U’U-HODGINS: They do.

COUNCILMEMBER SUGIMURA: Do we have to do each one separately?

CHAIR U’U-HODGINS: We do.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR U’U-HODGINS: So that we can ensure the proper people are in as we take up each executive session.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR U’U-HODGINS: Okay. Member Paltin. Hi.

VICE-CHAIR PALTIN: Oh, I just was wondering if they could clarify why the request for executive session on this case?

CHAIR U’U-HODGINS: Can do. That would be OCS.

MR. PASCUAL: The request for executive session...thank you for that question, Vice-Chair Paltin. The purpose of going into executive session is to provide the amount that we are requesting to settle and to discuss that.

VICE-CHAIR PALTIN: Okay. So, the 10,000 was Third Reef’s amount, and not ours?

MR. PASCUAL: I’m sorry. I don’t know where you got 10,000.

VICE-CHAIR PALTIN: Okay.

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CHAIR U’U-HODGINS: It's in our...it's in our documents that was provided to us. But I believe Member Paltin is correct, it's not for us, I don't think. It's on page 2 --

COUNCILMEMBER RAWLINS-FERNANDEZ: It's page 7. Page 7 of the document.

VICE-CHAIR PALTIN: So much reading, I sometimes get mixed up. Sorry. My bad.

CHAIR U’U-HODGINS: No, no, no. Thank you.

MR. PASCUAL: I'm not sure what page 7 you're referring to. Is that the complaint, or...

COUNCILMEMBER RAWLINS-FERNANDEZ: Page 2. Chair?

CHAIR U’U-HODGINS: Yeah. Under jurisdiction --

VICE-CHAIR PALTIN: Page 2 of the update.

CHAIR U’U-HODGINS: -- Page 2, number 6.

MR. PASCUAL: Oh, okay. Thank you for that question. I'm looking at paragraph 6 of the complaint that was filed in this case. It is basically a jurisdictional pleading whereas...where the Plaintiffs would generally indicate that the amount of controversy exceeds \$10,000, including cost and interest. That is basically included in the complaint so that they have the jurisdiction to file in the Second Circuit at the time. It's not the amount that they're claiming.

VICE-CHAIR PALTIN: Okay, okay. Thank you. I feel like I more understand what's going on here. Thank you.

CHAIR U’U-HODGINS: Thank you. Any further questions during open session? Member Johnson. Hi, go ahead.

COUNCILMEMBER JOHNSON: Thank you, Chair. Thank you. Quick clarifying question. I read that it was it on the corner of Auhana Road and South Kihei Road. I did a Google Earth search, I don't know, there's no...am I at the wrong intersection? Because I looked for Third Reef business, and I couldn't find that. Can you guys clarify where this accident happened so I could see it on Google Earth?

CHAIR U’U-HODGINS: Good question. Mr. Pascual.

MR. PASCUAL: Thank you for the question, Member Johnson. Third Reef Incorporated is the legal entity that owns the property, but the business is under a d/b/a.

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And I'm not sure exactly what the name of the d/b/a is, but it is a surf school on that corner.

VICE-CHAIR PALTIN: It's Maui Wave Riders.

COUNCILMEMBER JOHNSON: It's on the corner of Auhana Road, or is it a different location. Because that's right by the cove, the park, right?

MR. PASCUAL: It's almost like a triangle corner, and it is right there on the corner of South Kihei. And Auhana Road kind of...it's not a perpendicular...it's not a 90 degree intersection, it's kind of a triangular intersection, I believe.

COUNCILMEMBER JOHNSON: Okay. I think the name I was looking for was wrong. Thank you. That helps clarify it. Thank you, Chair.

CHAIR U'U-HODGINS: Thank you, Member Johnson. Okay. We are now going to move into executive session, if that is okay. Can I ask to have a motion made to move into executive session?

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER LEE: Second.

CHAIR U'U-HODGINS: Thank you so much. I do have to read all of this first. Sorry. Okay. Members, if we do not have any further questions or comments for Corporation Counsel in open session before we consider moving into executive session. Hawai'i Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, Section 92-5(a)(8), HRS, to deliberate or make a decision upon the matter that requires the consideration of information that must allow...that must be kept confidential pursuant to a State or Federal law or a court order. Okay. Now, can we please have a motion to move into execution session?

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER LEE: Second.

CHAIR U'U-HODGINS: Thank you, thank you. Moved by Chair Lee [sic], second by Member Sugimura [sic]. Do we need to have any further discussion before going into executive session? Okay, seeing none, all in favor of the motion, please raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

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MR. MITCHELL: Chair? Chair, if I could just momentarily interrupt?

MR. MITCHELL: If the motion could state clearly what code sections, statutory sections we're applying.

MR. MITCHELL: Thank you.

MS. APO TAKAYAMA: No, Chair. That was eight “ayes,” zero “noes,” one excused.
Motion...Member Tom Cook. Motion carries.

NOES: None.

ABSENT: None.

MOTION CARRIED.

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CHAIR U’U-HODGINS: Okay. Thank you. For the record, the following personnel will be attending the executive session meeting. Office of Council Services Staff, Richard Mitchell, Richelle Kawasaki, Pauline Martins, and Senior...which is the Senior Committee Secretary. And can now I ask Mr. Whittaker to state who from the Department of Corporation Counsel and from the Administration will be in executive session, and their titles please.

MR. WHITTAKER: Thank you, Chair. From the Department of Corporation Counsel, Victoria Takayesu, Acting Corporation Counsel; Keola Whittaker, Deputy Corporation Counsel; Mariana Lowy-Gerstmar, Deputy Corporation Counsel, for training purposes; Glen Pascual, Deputy Corporation Counsel; Thomas Kolbe, Deputy Corporation Counsel; and Brian Bilberry, Deputy Corporation Counsel.

MS. APO TAKAYAMA: Chair, my apologies. Deputy Director David Raatz...Deputy Director of Council Services David Raatz will also be in executive session.

CHAIR U’U-HODGINS: Thank you. Okay. At this time we're going to take a ten-minute recess to set up executive session, and we will return in executive session. So, we will return at 2:35, and we'll be in executive session. This meeting of the GREAT Committee is now in recess. Thank you. . . .(gavel). . .

RECESS: 2:26 p.m.

RECONVENE: 2:38 p.m.

CHAIR U’U-HODGINS: . . .(gavel). . . Aloha, gang. Will the GREAT Committee meeting of March 2023 please reconvene. It is 2:38. Before we left, we had discussed moving into execution session, and there are a couple things we need to redo in order to ensure that we are appropriately moving into executive session. At this time, can I please call for a reconsideration to move into executive session.

VICE-CHAIR PALTIN: Um --

CHAIR U’U-HODGINS: Hi.

VICE-CHAIR PALTIN: I'm not sure if you're talking to us, but I can't hear anything.

CHAIR U’U-HODGINS: Oh, shucks. One second, one second. Can you hear me now?

VICE-CHAIR PALTIN: I can hear you now.

CHAIR U’U-HODGINS: Okay. Sorry, sorry. I'll redo that again. Okay. At the time we came back, it was 2:38. Will the GREAT Committee please reconvene. Before we left, we were discussing executive session. But in order to appropriately move

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into executive session, we're going to have restate a couple of names. So, can I ask for reconsideration for GREAT-11(7), please? The vote to move into executive session.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TC)

CHAIR U'U-HODGINS: No objections? Is that okay, or do we need to --

UNIDENTIFIED SPEAKER: So moved.

MS. APO TAKAYAMA: Chair, can we have a motion and a second, please?

CHAIR U'U-HODGINS: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: So moved.

COUNCILMEMBER SUGIMURA: So moved.

CHAIR U'U-HODGINS: Thank you, thank you.

COUNCILMEMBER KAMA: Second.

CHAIR U'U-HODGINS: Okay. Moved by Member Sugimura, second by Tasha Kama. And moved by somebody also on BlueJeans that I couldn't see. Okay. So, we have a motion. Do we have any discussion? Otherwise, Kasie will explain some stuff.

MS. APO TAKAYAMA: Okay. So, we'll take the vote on the reconsideration, and then we'll ask for another motion and second on the motion to go into executive session for GREAT-11(7) again.

CHAIR U'U-HODGINS: Okay. Can we please take the vote to move into executive session? All those in favor, please raise your hand and say "aye."

MR. MITCHELL: The motion is for reconsideration, Chair.

CHAIR U'U-HODGINS: Oh, hi. This is for reconsideration to move into executive session for item GREAT-11(7). All those in favor, please raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR U'U-HODGINS: Thank you, thank you.

MS. APO TAKAYAMA: Chair, that's nine "ayes," zero "noes." Motion carries.

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VOTE: **AYES:** Chair U'u-Hodgins, Vice-Chair Paltin,
Councilmembers Johnson, Kama, Cook, Lee,
Rawlins-Fernandez, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: RECONSIDERATION.

CHAIR U'U-HODGINS: Thank you. With that, I would like to also recognize Member Cook, who has just joined us. Okay. So, for the record, the following personnel will be attending --

MS. APO TAKAYAMA: Sorry, Chair.

CHAIR U'U-HODGINS: Hi.

MS. APO TAKAYAMA: Now we'll go back to the motion to go into executive session.

CHAIR U'U-HODGINS: Okay.

COUNCILMEMBER KAMA: So moved.

CHAIR U'U-HODGINS: Thank you, thank you. Getting quick on the draw. Okay. Moved by Tasha Kama, second by Member Cook. And so we're going to have to now take a vote again.

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of order.

CHAIR U'U-HODGINS: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, when we do a reconsideration, we go right back to where the motion was already seconded. The motion was made and seconded, and we just vote. So, we don't need to take up

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CHAIR U’U-HODGINS: Thanks. Okay. Are we good to continue?

CHAIR U’U-HODGINS: Okay. All those in favor, please raise your hand and say "aye."

CHAIR U’U-HODGINS: Thank you, thank you.

VOTE: **AYES:** Chair U'u-Hodgins, Vice-Chair Paltin,
Councilmembers Johnson, Kama, Cook, Lee,
Rawlins-Fernandez, Sinenci, and Sugimura.

EXC.: None.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, I'm ready to take the re-vote because now you're going to read who else will be in executive session, which includes Member Cook?

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CHAIR U’U-HODGINS: Yes, and also, we didn't state any of our names either. So, I guess for the record, we will need to clearly state that the Members will also be in executive session.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I don't understand why we had to re-vote in order to state who was going to go in. But, okay. I will go talk to OCS later about that --

CHAIR U’U-HODGINS: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- as to the reason why.

CHAIR U’U-HODGINS: Yeah, can do. I just listen to the directions. But I appreciate that. Thank you. Okay. So, for the record, the following personnel will be attending the executive session meeting. Office of Council Services Staff, Richard E. Mitchell, Legislative Attorney; Richelle Kawasaki, Legislative Attorney; and Pauline Martins, Senior Committee Secretary; and David Raatz, Deputy Director of Council Services. We also have all nine Members in attendance. So, I am Member Nohelani U’u-Hodgins. We have Committee Chair [sic] Tamara Paltin, Councilmember Tom Cook, Councilmember Gabe Johnson, Councilmember Tasha Kama, Council Chair Alice Lee, Councilmember Keani Rawlins-Fernandez, Councilmember Shane Sinenci, Councilmember Yuki Lei Sugimura. And I'm now going to ask Mr. Whittaker to please introduce those of Corporation Counsel joining us as well.

MR. WHITTAKER: From the Office of Corporation Counsel, Victoria Takayesu, Acting Corporation Counsel; and the following Deputies Corporation Counsel, Keola Whittaker, Mariana Lowy-Gerstmar for training purposes, Litigators Glen Pascual, Thomas Kolbe, and Brian Bilberry. We're taking off Brian Bilberry from that list.

CHAIR U’U-HODGINS: Thank you, thank you. Oh, yes. Committee Vice-Chair Tamara Paltin, not Councilmember. Okay. So, Members we will be emailing you folks an email link for executive session. And we are going now call a five-minute recess to get us settled. So, we will now be in a recess and we'll return in executive session. We will be recessed until 2:49. . . .(gavel). . .

RECESS: 2:44 p.m.

RECONVENE: 3:57 p.m.

CHAIR U’U-HODGINS: . . .(gavel). . . Aloha. Will the GREAT Committee please reconvene. It is 3:57 p.m. Members, we have just completed our executive session meeting on Item --

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VICE-CHAIR PALTIN: Chair, I'm sorry to interrupt you if you're talking --

CHAIR U'U-HODGINS: Yes.

VICE-CHAIR PALTIN: -- but I don't hear anything.

CHAIR U'U-HODGINS: Thank you. Can you hear me now?

VICE-CHAIR PALTIN: Yes. I can hear you now.

CHAIR U'U-HODGINS: Okay. Okay. Thank you for letting me know. I will hana hou the introduction. Will the GREAT Committee please reconvene. It is 3:57. Thank you for letting us know you couldn't hear. Members, we have just completed our executive session meeting on Item GREAT-11(7). Before we continue on to the recommendation, Mr. Mitchell has a few notes to add.

MR. MITCHELL: Thank you, Chair. During the presentation in executive session, Mr. Pascual provided the Council Committee with two pictures, both of which he indicated were produced during discovery of the accident site. So, we'd like to have those two pictures. One with a close up of the sleeve for the sign, and the other is the sidewalk with a cone on it. We'd like to have those two pictures included as part of the public record.

COUNCILMEMBER SINENCI: No objections.

CHAIR U'U-HODGINS: Thank you. Thank you, Member Sinenci. Okay. Mahalo, Mr. Mitchell. Okay. So, I would like to entertain...oh, no. Sorry. First, for the record, Member Kama has left us. So, we have now eight Members in our meeting. With that being said, I would like to entertain a motion to recommend the adoption of Resolution 23-81.

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER LEE: Second.

CHAIR U'U-HODGINS: Thank you, thank you. Moved by Member Sugimura, and seconded by Council Chair Lee. Is there any further discussion on this item?

COUNCILMEMBER SUGIMURA: No.

CHAIR U'U-HODGINS: No? Seeing none. Can we do a roll call vote, Members, or we can just do a --

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COUNCILMEMBER SUGIMURA: Voice.

CHAIR U’U-HODGINS: Voice vote?

COUNCILMEMBER SUGIMURA: I think so.

CHAIR U’U-HODGINS: Okay. All those in favor, please raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR U’U-HODGINS: Aye.

MS. APO TAKAYAMA: Chair, that's eight “ayes,” zero “noes,” one excused, Councilmember Kama.

**VOTE: AYES: Chair U’u-Hodgins, Vice-Chair Paltin,
 Councilmembers Johnson, Cook, Lee,
 Rawlins-Fernandez, Sinenci, and Sugimura.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kama.

MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION 23-81.

CHAIR U’U-HODGINS: Thank you. Thank you, Members. This item will now move on for full Council's consideration.

**GREAT-11(9) LITIGATION MATTERS (RESOLUTION 23-83, RELATING TO
SETTLEMENT AUTHORIZATION: GEOFFREY E. WITTMER,
ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 19-1-0198(1))**

CHAIR U’U-HODGINS: Before us we have Resolution 23-83, entitled "AUTHORIZING THE SETTLEMENT OF GEOFFREY WITTMER, ET AL. V. THE COUNTY OF MAUI, ET AL., CIVIL 19-1-0198(1)." Resolution 23-83's purpose is to authorize the

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settlement of the claim filed on April 9th, 2020. The claim alleges negligence by the County while Eric G. Wittmer was in the custody on or about June 12th, 2017, resulting in his death. We are going to request comments from Deputy Corporation Counsel, Brian Bilberry, as well as opening comments from the Assistant Police Chief Gregg Okamoto.

MR. WHITTAKER: Chair, we were going to defer the item, given the time.

CHAIR U'U-HODGINS: Yes.

MR. WHITTAKER: But if you'd like to move forward with this item, we can do that.

CHAIR U'U-HODGINS: We can defer, if that is okay with the Members?

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TK)

CHAIR U'U-HODGINS: Thank you. We will --

MS. APO TAKAYAMA: Chair?

CHAIR U'U-HODGINS: Hi.

MS. APO TAKAYAMA: I'm sorry. Before we defer the item, we need to take testimony.

CHAIR U'U-HODGINS: Okay. We will take testimony and then defer the item. Staff, do we have any testifiers at this moment?

MS. LILLIS: Chair, no one has indicated that they wish to testify, and we have no one signed up. I will proceed with a brief countdown. If you would like to testify, please make yourself known to us now, either in the Council Chamber or on BlueJeans. Three, two, one. Chair, no one has indicated that they wish to testify.

CHAIR U'U-HODGINS: Thank you. Members, seeing there are no individuals wishing to testify, without objection, I will now close oral testimony for --

COUNCILMEMBER SUGIMURA: No objections.

CHAIR U'U-HODGINS: Thank you. GREAT-11(9).

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TK)

ACTION: Close oral testimony for GREAT-11(9).

CHAIR U'U-HODGINS: We would like to defer this item, and so we will have no then

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discussion, and we will continue moving on; is that right?

MS. APO TAKAYAMA: Right.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TK)

ACTION: DEFER.

CHAIR U’U-HODGINS: Okay. One second, one second. Okay.

**GREAT-11(11) LITIGATION MATTERS (RESOLUTION 23-84, RELATING TO
SETTLEMENT AUTHORIZATION: ASHLEY HOOKS V. COUNTY OF
MAUI, ET AL.; CIVIL 2CCV-21-0000034(2))**

CHAIR U’U-HODGINS: So, to move on. Before us we have Resolution 23-84, entitled "AUTHORIZING THE SETTLEMENT OF ASHLEY HOOKS V. THE COUNTY OF MAUI, ET AL.; CIVIL 2CCV-21-0000034(2)." Resolution 23-84's purpose is to authorize the settlement of the claim filed on February 5th, 2021. The claim alleges a violation of the Hawai'i Whistleblower Protection Statute and unlawful termination. At this time we're going to request opening comments from Deputy Corporation Counsel Thomas Kolbe, as well as Acting Director of Water Supply John Stufflebean. Mr. Kolbe.

MR. WHITTAKER: Before Mr. Kolbe speaks, I just wanted to let the Committee know that this lawsuit deals with a current employee of the County, so Mr. Kolbe is going to say very, very little in open session. Almost everything he has to say is going to have to be in closed session just due to the nature of the Plaintiff.

CHAIR U’U-HODGINS: Thank you. Mr. Kolbe.

MR. KOLBE: Good afternoon, Members. Is this on? Yes. Okay. Yeah, good afternoon. Hooks v. County is a Whistleblower claim. Hooks v. County is a Whistleblower claim that essentially involves Plaintiff, who was a water treatment plant operator in the Department of Water Supply. He has alleged that he was terminated because he contacted the Department of Health about an incident that took place at one of the plants. The parties have engaged in discovery, and trial is now scheduled to take place beginning April 17th of this year. There are hearings set on motions in limine for March 20th, and the County has filed a motion for summary judgment, which will be heard on March 22nd. Mr. Hooks is currently employed with the County. As Mr. Whittaker indicated, I would request the opportunity to discuss in executive session and provide you with an assessment of the case and to discuss settlement authority in this matter. Thank you.

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CHAIR U’U-HODGINS: Thank you. Do we have a representative of the Water Department on to provide us some opening comments as well?

MS. APO TAKAYAMA: Chair, I believe they logged off of the call.

CHAIR U’U-HODGINS: Okay.

MR. WHITTAKER: We were going to let them know when they were needed. So, I think they may be on their way.

CHAIR U’U-HODGINS: Okay. We can give them a moment.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR U’U-HODGINS: Hi. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Hi. How...when are you estimating to adjourn today's meeting?

CHAIR U’U-HODGINS: Good question. So, I've been told the next item will not take too long. Do you need to leave?

COUNCILMEMBER RAWLINS-FERNANDEZ: I cannot stay past 4:30.

CHAIR U’U-HODGINS: Okay. Thank you for that. I intended on --

COUNCILMEMBER RAWLINS-FERNANDEZ: If you any . . .*(inaudible)*. . . Okay.

CHAIR U’U-HODGINS: Thank you, thank you.

MR. WHITTAKER: Chair, there's not much the Department can comment on this. So, I'm not sure if their presence is necessary for the Committee, but we would advise them to not comment probably to most of your questions dealing with this current employee. So, if it's okay with the Chair and the Committee, we can go into executive session.

CHAIR U’U-HODGINS: Okay. Before we do so, let's ensure that we have no testimony on Items...for Item GREAT-11(11). Staff?

MS. LILLIS: Chair, no one is signed up to testify. If anyone would like to testify that is connected to BlueJeans or is in the Council Chamber, please let us know now. I will proceed with a brief countdown. Three, two, one. Chair, no one has indicated that they wish to testify.

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CHAIR U’U-HODGINS: Thank you. Members, seeing there are no individuals wishing to testify, without objection, I will now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused TK)

ACTION: Close oral testimony for GREAT-11(11).

CHAIR U’U-HODGINS: Thank you. Okay. Oral testimony is now closed. And as a reminder, written testimony will continue to be accepted into the record. Members, in the interest of time we are also going to do a three-minute questioning period with a one-minute follow up, and we will most likely move into executive session now. Yes?

MS. APO TAKAYAMA: Chair, unless there are questions that can be asked in open session, yes, we can go into requesting that motion.

CHAIR U’U-HODGINS: Okay. Members, do we have any discussion questions that can be...okay. Member Paltin.

VICE-CHAIR PALTIN: I just wanted to clarify. So, he was working with the Water Department. Then he was fired for some other reason, and then he was...had to be rehired, and then he was not rehired to the Water Department?

MR. KOLBE: I can answer that question generally.

CHAIR U’U-HODGINS: Please.

MR. KOLBE: So, he was returned to duty via settlement agreement that has a confidentiality component, which is why I can't discuss the nature of it. He is currently employed as a leak detector within the Department of Water Supply, but he's not currently in the position that he previously held.

VICE-CHAIR PALTIN: And the settlement agreement was between HGEA and the County?

MR. KOLBE: UPW and the County.

VICE-CHAIR PALTIN: Oh, sorry. UPW. And you're not allowed to say for what reason he was hired and fired, and what reason he was brought back, that's confidential.

MR. KOLBE: Well, it gets into documents that are part of a person's personnel file. And so there's Chapter 92(f), which also comes into play in this, but there specifically are court rulings and related to the settlement agreement. And so, I don't want to discuss any of the portions of that agreement in open session.

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VICE-CHAIR PALTIN: Okay. Thank you.

CHAIR U’U-HODGINS: Thank you, Member Paltin. Any further discussion? Okay. Okay, Members, since we do not have any additional comments for Corp. Counsel in open session, before we move on, we will now entertain a motion to convene in executive session. Accordance with Section 92-5(a)(4), HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. Section 92-5(a)(8), HRS, to deliberate or make a decision upon the matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law or a court order.

COUNCILMEMBER COOK: So moved.

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER LEE: Second.

CHAIR U’U-HODGINS: Moved by Member Cook, second by Chair Lee. Do we have any further discussion? Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Just a quick one. Is there a reason that we wouldn't include Section (f), personnel?

CHAIR U’U-HODGINS: Good question. Not for me to answer. Somebody else?

MR. WHITTAKER: Yes, that can be included as well. Thank you for noting that.

CHAIR U’U-HODGINS: Mahalo. Do I need to say that, or is that sufficient? Okay, great. Any further discussion? Seeing none. All in favor of the motion to move into executive session, please raise your hand and say "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR U’U-HODGINS: Aye.

MS. APO TAKAYAMA: Chair, that's eight "ayes," zero "noes," one excused, Councilmember Tasha Kama.

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VOTE: **AYES:** Chair U'u-Hodgins, Vice-Chair
Rawlins-Fernandez, Councilmembers Cook,
Johnson, Lee, Paltin, Sinenci, and Sugimura.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kama.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR U-U-HODGINS: Thank you. Again, now, for the record, the personnel that will be attending the executive meeting include Office of Council Services Staff, Richard E. Mitchell, Legislative Attorney; Richelle Kawasaki, Legislative Attorney; and Pauline Martins, Senior Committee Secretary; as well as David Raatz, Deputy Director of Council Services. We also have all eight Members, which include Committee Vice-Chair Tamara Paltin, Councilmember Tom Cook, Councilmember Gabe Johnson, Council Chair Alice Lee, Councilmember Keani Rawlins-Fernandez, excuse me, Councilmember Shane Sinenci, and Councilmember Yuki Lei Sugimura. And Mr. Whittaker, could you please let us know who will be in executive session from Corporation Counsel.

MR. WHITTAKER: Yes, Chair. Acting Corporation Counsel, Victoria Takayesu, Deputies Corporation Counsel Keola Whittaker, Mariana Lowy-Gerstmar, and Thomas Kolbe.

CHAIR U'U-HODGINS: Thank you very much. At this time, we're going to call for a five minute recess...sorry, excuse me...to reconvene at 4:16 in executive session. Members, please check your emails. You will receive an email from OCS Staff to get us into executive session. And so we will return in executive session. This meeting is now...oh, hi, Member Rawlins-Fernandez. Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I don't think you included yourself, unless I missed it.

CHAIR U'U-HODGINS: You're right. Thank you. And me, Chair U'u-Hodgins. Thank you so much.

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COUNCILMEMBER RAWLINS-FERNANDEZ: You will be there.

CHAIR U’U-HODGINS: Yeah, I will be there. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then, Mr. Whittaker is not joining us?

CHAIR U’U-HODGINS: He will be.

MR. WHITTAKER: Yeah, I said my name just very quickly.

CHAIR U’U-HODGINS: Thank you. I appreciate that. Okay, we are now going to into recess. We'll see you in a few minutes in executive session. We are now in recess. Thank you. . . .*(gavel)*. . .

RECESS: 4:12 p.m.

RECONVENE: 5:01 p.m.

CHAIR U’U-HODGINS: . . .*(gavel)*. . . Aloha again. Will the Government, Relations, Ethics, Transparency Committee, please reconvene. It is now 5:01 p.m. Members, we have just completed our executive session on meeting...executive meeting on GREAT Item 11(11). Do we have any further discussions before we move on to the Chair's recommendation? Great. Seeing none. I would like to entertain a motion to recommend the adoption of Resolution 23-84.

COUNCILMEMBER COOK: So moved.

COUNCILMEMBER LEE: Second.

CHAIR U’U-HODGINS: Motion made by Member Cook, second by Chair Lee. Is there any discussion on this item? Seeing none. Can we please do a voice vote? All those in favor, please raise your hand and say “aye.”

COUNCILMEMBERS VOICED AYE.

MS. APO TAKAYAMA: Chair, that's seven “ayes,” zero “noes,” two excused, Councilmembers Kama and Rawlins-Fernandez.

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VOTE: AYES: Chair U'u-Hodgins, Vice-Chair Paltin, Councilmembers Johnson, Cook, Lee, Sinenci, and Sugimura.

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 37 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 14th day of April 2023, in Wailuku, Hawai'i



Terianne Arreola