

REQUEST FOR LEGAL SERVICES

Date: July 30, 2024
From: Yuki Lei K. Sugimura, Chair
Budget, Finance, and Economic Development Committee

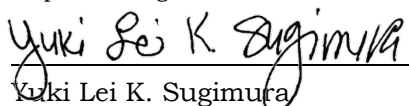
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi Desjardins, Esq.

Subject: JOHNSON CONTROLS, INC. ENERGY PERFORMANCE CONTRACT (BFED-21(24))

Background Data: Please opine on the attached questions relating to Contract C7619, its amendments, and Equipment Lease 1474.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER: Opinion

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>James Krueger</u> (Telephone Extension: <u>7761</u>)
--	---

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

bfed:ltr:021(24)acc01:jgk

Attachment

In May 2024, before the Fiscal Year (“FY”) 2025 Budget passed on second and final reading, the Council was informed of the inclusion of approximately \$2.3 million under the Department of Finance, Countywide Costs, Bond Issuance and Debt Service, for a lease payment for the equipment installed by Johnson Controls, Inc. under Contract C7619, its amendments, and Equipment Lease 1474. I was informed by the Department of the Corporation Counsel that under Section 9-5 of the Revised Charter of the County of Maui (1983), as amended (“Charter”), the Council could not adjust the amount appropriated for the lease payment because it was an appropriation to pay “indebtedness.” All funds appropriated under the Bond Issuance and Debt Service line item are intended to pay for bond issuance, “indebtedness,” and related costs.

Charter Section 9-10 also states that while the Mayor can request the transfer of any unencumbered appropriation balance during the fiscal year, “[n]o transfer, however, shall be made from an appropriation to pay any indebtedness.”

The County’s special counsel for Contract C7619 later informed the BFED Committee that the lease payment should not be considered debt service for budgetary purposes.

The payment is subject to Council appropriation every fiscal year for 20 years.

May I please request your response to the following:

1. Can the Mayor request, and the Council approve, a transfer of an unencumbered appropriation balance from the Bond Issuance and Debt Service line item without violating the Charter?
2. Can the lease payment still be made using funds appropriated under the Bond Issuance and Debt Service line item, even though the payment is not considered debt service for budgetary purposes?
3. What other options, including the use of Carryover/Savings, may the Mayor request the Council authorize, to make the lease payment in FY 2025?

BFED Committee

From: BFED Committee
Sent: Tuesday, July 30, 2024 8:27 AM
To: CorpCounselRFLS@co.maui.hi.us
Cc: BFED Committee
Subject: OCS - BFED - Johnson Controls, Inc. Energy Performance Contract (BFED-21(24))
Attachments: 021(24)acc01.pdf

Please see attached RFLS.

Mahalo,
BFED Committee Staff