

ALAN M. ARAKAWA  
Mayor


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February 4, 2003

MEMORANDUM

MEMO TO: Honorable Alan M. Arakawa, Mayor

F R O M: Edward S. Kushi, Jr., Deputy Corporation Counsel 

SUBJECT: COUNTY/FEDERAL DEPARTMENT OF LABOR LEASE; MAUNAOLU  
COLLEGE PROPERTY

Per your request of January 8, 2003, we have reviewed the relevant documents provided, specifically, the "U.S. Government Lease for Real Property" with attachments dated August 15, 1985 (the "Lease"), and also the County Council Human Services Committee Report No. 85-196 of same date ("Council Committee Report").

While the Lease does require the County's approval for any improvements to the premises costing more than \$10,000, there are no provisions, which we now consider standard, to implement and/or control such approval, specifically, to-wit:

- What agency/body/official of the County would approve the request.

- Prior review by the County of the proposed plans and specifications covering the improvements.

- Performance and/or completion bonding requirements for the improvements.

- Agreement/covenant/guarantee by the Lessee to pay and/or release any lien(s) recorded against the fee simple interest resulting from the improvements (*i.e.*, mechanic liens and/or judgments).

- That any improvements comply and conform to all applicable governmental permit and/or licensing requirements (*i.e.*, building permits, zoning, contractor licensing, *etc.*).

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Notwithstanding the above, we opine that the absence of said provisions is not fatal.

As to what agency/body/official would issue such approval, we believe your office would be proper and sufficient, the instant request being administrative and ministerial in nature. If the Lessee was asking for a change in the use of the leased premises, then we believe the Council should review same, such a request being legislative and discretionary in nature.

As regards the other concerns, we believe that the approval can be conditioned on the Lessee agreeing, by separate document, to abide by and perform the necessary prerequisites. Upon request, we can draft such language for your review.

Of more particular relevance and importance, in reviewing and comparing the Lease with the Council Committee Report, we believe an error in drafting may have occurred. As set forth in both documents, the term of the Lease was for one (1) year, beginning as of September 1, 1985, with the unusual provision for annual renewals, at the option of the Lessee, for the next forty-nine (49) years. However, after December 1, 1994 any party can unilaterally cancel the Lease by giving ninety (90) days written notice. The Lease is now in its eighteenth (18<sup>th</sup>) year. Further, "If the County terminates the lease prior to December 1, 2004 (approximately 20 years), the County shall reimburse the government for the unamortized portion of the DOL's improvement expenditures." Section 5, page 4 of Council Committee Report. Language to the same effect is found in Paragraph 4(c), page 2, of the Lease. The Council Committee Report, at Section 4, page 4, also provided that "If the DOL terminates the lease prior to August 1, 2004 (approximately 20 years), the County shall not be liable for the unamortized portion of the DOL's improvement expenditures" (emphasis added). However, the Lease, at Paragraph 5(c), page 3, states, "In the event the Government elects not to renew this lease prior to August 1, 2004, Lessee shall not be liable for reimbursement for the unamortized portion of the Government's expenditures for improving or altering the demised premises pursuant to Paragraph 4(c) herein." (emphasis added). We believe that to conform to the Council Committee Report, the term "Lessor" should have been cited instead of "Lessee" in Paragraph 5(c), page 3, that the insertion of "Lessee" was a drafting error/oversight, and to conclude otherwise would not make sense, i.e., the government/lessee cancelling the lease to avoid its own expenditures. We advise that this patent error be rectified by separate written understanding/agreement to confirm that the County will not be liable for any reimbursement in the event the government/lessee elects to cancel or not renew the Lease at any time.

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Conclusion.

We understand that in accordance with the Lease terms, the County shall not "unreasonably" withhold the subject request for approval, and further that there is a time constraint of thirty (30) days. However, we submit that the concerns addressed above are "reasonable" and legitimate matters that need to be resolved before approval is issued, and therefore recommend that request be promptly made to the Lessee authority for an additional time extension to obtain and review Lessee's site plan and building specifications, and to propose clarification, conditions to the approval, and corrections to the Lease document itself.

Call if further discussion is needed.

APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

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cc: Jack Kulp, Managing Director  
Alice Lee, Director, Housing & Human Concerns  
Ellen Pellissaro, Public Information Officer