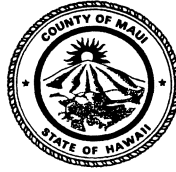


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

September 21, 2004

RECEIVED
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OFFICE OF THE
COUNTY CLERK

MEMO TO: Dain P. Kane, Chair
County Council

F R O M: James A. Giroux, Deputy Corporation Counsel

SUBJECT: **RESOLUTION AUTHORIZING ACCEPTANCE OF MARWEEN YAGIN'S
DESIGN AS THE COUNTY LOGO FOR USE IN THE MAUI COUNTY
BUSINESS RESOURCE CENTER AND COUNTY STORE**

The purpose of this memorandum is to advise the Council that it is unnecessary to adopt the proposed resolution accepting Mr. Yagin's logo as a gift pursuant to Chapter 3.56, Maui County Code.

All rights to the logo designed by Mr. Yagin were obtained through a valid contract that was formed between the County of Maui and Mr. Yagin when Mr. Yagin submitted his entry. Consequently, the logo was not a gift and no resolution is required to use the logo.

Background.

The Office of Economic Development sponsored a contest to obtain a new logo that would be used on products sold from the Maui County Business Resource Center and County Store. Marween Yagin's logo was selected from the entries as the winner and he was awarded \$150, as promised.

By memorandum dated September 2, 2004, First Deputy Corporation Counsel Traci Fujita Villarosa answered questions posed by the Chair of the Energy and Economic Development Committee regarding whether the contest fell under the purview of Chapter 103D, Hawaii Revised Statutes, "Hawaii Public Procurement Code." In summary, the memorandum advised that the contest gave rise to a

"contract"; however, it was not a "procurement" and did not have to follow the procedures of a government procurement.

Analysis and discussion.

A. Chapter 3.56, Maui County Code; Gifts and Donations.

Section 3.56.030, Maui County Code, states:

The County shall not use, exercise any control over, or possess any gift or donation unless and until the council accepts such gift or donation by resolution, except as provided by this chapter.

According to Chapter 3.56.020, Maui County Code, "Gifts and donations" means and includes money, personal property and real property, including alterations thereto, offered to the County for less than fair market value, but shall not include personal services or grants from other governmental agencies.

B. County's contest specifications provided the basis for the terms of the contract.

The design contest gave rise to a contract between the County and Mr. Yagin. The contract was made when Mr. Yagin entered his logo under the terms of the contest. Lucas v. U.S., 25 Cl. Ct. 298 (1992). Therefore, it was not a gift. In a contest or competition, the rules for the contest or competition provide the basis for the terms of the parties' agreement.¹ In this situation, the County's contest specifications stated that Maui County would have "unlimited rights to use the design in any form or application necessary to promote Maui County." (See copy of "The Maui County Logo Contest", attached as Exhibit "A".) Further, contest specification number 13 stated:

13. All entries will become the sole property of the County of Maui at the time of submission, and will not be returned. Each entrant understands, and fully agrees that he or she relinquishes any and all present or future rights to his or her design, including any royalties, revenues, or other income produced as a result of the use of the design. Maui County will become vested with all the rights and privileges afforded any owner of property at the time of submission. Such rights are to include, but not be limited to, any use, reproduction, reprint, or publication of the entries by Maui County without the written or implied consent of the artist.

¹Lucas v. United States, 25 Cl. Ct. 298 (1992), at 308.

Dain P. Kane, Chair
September 21, 2004
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Conclusion.

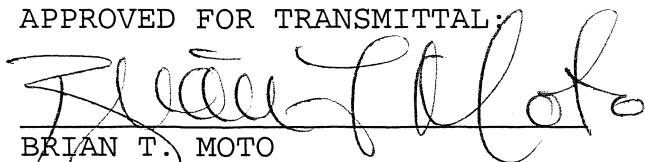
A resolution is not necessary for the use of the logo because it was acquired through a valid contract whose terms were established by the contest rules.

Should you have any further questions, please do not hesitate to contact me.

JAG:ln

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APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

County of Maui Office of Economic Development is proud to sponsor:

The Maui County Logo Contest

Let's develop an image to promote Maui County! The Office of Economic Development's plans are underway to open the **Maui County Business Resource Center and County Store** in the Maui Mall in coming weeks.

As we make plans on opening the Maui County Store, we see a need for a Maui County Logo for the merchandise that will be sold in the Store. The logo should be an image that will immediately identify and illustrate the essence of our county. So, we will hold a Maui County logo contest that is open to everyone!

Specifications for the logo contest can be obtained at the Office of Economic Development.

The person submitting the winning logo will receive a \$150 cash award. If the winning logo meets the criteria set forth by the panel of jurors, it will be used on promotional materials and merchandise for the Maui County Store; everything from stationery to t-shirts and mugs.

The winner will be announced in March.

Deadline for Submission:

February 20, 2004

**For more information,
call 270-7710**



EXHIBIT " A "

Specifications for Maui County Logo Contest

The Maui County Logo Contest, to develop an image to promote Maui County, is open to everyone -- with the exception of those who are serving on the jury to judge the logo contest and members of the jury's immediate family. A panel of seven jurors, including graphic artists, photographers and members of the community at large, will judge the Logo Contest.

1. Design submission must be in an 8"x10" format.
2. The logo design must be representative of Maui County as a whole – not just of one or two towns. Entries submitted that are specifically designed to represent a single town, village or an island will not be considered representative of Maui County.
3. The logo design is limited to up to three solid colors only. Solid colors only – no gradients please.
4. Words within the graphic and/or an accompanying slogan are permitted.
5. The design can be created on a computer or drawn by hand with pen, pencil or crayon. No paint or magic markers allowed.
6. Computer-generated designs must be printed out in an 8"x10" format. If the logo design is computer-generated, an 8"x10" hard copy must be submitted along with a CD or floppy disk with the logo design in a pdf format.
7. Design submissions must be mailed or hand-delivered to the County of Maui Office of Economic Development, 200 S. High St., Wailuku, HI 96793. A submission form with the artist's signature must accompany each entry. Any submission from an artist under the age of 18 must also include a parental consent with the entry. All entries must be postmarked or received in the County of Maui Office of Economic Development not later than 4:00 p.m. on Friday, February 20, 2004. Any entry submitted with a postmark of February 20, 2004 or later will not be eligible for consideration.
8. The winner of the logo contest will receive a check for \$150.00. Maui County has unlimited rights to use the design in any form or application necessary to promote Maui County.
9. Maui County reserves the right to adapt the winning design, if necessary.
10. Maui County reserves the right not to use any of the submissions, inclusive of the winning entry.

11. Jurisdiction over all disputes will be limited to arbitration. The arbitrator will be a third party upon mutual assent.
12. Hawaii State law will apply; unless Federal Law supersedes the State law.
13. All entries will become the sole property of the County of Maui at the time of submission, and will not be returned. Each entrant understands, and fully agrees that he or she relinquishes any and all present or future rights to his or her design, including any royalties, revenues, or other income produced as a result of the use of the design. Maui County will become vested with all the rights and privileges afforded any owner of property at the time of submission. Such rights are to include, but not be limited to, any use, reproduction, reprint, or publication of the entries by Maui County without the written or implied consent of the artist.
14. By submitting any form of entry to the competition, the artist is agreeing to accept and abide by the rules of the competition, and the judgment of the panel of judges.
15. If you have any questions or require further information, please contact Lynn Araki-Regan or Kalbert Young at 270-7710.

County Logo Submission Form

I, _____, have read and understand the rules of the competition. I agree to abide by the rules of the competition. I agree to abide by the final decision of the panel of judges, as to the winner of the competition. I understand that by submitting this art work to the competition, it becomes the property of Maui County and all or part of my work may be used at a later date, and I will NOT be entitled to any royalties or other fees for the use of this work at any point for any reason. I also understand that even if I am the winner of the competition Maui County may choose not to use any part of my art work.

Signature

Date

If the above signed artist is a minor, then the parent or legal guardian must sign the consent below.

I, _____, am the above signed artist's parent or legal guardian. I also give my consent for the above signed artist to submit the art work to the Maui County Logo Competition. I have reviewed the rules with the above signed artist, and the artist and I understand the rules and agree to abide by them. I have also reviewed with the above signed artist the paragraph above, and both of us understand and agree to abide by the terms listed within.

Signature

Date