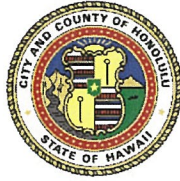


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091
PHONE: (808) 768-7786 • FAX: (808) 768-7768 • EMAIL: ethics@honolulu.gov • INTERNET: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR

CHARLES W. TOTTO
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL



June 15, 2016

Mr. Charles W. Totto
715 South King Street, Suite 211
Honolulu, Hawaii 96813

Re: Separation from Employment

Dear Mr. Totto:

This letter agreement (this "Agreement") confirms your voluntary resignation of your employment with the City and County of Honolulu, by and through its Ethics Commission and Ethics Commissioners (the City, the Commission, and its Commissioners being collectively referred to as the "Agency").

1. Separation Date. Your last day of employment with the Agency will be eight (8) weeks from and after the execution of this Agreement by all parties (your "Separation Date"). It is understood and agreed that you will leave the workplace upon acceptance of the terms and conditions of this Agreement, but will continued to be paid up to and through the Separation Date.

2. Compensation. Your total and final compensation, payments and benefits from the Agency shall be as follows (subject to applicable deductions and withholdings):

a. You will receive your current salary of \$9,000 per month through the Separation Date, payable in accordance with the Agency's payroll practices.

b. Your group medical and dental insurance benefits will remain in effect through the end of the month that includes your Separation Date. Thereafter, you will be eligible to participate in continued coverage on a self-pay basis under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") for medical and dental insurance for a period of up to 18 months if you elect coverage under COBRA. You will be provided with documentation necessary in order to apply for such continued COBRA coverage.

c. On the Separation Date, you will cease to actively participate in all other benefit plans and programs, except as provided in paragraph 1.b above and as otherwise provided by federal, state, City and County of Honolulu law, statutes, ordinances, and/or regulations.

d. You will receive pay for any and all accrued and unused vacation days covering the period ending on your Separation Date, payable in accordance with the Agency's payroll practices, which payment shall be mailed to you at your last known residence address as indicated in the Agency's files as soon as practicable following your Separation Date.

e. You will receive accrued and unused sick leave days covering the period ending on your Separation Date as permitted by law.

f. The Agency agrees not to contest any claim for unemployment insurance benefits you may file.

3. Other Consideration.

a. If you become a party to a lawsuit because of any alleged acts or omissions that occurred during the course of your employment with the Agency, the Agency shall cooperate in your defense including providing you reasonable access to witnesses, documents and other evidence that you would normally have had access to if you were still employed by the Agency. Further, the Agency agrees that it shall defend, indemnify and hold you harmless unless and until there is a final determination that you acted outside the course and scope of your employment with the Agency or that you acted beyond your official powers and duties as the Executive Director and Legal Counsel ("EDLC") of the Agency.

b. The Agency and you (together, the "parties" and each a "party") understand and agree that all complaints of ethical misconduct before the Commission against you shall continue to be investigated and/adjudicated in the normal course of business before the Commission. Notwithstanding the terms of Paragraph 6 below, the parties acknowledge and agree that this Agreement shall not waive and/or release you from any pending cases against you before the Commission, including the assessment of any civil fines and/or penalties if ethics violations are proven.

c. This Agreement shall not waive and/or release the Agency from any claim you may make that the current Commissioners are disqualified from participating in a Commission action, investigation, meeting or hearing on a matter in which ethical

misconduct by you is alleged. This provision shall not operate to disqualify the Commissioners from ruling on such a claim.

d. The Agency agrees to maintain and make available all information, whether or not deemed confidential, that is reasonably related to complaints of ethical misconduct made against you or by you against the Agency, Releasees or Commissioners, as and to the extent required or permitted by law.

e. The Agency shall not rescind, revoke, amend, or disavow the Investigation Report and Discipline Letter.

f. The Agency agrees not to publicly disclose employment issues regarding you and your employment or resignation other than issuing the Joint Press Release that the parties have agreed to and acknowledging the dates of your employment, and you agree to the Joint Press Release; provided, however, that if you or any of your representatives make a public statement, other than the Joint Press Release, regarding your employment or your resignation, the Agency, including the Commissioners, will be free to respond to the subject of your statements.

g. Your resignation shall be in "good standing" and the Agency shall not change the "good standing" resignation for any purpose.

4. No Other Entitlements. You understand and agree that the compensation, payments and benefits provided for in this Agreement are in addition to those to which you may be entitled from the Agency. Other than the compensation, payments and benefits provided for in this Agreement, you acknowledge and agree that you have received all entitlements due from the Agency relating to your employment with the Agency, including, but not limited to, all wages earned, sick pay, vacation pay, bonus awards, and any paid and unpaid personal leave for which you were eligible and entitled, and that no other entitlements are due to you other than as set forth in this Agreement. The parties specifically understand and agree that each party to this Agreement shall bear his/its own attorneys' fees and costs incurred in any way related to this Agreement.

5. Waiver and Release by You. In consideration of the payments set forth in Paragraphs 2 and 3 hereof, you agree as follows:

a. To the extent permitted by law, you hereby **IRREVOCABLY AND UNCONDITIONALLY RELEASE, WAIVE AND FOREVER DISCHARGE** the Agency and Releasees (as that term is defined below) from and against any and all agreements, promises, liabilities, claims, demands, grievances, injuries, controversies,

covenants, debts, accounts, sums of money, actions, causes of action, suits, arbitrations, attorneys' fees, costs, rights to any monetary damages or any other form of personal relief, and rights and entitlements of any kind whatsoever capable of legally being waived, in law or equity, whether known or unknown, asserted or unasserted, fixed or contingent, apparent or concealed, which you, your heirs, executors, administrators, successors or assigns ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever existing, first arising or occurring at any time on or prior to the date you execute this Agreement, including, without limitation, any and all claims arising out of or relating to your employment and/or the termination thereof, and any and all contract claims, benefit claims, tort claims, fraud claims, defamation, disparagement, or other personal injury claims, and claims under any federal, state or municipal discrimination or fair employment practices law, statute or regulation, and claims for costs, expenses and attorneys' fees with respect thereto. This includes a release to the fullest extent permitted by law of all rights and claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Family and Medical Leave Act, the Pregnancy Discrimination Act of 1978, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Older Workers Benefit Protection Act of 1990, the Sarbanes-Oxley Act of 2002, the Worker Adjustment and Retraining Notification Act of 1989, the Employee Retirement Income Security Act ("ERISA") (including, but not limited to, claims for breach of fiduciary duty under ERISA), the Hawaii Employment Practices Law, Haw. Rev. Stat. ch. 378, the Hawaii Civil Rights Act, Haw. Rev. Stat. ch. 368, and the Workers' Compensation Law, Haw. Rev. Stat. ch. 386 (together with all Hawaii Administrative Rules promulgated under any of these Hawaii chapters), as well as any amendments to such laws, and all other applicable federal, state or local statutes, regulations, ordinances, constitutional provisions or common law regarding employment, employment discrimination, termination, retaliation, or equal opportunity. All of the above referenced in this Paragraph 5.a are collectively referred to as the "Claims."

b. For the purpose of implementing a full and complete release and discharge of the Claims, you expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all the Claims described in the preceding Paragraph 5(a), whether known or unknown, apparent or concealed, and that this Agreement contemplates the extinction of all such Claims.

c. Notwithstanding the generality of the foregoing, nothing herein constitutes a release or waiver by you of: (i) any claim or right you may have under COBRA; (ii) any claim or right you may have for unemployment insurance benefits; (iii) any claim or right you may have under this Agreement; or (iv) any claim to vested benefits under the written terms of any employee retirement system or plan.

d. The parties understand and agree that nothing in this Agreement shall constitute a waiver or release by either party of claims against each other regarding violations of the ethical standards of conduct.

e. For purposes of this Agreement, the terms “the Agency and Releasees” and “the Agency or the Releasees”, include the Agency and their predecessors, successors, and assigns, past, present and future commissioners, representatives, employees, agents and attorneys, in their official and individual capacities, and all other related individuals and entities, jointly and individually, and this Agreement shall be binding upon and inure to the benefit of, and be enforceable by and against, all such entities and individuals and their successors and assigns.

6. Waiver and Release by the Agency and Releasees. In consideration of your execution of this Agreement and your agreement to the promises and covenants contained herein, to the extent permitted by law and subject to Paragraphs 3(b), 3(c), and 5(d) above, the Agency and Releasees hereby **IRREVOCABLY AND UNCONDITIONALLY RELEASE, WAIVE AND FOREVER DISCHARGE** you and your heirs, executors, administrators, successors or assigns from and against any and all agreements, promises, liabilities, claims, demands, grievances, injuries, controversies, agreements, covenants, promises, debts, accounts, sums of money, actions, causes of action, suits, arbitrations, attorneys’ fees, costs, rights to any monetary damages or any other form of personal relief, and rights and entitlements of any kind whatsoever capable of legally being waived, in law or equity, whether known or unknown, asserted or unasserted, fixed or contingent, apparent or concealed, which the Agency and Releasees ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever existing, arising or occurring at any time on or prior to the date the Agency executes this Agreement, including, without limitation, any and all claims arising out of or relating to your employment and/or the termination thereof, and any and all contract claims, benefit claims, tort claims, fraud claims, defamation, disparagement, or other personal injury claims, and claims under any federal, state or municipal discrimination or fair employment practices law, statute or regulation, and claims for costs, expenses and attorneys’ fees with respect thereto.

7. No Admissions. Nothing herein shall be deemed to constitute an admission of wrongdoing by the Agency, any Releasee or you. Neither this Agreement nor any of its terms shall be used as an admission or introduced as evidence as to any issue of law or fact in any proceeding, suit or action, other than an action to enforce this Agreement.

8. Cooperation. You agree that, upon the Agency's reasonable notice to you, you shall cooperate with the Agency and its counsel (including, if necessary, preparation for and appearance at depositions, hearings, trials or other proceedings) with regard to any past, present or future investigation, proceeding, dispute, claim, or legal or regulatory matter that relates to or arises out of matters you have knowledge about or have been involved with during your employment with the Agency. The parties understand and agree that this duty to cooperate includes all pending cases before any state or federal administrative agencies, including the Hawaii Civil Rights Commission and the Equal Employment Opportunity Commission and any subsequent or related litigation arising thereto.

Similarly, should you be sued because of any alleged acts or omissions that occurred during the course of your employment with the Agency, the Commission shall cooperate in your defense including providing you reasonable access to witnesses, documents and other evidence that you would normally have had access to if you were still employed by the Agency. Further, the Agency agrees that it shall defend, indemnify and hold you harmless unless and until there is a final determination that you acted outside the scope of your employment with the Agency or that you acted beyond your official powers and duties as the Executive Director and Legal Counsel of the Agency.

Access to documents or electronic files will include, but not be limited to, confidential records and information only related to Louis Kealoha, Katherine Kealoha and/or their attorneys or representatives pertaining to (i) any claim of ethical misconduct against you, or (ii) any claim you may make against the foregoing parties at any agency or court of law.

9. Confidentiality of Agency's Information. You hereby acknowledge your existing obligation to maintain the confidentiality of the Agency's information.

10. Return of Agency Property. By signing this Agreement, you affirm that to the best of your knowledge and belief, you will return/have returned to the Agency all Agency property issued to you, including but not limited to keys, credit cards, if any, identification cards, beepers, cell phones, computers, computer software, hardware and software user's guides, instruction booklets, and any and all original and duplicate copies of files, calendars, books, records, notes, notebooks, manuals, computer disks, diskettes and any other magnetic and other media materials, regardless of who created them, you have in your possession or under your control, belonging to the Agency or containing confidential or proprietary information concerning the Agency. Furthermore, should you or the Agency discover, after the date on which you have returned to the Agency all such property, that you inadvertently possess any of the property described in this Paragraph, you agree to return such property to the Agency immediately.

a. Notwithstanding the foregoing, upon your payment of costs related to copying and/or duplication, copies will be provided to you of documents and electronic files in the possession, custody or control of the Commission that are or could be deemed open records under Hawaii Revised Statutes Chapter 92F (Uniform Information Practices Act).

b. Notwithstanding the foregoing, upon your payment of costs related to copying and/or duplication, copies will be provided to you of non-confidential and non-privileged legal research, memoranda, moving papers, ethics training materials, meeting minutes, correspondence, and similar documents or electronic files created by you or at your direction during your tenure with the Agency.

11. Nondisclosure. You and the Agency each agree to maintain the confidentiality of, and refrain from disclosing, making public, or discussing in any way whatsoever the terms and conditions of this Agreement, except that you may discuss and disclose this Agreement to your immediate family and in connection with receiving advice from your attorney(s) and/or tax advisor(s), and the Agency may discuss and disclose this Agreement with its attorneys, accountants, payroll and benefits employees responsible for issuing to you the payments and benefits described above, and any other person whose knowledge of the Agreement is necessary. The Agency shall affirmatively instruct all persons privy to the terms of this Agreement not to disclose any information concerning this Agreement to any person except its attorneys, accountants, payroll and benefits employees responsible for issuing to you the payments and benefits described above, and any other person whose knowledge of the Agreement is necessary. Any person to whom such information is disclosed shall be instructed to abide by this provision. The foregoing shall not prohibit or restrict such disclosure as required by law.

12. Disclosure required by law. Nothing in this Agreement shall prohibit or restrict you or the Agency, or our respective attorneys from: (i) making any disclosure of relevant and necessary information or documents in any action, investigation, or proceeding relating to this Agreement, or as required by law or legal process; or (ii) participating, cooperating, or testifying in any action, investigation, or proceeding with, or providing information to, any governmental agency or legislative body; provided that, to the extent permitted by law, upon receipt of any subpoena, court order or other legal process compelling the disclosure of any such information or documents, the disclosing party gives prompt written notice to the other party so as to permit such other party to protect such party's interests in confidentiality to the fullest extent possible.

13. Amendments. This Agreement may only be modified by a writing signed by both parties.

14. Governing Law. This Agreement shall be subject to and governed by and interpreted in accordance with the laws of the State of Hawaii without regard to conflicts of law principles.

15. No Party Deemed Drafter. The parties agree that no party to this Agreement shall be claimed or deemed to be the drafter of this Agreement should any dispute arise over its interpretation.

16. Assignment. This Agreement shall be binding upon you and your executors, administrators, heirs and legal representatives, and upon the Agency and its administrators, successors, assigns and legal representatives.

17. Severability. In the event any provision of this Agreement shall be held to be void, voidable, unlawful or, for any reason, unenforceable, the remaining portions shall remain in full force and effect.

18. Approval of Ethics Commission. This Agreement is subject to the approval of the Commission at a duly called meeting. If and when the Commission approves this Agreement, the Chair of the Commission shall countersign this Agreement in the space provided below, whereupon this Agreement shall be effective and binding on the parties.

19. List of Accomplishments. You have prepared a document titled, "Accomplishments of Honolulu Ethics Commission 2000-2015." The parties agree that the Agency will cause the document to be posted to the Commission's website for a period of six (6) months with the following notation: "Chuck Totto's List of 'Accomplishments of Honolulu Ethics Commission 2000-2015'". This list does not necessarily reflect the position of the Ethics Commission."

20. Execution. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature by facsimile or .pdf format will be binding.

21. Entire Agreement. The terms contained in this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations, representations or agreements, whether written or oral, except that any agreements concerning confidentiality shall remain in full force and effect in accordance with their terms.

22. Revocation. If this Agreement conforms to your understanding and is acceptable to you, please indicate your agreement by signing and dating the

Mr. Charles W. Totto
June 15, 2016
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Agreement, and returning it to me within twenty-one (21) days after the date you receive this Agreement. You will then be permitted to revoke this Agreement at any time during the period of seven (7) calendar days following its execution (the "Revocation Period") by delivering to me a written notice of revocation. This Agreement will not be effective or enforceable unless and until the seven calendar day Revocation Period has expired without your having exercised your right of revocation. In the event you fail to execute and return this Agreement on a timely basis, this Agreement will be of no force or effect, and neither you nor the Agency will have any rights or obligations hereunder.

23. Acknowledgment. This Agreement is a legal document. The Agency advises you to consult with an attorney prior to signing this Agreement. By signing this Agreement, you acknowledge that you are competent, that you were afforded a reasonable period of at least twenty-one (21) days to review and consider this Agreement with attorneys of your choice, or you have knowingly and voluntarily chosen not to do so, that you have read and understand and accept this Agreement as fully and finally resolving, waiving and releasing any and all rights and claims which you may have against the Agency and Releasees (as defined above), including without limitation any and all claims under the Age Discrimination in Employment Act, as amended, that no promises, representations or inducements have been made to you except as set forth in this Agreement and that you have signed this Agreement and release freely and voluntarily, intending to be legally bound by its terms.

If the terms as set forth above accurately state our agreement, including the separation, waiver and release, kindly sign below and return this original Agreement to me by no later than twenty-one (21) days after your receive this Agreement. I will sign it and return a copy to you. We appreciate your service to the Agency, and we wish you the best in all your future endeavors.

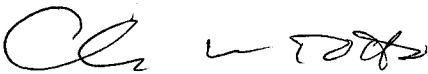
Sincerely yours,

By: 
VICTORIA S. MARKS, CHAIR
Ethics Commission
City and County of Honolulu

[SIGNATURES CONTINUED ON NEXT PAGE]

Mr. Charles W. Totto
June 15, 2016
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I UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS LETTER AGREEMENT:

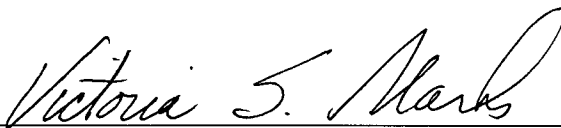


CHARLES W. TOTTO

Date: 6/15/16

WITNESSED BY: 

THE TERMS AND CONDITIONS SET FORTH IN THIS LETTER AGREEMENT HAVE BEEN ACCEPTED BY MR. CHARLES W. TOTTO AND I HAVE RECEIVED A SIGNED COPY OF THIS LETTER AGREEMENT FROM HIM. THE TERMS AND CONDITIONS SET FORTH IN THIS LETTER AGREEMENT HAVE BEEN APPROVED BY THE ETHICS COMMISSION OF THE CITY AND COUNTY OF HONOLULU AT A DULY CALLED MEETING ON JUNE 15, 2016.



VICTORIA S. MARKS, CHAIR
Ethics Commission
City and County of Honolulu

Date: June 15, 2016

APPROVED AS TO FORM AND LEGALITY:



ERNEST H. NOMURA
DEPUTY CORPORATION COUNSEL