

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

February 5, 2010

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on January 14, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated December 4, 2009, the Department of the Corporation Counsel requested consideration of the possible settlement of Hi-Tech Rockfall Construction, Inc. v. County of Maui, et al., Civil No. 08-00081 DAE LEK. Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF HI-TECH ROCKFALL CONSTRUCTION, INC. V. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00081 DAE LEK". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint seeks declaratory and injunctive relief, attorneys' fees, and damages resulting from the County's award of a contract to Janod, Inc., to complete rockfall mitigation after an October 2006 earthquake resulted in a major rockfall along Piilani Highway, Kaupo, Maui, Hawaii.

The Department of the Corporation Counsel transmitted a revised proposed resolution incorporating nonsubstantive revisions.

A Deputy Corporation Counsel explained that in October 2006, an earthquake caused extensive rockfall damage along Piilani Highway, between Kaupo and Kipahulu, blocking the road to traffic. Despite the Governor's suspension of the Procurement Code (Chapter 103D, Hawaii Revised Statutes) to allow the Department of Public Works to expedite the work to mitigate rockfall damage, the Director of Public Works decided to solicit for sealed bids, in order to obtain the best price for the work required. According to the Deputy Corporation Counsel, the contract was awarded to Janod, Inc. who provided the lowest bid. Hi-Tech Construction, Inc. alleges that Janod, Inc. obtained an advantage in the bidding process because the County improperly consulted with Janod, Inc. prior to its solicitation for bids.

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The Deputy Corporation Counsel informed your Committee that during a recent settlement conference, the parties reached a negotiated agreement, subject to Council approval. She requested that your Committee convene an executive meeting to discuss the terms of the negotiated agreement. Your Committee voted to convene an executive meeting for the purposes of consulting with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina, and members Baisa, Kaho'ohalahala, Medeiros, Nishiki, and Victorino voted "aye". Vice-Chair Mateo, and members Johnson and Pontanilla were excused.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, entitled "AUTHORIZING SETTLEMENT OF HI-TECH ROCKFALL CONSTRUCTION, INC. V. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00081 DAE LEK", be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF HI-TECH ROCKFALL CONSTRUCTION, INC. V.
COUNTY OF MAUI, ET AL., CIVIL NO. 08-00081 DAE LEK

WHEREAS, on November 7, 2008, HI-Tech Rockfall Construction, Inc., filed a lawsuit in the United States District Court for the District of Hawaii against the County of Maui and Janod Inc., Civil No. 08-00081 DAE LEK, seeking declaratory and injunctive relief, attorneys' fees, and damages resulting from the bid process by which the County of Maui awarded a contract to Janod Inc. for rockfall mitigation at the Kalepa and Alelele gulches on the Piilani Highway at Kaupo, Maui arising from the October 2006 earthquake; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle these matters under the terms set forth in an executive meeting before the Committee of the Whole; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a

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resolution of these cases by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, having reviewed the facts and circumstances regarding these cases and being advised of attempts to reach resolution of these cases by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That pursuant to Maui County Code Section 3.16.020, it hereby approves settlement of these matters under the terms set forth in an executive meeting before the Committee of the Whole; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in these matters, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



MADelyn S. D'ENBEAU
Deputy Corporation Counsel
County of Maui

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