



RESOLUTION

TO RETAIN THE SERVICES OF A PRIVATE ATTORNEY AS SPECIAL DEPUTY CORPORATION COUNSEL FOR THE CITY AND COUNTY OF HONOLULU IN A LAWSUIT ENTITLED, U.S. COMPOSITE PIPE SOUTH, LLC VS. FRANK COLUCCIO CONSTRUCTION COMPANY, ET AL., CIVIL NO. CV-12-00538 JMS KSC.

WHEREAS, a lawsuit was filed by U.S. Composite Pipe South, LLC ("USCPS") in the United States District Court for the District of Hawaii, on October 3, 2012, against Frank Coluccio Construction Company ("Coluccio") and Safeco Insurance Company of America, as surety for Coluccio ("Safeco"), entitled U.S. Composite Pipe South, LLC vs. Frank Coluccio Construction Company, et al., Civil No. CV-12-00538 JMS KSC ("lawsuit");

WHEREAS, said lawsuit involves the City's construction contract with Coluccio for the Beachwalk WWPS to Ala Moana Park Sewer: Phase I – Force Main System, Contract No. CT-DDC-0900444, and wherein USCPS, as the supplier of certain sewer pipe, asserts claims for damages against Coluccio as the City's general contractor and against Safeco as Coluccio's surety; and

WHEREAS, Coluccio filed a First Amended Counterclaim on June 4, 2013 against USCPS and against additional counterclaim defendants City and County of Honolulu and Westchester Fire Insurance Company as surety for USCPS; and

WHEREAS, Coluccio has asserted claims against the City for negligence and breach of contract and implied warranties in allegedly accepting and warranting the use of pipe supplied by USCPS; and

WHEREAS, pursuant to Section 5-204 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition, as amended) ("RCH"), the Corporation Counsel has determined that because it is necessary to retain attorneys with expertise and experience in the subject area to effectively defend and advocate the City's position in any mediation and litigation, and because of the expertise and experience required in the area of construction law, the complexity of the review and analysis required of an anticipated substantial volume of financial and construction-related documents, and the resources currently available in the Department of the Corporation Counsel, it is necessary to retain attorneys with expertise and experience in the subject area to effectively defend and advocate the City's position in mediation and litigation; and



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WHEREAS, the law firm of Kobayashi, Sugita & Goda LLP possesses the specialized legal knowledge and expertise in construction litigation and has assisted in the evaluation of these claims and is therefore familiar with this matter; and

WHEREAS, the Department of the Corporation Counsel seeks to retain the services of the law firm of Kobayashi Sugita & Goda LLP, to represent the City and County of Honolulu in the lawsuit as special deputy;

WHEREAS, RCH Section 5-204.1 provides that special deputies may be appointed by the Corporation Counsel with the approval of the City Council; now, therefore,

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

(1) Pursuant to RCH Sections 5-203 and 5-204.1, the City Council authorizes the retention of the law firm of Kobayashi Sugita & Goda LLP, as special deputy corporation counsel, to represent the City in legal proceedings and any appellate proceedings arising out of the claims and lawsuit entitled U.S. Composite Pipe South, LLC vs. Frank Coluccio Construction Company, et al., Civil No. CV-12-00538 JMS KSC, at the rate of \$295.00 per hour for senior partner Bert T. Kobayashi, \$225.00 per hour for partners, \$140.00 per hour for associates, and \$80.00 per hour for paralegals for preparation, research, and representation in legal proceedings, together with reasonable costs incurred in connection with the litigation and appellate proceedings, but not to exceed the total sum of Seventy Thousand Dollars (\$70,000), provided that this total amount may be increased by the Council if it is satisfied with the justification for such increase; and

(2) The Special Deputy Corporation Counsel may be paid monthly for its services; provided that it submits to the Corporation Counsel an itemized monthly statement reflecting the specific services rendered, together with the total number of hours billed for the specific services at one-tenth of an hour, and such monthly statement shall be reviewed and approved by the Corporation Counsel before any payments may be made by the City.



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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, Honolulu, Hawaii 96813 and to the Corporation Counsel.

INTRODUCED BY:

Ann Wern (br)

Councilmembers

DATE OF INTRODUCTION:

JUL 16 2013

Honolulu, Hawaii

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 13-165

Introduced: 07/16/13 By: RON MENOR (BR)

Committee: EXECUTIVE MATTERS
AND LEGAL AFFAIRS

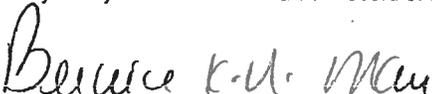
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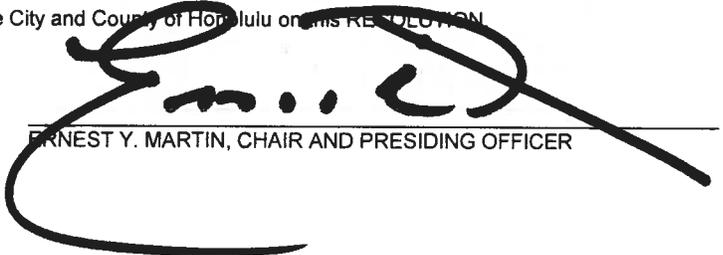
Links: [RES13-165](#)
[CR-215](#)

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

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| EXECUTIVE MATTERS AND LEGAL AFFAIRS (EXECUTIVE SESSION) | 07/16/13 | CR-215 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION. | | | | |
| COUNCIL | 08/07/13 | CR-215 AND RESOLUTION 13-165 WERE ADOPTED. | | | | |
| | ANDERSON Y | CHANG Y | FUKUNAGA Y | HARIMOTO Y | KOBAYASHI Y | |
| | MANAHAN Y | MARTIN Y | MENOR Y | PINE 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