



RESOLUTION

AUTHORIZING THE DEPARTMENT OF THE CORPORATION COUNSEL TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, THE COUNTY OF HAWAII, THE COUNTY OF KAUAI AND THE COUNTY OF MAUI TO RETAIN AND UTILIZE EXPERT CONSULTING AND SUPPORT SERVICES ON BEHALF OF THE PUBLIC EMPLOYER GROUP IN COLLECTIVE BARGAINING INTEREST ARBITRATION.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, requires that any intergovernmental agreement or amendment thereto which places an obligation to the City or any department or agency thereof, receive the prior consent and approval of the Council of the City and County of Honolulu; and

WHEREAS, Hawaii Revised Statutes Section 89-6(d) requires that Public Employer group negotiate collectively with the exclusive representatives of various bargaining units over the terms of collective bargaining agreements; and

WHEREAS, the collective bargaining agreement for Bargaining Unit 11 ("BU 11") will expire on June 30, 2017; and

WHEREAS, the Hawaii Fire Fighters Association, IAFF, Local 1462, AFL-CIO ("HFFA"), is currently the exclusive representative of BU 11; and

WHEREAS, Public Employer group is currently engaged in the process of negotiating with HFFA the successor collective bargaining agreement for BU 11 in a collective bargaining interest arbitration (the "proceedings"); and

WHEREAS, the City and County of Honolulu, the State of Hawaii, the County of Hawaii, the County of Maui and the County of Kauai have agreed to enter into an intergovernmental agreement to utilize the Berkeley Research Group, LLC, who will provide expert consulting and support services to and on behalf of the Public Employer group to address the cost items in the proceedings; now and therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Corporation Counsel or the Corporation Counsel's designee is hereby authorized to enter into an agreement with the State of Hawaii, the County of Hawaii, the County of Maui and the County of Kauai in substantially the form attached hereto as Exhibit A, to retain Berkeley Research Group, LLC, to provide expert consulting and support services on behalf of the Public Employer group in the proceedings, as well as any other incidental or related agreements in connection thereto as may reasonably be required; and



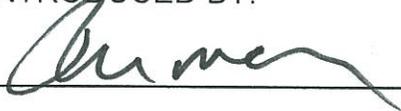
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-259

RESOLUTION

BE IT FINALLY RESOLVED that a copy of this Resolution be transmitted to the Department of the Corporation Counsel, 530 South King Street, Room 110, Honolulu, Hawaii 96813.

INTRODUCED BY:

 _____ (br)

DATE OF INTRODUCTION:

SEP 22 2016

Honolulu, Hawaii

Councilmembers

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:

BERKELEY RESEARCH GROUP, LLC

By 
Name: Michael Kao
Title: Assistant General Counsel

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 KAUA'I

By _____
Name:
Title:

Dated: _____

Berkeley Research Group, LLC Standard Commercial Terms

BRG will bill for its services on a monthly basis and will provide customary descriptions regarding the services rendered. BRG will provide additional details regarding services rendered upon request by Client. In some circumstances, bills may be sent more frequently. BRG's billing statements shall be paid within thirty (30) days of the statement date. Client agrees that it will review BRG's statement upon receipt and will advise BRG of any objection to or dispute with the statement and the work reflected in the statement within thirty (30) days of the statement date. In the event the Client disputes part of BRG's bill, the undisputed part shall be paid within thirty (30) days of the statement date. Without liability, BRG and Expert reserve the right to withhold delivery of services, testimony, reports or data (written or oral), or suspend work, if the account on this engagement is not current. A late payment charge of one percent (1%) per month (or the maximum rate permitted by law, whichever is less) may be added to any outstanding invoices that are past due.

BRG will provide a reasonably itemized statement of expenses incurred on this engagement, and shall provide copies of original invoice or other documentation on itemized expenses over \$75 upon request. The Client shall reimburse BRG for reasonable itemized expenses less than \$75 without a copy of the original invoice or other documentation.

Though BRG does not typically provide estimates, any estimate of anticipated fees for services that may be provided to Client prior to or during the course of the work on this matter is BRG's best estimate of the effort that will be required to complete the services based on the information available to BRG at the time. Under no circumstances shall such an estimate be deemed a maximum fee or a fixed price.

BRG shall not be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

In the event Expert or BRG is requested pursuant to subpoena or other legal process to produce any documents or to provide testimony relating to engagements for Client in judicial or administrative proceedings to which BRG is not a party, Client shall reimburse BRG and Expert at standard billing rates for all professional time and expenses, including reasonable attorneys' fees, incurred in preparing for and responding to requests for documents and providing testimony.

Except as otherwise required by law or special circumstance, at the end of this engagement, or else as otherwise directed by Client, BRG will return to Client or destroy (except as necessary for archiving purposes) all case information provided by Client, and provide Client with BRG's final work product in appropriate media as agreed by BRG and Client. Work papers associated with our consulting services are the confidential property of BRG. In the event that there are special circumstances (such as a subpoena, court order or other legal hold, or storing of case records and information for Client for a specified period of time after the scope of work is complete), Client will be responsible within thirty (30) days for providing BRG with written instructions for BRG to follow. Client shall be responsible for payment of expenses (such as storage, destruction and return shipment costs) incurred by BRG in preserving documents due to such special circumstances. These expenses may be submitted to Client after the final bill for BRG professional services has been rendered. Any remaining case information in the possession of BRG, i.e. generated reference and research materials, as well as work product, etc., will be processed according to BRG's case retention policies and schedule.

BRG is engaged by many other companies and individuals. It is possible that some of BRG's and Expert's past, present or future clients will have disputes with and other matters relating to Client during the course of and subsequent to this engagement. Client agrees that BRG and Expert may be engaged by parties with interests that are adverse to and may not be consistent with the interests of Client. BRG and Expert reserve the right to accept unrelated engagements with other parties consistent with internal, prior practices, and will not be required to advise Client of such engagements in the future. Client agrees that the services provided in this engagement will not preclude BRG from providing services in any other unrelated engagement in which Client is or may be adverse to BRG's client, and Client further agrees that it will not bring any proceeding against BRG on the basis of such alleged conflict of interest arising out of the services to be provided under this agreement. Where it is appropriate BRG and Expert will institute procedures to protect the confidentiality of information provided by Client on this engagement. Client's engagement

of BRG and Expert is expressly conditioned on Client's agreement not to use the fact of BRG's or Expert's current or previous engagement by any opposing client in other matters as a means of enhancing or diminishing Expert's or BRG's credibility in conjunction with any appearance before a trier of fact.

The prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in any litigation brought in connection with this Agreement, as well as reasonable attorneys' fees and costs incurred in appealing or in connection with any action to enforce any judgment entered in any court having jurisdiction. The parties shall not be liable to each other for any consequential, incidental, special or punitive damages, nor shall BRG or Expert be liable for direct compensatory damages in excess of the fees actually received by BRG for the performance of services hereunder.

Client represents and warrants that Client has any and all necessary right, title, license and authority (including any and all necessary permissions from third-party owners) to transfer to BRG, grant access to BRG or allow BRG to use for the purpose of rendering services to Client, any and all of the data or other information that Client provides to BRG for such purpose. Client agrees to indemnify BRG against any and liabilities, including liabilities arising from claims brought by third parties and any and all costs of defense, arising from such transfer, access or use.

Unless otherwise explicitly stated, all provisions of this Agreement shall survive the expiration or termination of this engagement. BRG shall be paid for all time and expenses incurred up to the termination of this agreement. Neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party. These Standard Commercial Terms, and the engagement letter to which these terms are appended, including the exhibits, if any, constitutes the entire agreement between BRG and Client with respect to the subject matter hereof and supersedes all other oral and written representations, understandings or agreements relating to the subject matter hereof.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 16-259

Introduced: 09/22/16 By: RON MENOR – BY REQUEST Committee: EXECUTIVE MATTERS AND LEGAL AFFAIRS

Title: RESOLUTION AUTHORIZING THE DEPARTMENT OF THE CORPORATION COUNSEL TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, THE COUNTY OF HAWAII, THE COUNTY OF KAUAI AND THE COUNTY OF MAUI TO RETAIN AND UTILIZE EXPERT CONSULTING AND SUPPORT SERVICES ON BEHALF OF THE PUBLIC EMPLOYER GROUP IN COLLECTIVE BARGAINING INTEREST ARBITRATION.

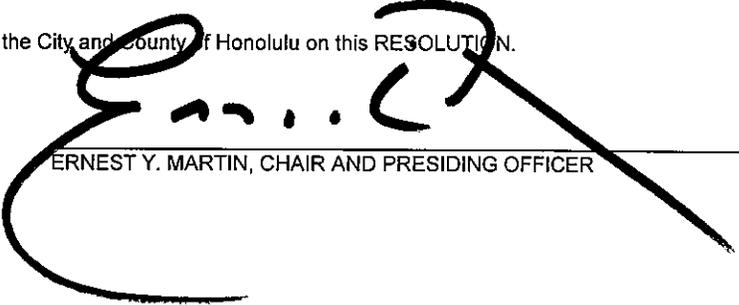
Voting Legend: * = Aye w/Reservations

09/20/16	EXECUTIVE MATTERS AND LEGAL AFFAIRS (EXECUTIVE SESSION)	CR-296 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
10/05/16	COUNCIL	CR-296 AND RESOLUTION 16-259 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

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.



GLEN I. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER