



RESOLUTION

TO RETAIN THE SERVICES OF A PRIVATE ATTORNEY AS SPECIAL DEPUTY FOR THE CITY AND COUNTY OF HONOLULU

WHEREAS, in 2007, the United Public Workers, AFSCME, Local 646, AFL-CIO ("UPW") filed Grievance No. DMN-07-05 relating to privatization of City services, claiming that the City violated civil service merit principles in violation of Sections 1, 2, 14, 15, 16 and 23 of the Unit 1 Collective Bargaining Agreement; and

WHEREAS, in 1997, the Hawaii Supreme Court issued what is known as the Konno decision, Konno v. County of Hawaii, 85 Hawai'i 61, 937 P.2d 397 (1997), which ruled that government contracts for services that had been customarily and historically performed by civil servants, violated state law and state constitutional provisions on civil services irrespective of whether such contracts were more cost effective;

WHEREAS, in 2001, in reaction to the Konno decision, the legislature enacted Act 90 (commonly known as the Privatization law) that allowed for the privatization of government services under certain circumstances but the law had a sunset date of June 30, 2007, which meant that the law would no longer be in effect and that, in essence, the Konno decision thereafter would be controlling;

WHEREAS, following the sunset date of Act 90, the UPW filed grievance DMN-07-05, seeking to have all contracts for services voided and replaced by civil servants;

WHEREAS, in an effort to avoid what would be a drawn out and costly litigation process, the City and the UPW entered into an agreement called the "Principles of Understanding" that commits the UPW to not pursue and challenge every contract for services while the City is committed to fill a certain number of positions in the areas of maintenance, refuse and groundskeeping services;

WHEREAS, the City and County of Honolulu is named as a Respondent in Grievance No. DMN-07-05, Relating to Privatization; and

WHEREAS, as part of the grievance, the UPW seeks termination of all contracts with private entities, and restoration of the merit system for services customarily performed by civil servants in Bargaining Unit 1; and



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WHEREAS, the grievance further requests information identifying all contracts with private entities, including contracts for 1) refuse collection; 2) building repair, maintenance and custodial services; 3) ground maintenance, landscaping, tree trimming; 4) automotive repair and maintenance; and 5) other services covered by Act 90, Article XVI, Section 1 of the Hawaii Constitution; and

WHEREAS, by Resolution No. 07-389, the City Council approved the retention of Kobayashi Sugita & Goda LLP, as special deputy to represent the City in this grievance; and

WHEREAS, via Contract No. SC-COR-0800135, Kobayashi Sugita & Goda LLP, represented the City in this grievance from April 24, 2008 through April 23, 2010, and have been the only lawyer to do so to date; and

WHEREAS, the UPW has recently indicated its intent that its claim relating to the privatization of City services move forward; and

WHEREAS, Section 5-203 of the Revised Charter of the City and County of Honolulu 1973 (Supp. 1993) ("RCH"), provides:

The corporation counsel shall serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties. Except as otherwise provided by federal or state law, the determination whether a matter relates to official powers and duties shall be made by the corporation counsel and shall include, among other things, consideration of case law applicable to the concept of course and scope of employment. The corporation counsel shall represent the city in all legal proceedings, except as otherwise provided in this charter. The corporation counsel shall perform all other services incident to the office as may be required by this charter or by law;

and



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WHEREAS, RCH Section 5-204.1 provides that:

Special deputies may be appointed by the corporation counsel, with the approval of the city council. Such appointments shall be based on a contract specifying the compensation, if any, to be paid a special deputy.

The compensation shall be based on the prevailing rate for the specified services to be rendered;

and

WHEREAS, pursuant to RCH Section 5-204, the Department of the Corporation Counsel has determined that because of the number of plaintiffs in this action, and complexity of the issues involved, the defense of the City and County of Honolulu will greatly benefit by the retention of attorneys who specialize in the area of privatization, and who are familiar with the issues and the arguments of UPW as the only counsel of record for the City involved in Grievance No. DMN-07-05; and

WHEREAS, the Department of the Corporation Counsel seeks to again retain the services of the law firm of Kobayashi Sugita & Goda LLP, to represent the City and County of Honolulu in the grievance; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that:

Pursuant to the mandate of RCH Sections 5-203 and 5-204.1, it authorizes the retention of the law firm of Kobayashi Sugita & Goda LLP, as special deputy corporation counsel to represent the CITY AND COUNTY OF HONOLULU in Grievance No. DMN-07-05, Relating to Privatization, at the rate of \$225.00 per hour for partners, \$140.00 per hour for associates, \$100.00 per hour for paralegals, for preparation, research, and representation in all administrative matters and court proceedings, together with reasonable costs incurred in connection with the litigation, but not to exceed the total sum of Seventy-Five Thousand Dollars (\$75,000.00); provided that this total amount may be increased by the Council if it is satisfied with the justification for such increase; and



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BE IT FINALLY RESOLVED by this Council that the Clerk be and is hereby directed to transmit copies of this resolution to the law offices of Kobayashi Sugita & Goda LLP (999 Bishop Street, Suite 2600), and the Corporation Counsel.

INTRODUCED BY:

Forney M. Lumb (B/R)

DATE OF INTRODUCTION:

JAN 12 2012

Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 12-18

Introduced: 01/12/12 By: ROMY CACHOLA (BR)

Committee: EXECUTIVE MATTERS
AND LEGAL AFFAIRS

Title: RESOLUTION TO RETAIN THE SERVICES OF A PRIVATE ATTORNEY AS SPECIAL DEPUTY FOR THE
CITY AND COUNTY OF HONOLULU.

Links: [RES12-18](#)
[CR-28](#)

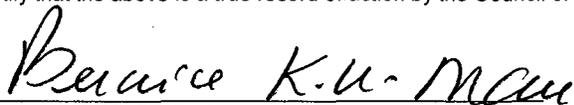
Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

EXECUTIVE 01/10/12 CR-28 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
MATTERS AND
LEGAL AFFAIRS
(EXECUTIVE
SESSION)

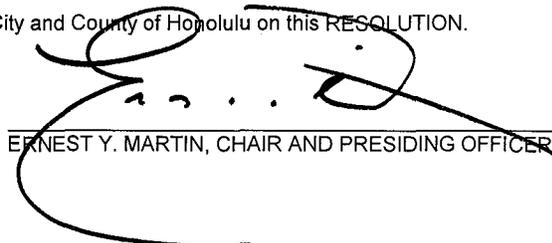
COUNCIL 01/25/12 CR-28 AND RESOLUTION 12-18 WERE ADOPTED.

ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	Y	GABBARD	Y
GARCIA	A	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



BERNICE K. N. MAU, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER