RESOLUTION NO. 372 23

**RESOLUTION AUTHORIZING: (1) THE HIRING OF SCHLACK ITO, A LIMITED LIABILITY LAW COMPANY, AS SPECIAL COUNSEL TO REPRESENT THE COUNTY OF HAWAI‘I IN *HUI MALĀMA HONOKŌHAU V. COUNTY OF HAWAI‘I*, CIVIL NO. 1:23-CV-00393; AND (2) THE PAYMENT OF FUNDS OF A LATER FISCAL YEAR AND OF MORE THAN ONE FISCAL YEAR FOR A MULTI-YEAR AGREEMENT WITH SPECIAL COUNSEL FOR THE COUNTY’S LEGAL DEFENSE IN *HUI MALĀMA HONOKŌHAU V. COUNTY OF HAWAI‘I*, CIVIL NO. 1:23-CV-00393**

**WHEREAS**, Hawai‘i County Charter (“Charter”) § 6-5.5 (Special Counsel) provides the Hawai‘i County Council may approve by two-thirds vote of its entire membership the employment of Special Counsel, for any special matter presenting a real necessity for such employment; and

**WHEREAS**, Charter § 6-5.5 states any such authorization for the employment of Special Counsel shall specify the compensation to be paid for services; and

**WHEREAS**, the County of Hawai‘i (“County”) is named Defendant in the citizens’ Clean Water Act (“CWA”) civil action regarding the County’s Kealakehe Wastewater Treatment Plant titled *Hui Malāma Honokōhau v. County of Hawai‘i*, Civil No. 1:23-cv-00393, commenced in the United States District Court for the District of Hawai‘i on September 25, 2023 (“Lawsuit”);

**WHEREAS**, the Office of the Corporation Counsel (“Corporation Counsel”) does not have the expertise and personnel resources to provide the level of legal services necessary to represent the County in, and defend the County against, the Lawsuit; and

**WHEREAS**, there is a real necessity for Special Counsel to represent the County in, and defend the County against, the Lawsuit; and

**WHEREAS**, pursuant to Hawai‘i Procurement Code, Hawai‘i Revised Statutes (“Haw. Rev. Stat.”) §103D-304 (2012), Corporation Counsel caused to be published a Notice to Providers of Legal Professional Services (“Notice”), and received timely responses; and

**WHEREAS**, Schlack Ito, a Limited Liability Law Company (“Schlack Ito”) was one of the providers that responded to the Notice; and

**WHEREAS**, pursuant to Haw. Rev. Stat. §103D-304, a selection committee of three people was formed to review and rate all qualified providers (“Selection Committee”); and

**WHEREAS**, the Selection Committee selected Schlack Ito as the provider who could best serve the County based on the selection criteria set forth in Haw. Rev. Stat. §103D-304(e), including Schlack Ito’s experience and professional qualifications relevant to the project type; the past performance on projects of similar scope; the capacity to accomplish the work in the required time; and any additional criteria determined in writing by the Selection Committee to be relevant to the Corporation Counsel’s needs; and

**WHEREAS**, based upon the estimated value, scope, complexity, and nature of the services rendered, Schlack Ito’s rate of compensation is fair and reasonable; and

**WHEREAS**, there is \$200,000.00 budgeted for legal services to be rendered by Special Counsel;

**WHEREAS**, pursuant to Charter §10-11, any contract, lease or other obligation requiring payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be approved by resolution; and

**WHEREAS**, due to the complexity and scope of the issues raised in the Lawsuit, the Lawsuit has the potential to last years; and

**WHEREAS**, a multi-year agreement will allow the County to employ Special Counsel who can provide services on a continuing and consistent basis for the Lawsuit’s duration; and

**WHEREAS**, pursuant to Charter § 6-5.5, Corporation Counsel wishes to enter into a multi-year agreement with Schlack Ito to provide the County’s legal defense in the Lawsuit for the Lawsuit’s duration; and

**WHEREAS**, the Schlack Ito was duly selected in compliance with the procurement of professional services under Haw. Rev. Stat. § 103D-304; and

**WHEREAS**, the agreement is anticipated to cover the Lawsuit’s duration, commencing on or about December 11, 2023; now therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that:**

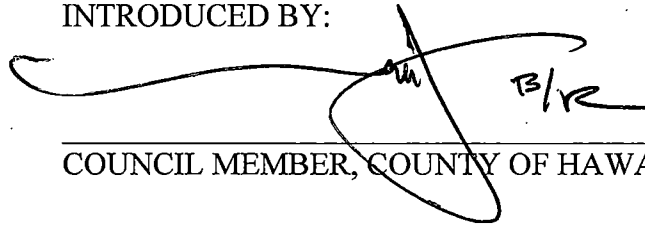
1. Pursuant to Charter § 6-5.5 (Special Counsel), the County Council authorizes the retention of Schlack Ito as Special Counsel to represent the County in, and defend the County against, the Lawsuit;
2. The funds for the Special Counsel shall not exceed \$200,000.00.

3. The Mayor is hereby authorized to enter into a multi-year agreement with Schlack Ito for the legal professional services for the duration of the Lawsuit as described above.
4. That sufficient funds be budgeted in future fiscal years to cover the anticipated obligations of the County under the terms of the agreement.

**BE IT FINALLY RESOLVED** that the County Clerk of the County of Hawai'i shall transmit copies of this resolution to the Office of the Corporation Counsel.

Dated at \_\_\_\_\_, Hawai'i, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

INTRODUCED BY:

 B/R

\_\_\_\_\_  
COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL  
County of Hawai'i  
Hilo, Hawai'i

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on \_\_\_\_\_.

ATTEST:

COUNTY CLERK    CHAIRPERSON & PRESIDING OFFICER

ROLL CALL VOTE

	AYES	NOES	ABS	EX
EVANS				
GALIMBA				
INABA				
KAGIWADA				
KĀNEALI'I-KLEINFELDER				
KIERKIEWICZ				
KIMBALL				
LEE LOY				
VILLEGAS				

Reference: \_\_\_\_\_ C-620/Waived FC

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