

June 11, 2024

MEMO TO: BFED-21(24) File

F R O M: Yuki Lei K. Sugimura, Chair *Yuki Lei K. Sugimura*
Budget, Finance, and Economic Development Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
JOHNSON CONTROLS, INC. ENERGY PERFORMANCE
CONTRACT** (BFED-21(24))

The attached informational document pertains to Item 21(24) on the Committee's agenda.

bfed:ltr:021(24)afile06:jgk

Attachment

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BANK OF HAWAII

EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

ADVANCE FUNDING ADDENDUM

To Exhibit No. 5461
To Equipment Lease Agreement No. 1474 dated September 30, 2022

This Addendum is made by and between the Lessor and the Lessee described in that certain above-referenced Equipment Lease Agreement and Exhibit thereto, and is incorporated into and shall amend and supplement said above-referenced Equipment Lease Agreement and Exhibit thereto. Notwithstanding the execution date of the Exhibit, this Addendum shall be effective as of the date hereof (the "Effective Date"), and advances may be made upon the terms and conditions below. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in said above-referenced Equipment Lease Agreement and Exhibit thereto.

In the event any equipment vendor requires full or partial funding in advance of delivery or acceptance of the equipment, Lessor agrees to pay to the vendor such advance amounts, subject, however, to the following conditions: (a) such advance shall be in accordance with the formal budget approved in writing by Lessor; (b) in no event shall advances be less than \$100,000.00, (c) in no event shall advances be made more than once per calendar month; (d) Lessee shall submit to Lessor a written request and authorization for such advance funding in the form attached hereto (the "Advance Funding Authorization"), and Lessee shall deliver therewith such written information and documentation described in the Advance Funding Authorization and any other items as Lessor may reasonably require to substantiate the necessity for such advance funding; (e) no default under the Equipment Lease Agreement or the Transaction Documents has occurred, and no event has occurred which, with the giving of notice, the lapse of time, or both, would be considered an event of default thereunder; (f) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of the advance request; and (g) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, this Addendum, and all other Transaction Documents (collectively, the "Draw Conditions").

In addition to the foregoing, in no event shall the aggregate amount of all advances hereunder exceed Twenty-Nine Million Four Hundred Twenty Thousand and No/100 Dollars (\$29,420,000) (the "Project Budget"), and Lessor's commitment to make any such advances hereunder shall commence on the Effective Date, and expire on September 30, 2024 (the "Construction Period").

Lessee shall pay Lessor monthly rent on all funds advanced by Lessor from time to time to any equipment vendor plus all expenses incurred by Lessor in connection with the funding of any such advance. The rent will be based on a monthly rate factor of \$1.54167 per One Thousand Dollars (\$1,000.00) of each such advance prorated for partial months based on the number of days in the applicable month(s) and the actual number of days elapsed in each such month from and after the date each such advance is made to the end of the month. The rent shall be calculated from the date of each advance funding to the date the rent and all such expenses must be paid to Lessor which shall be the earlier to occur of either (a) the date of Lessee's rejection of the equipment pursuant to paragraph 5(d) of said Equipment Lease Agreement or (b) the date of the Certificate of Acceptance for the equipment.

Provided that the Draw Conditions are timely satisfied by the end of each calendar month, Lessee's monthly rent payments specified in this Addendum shall be in the amounts as shown Column [E] of the schedule attached hereto as Schedule "1", for the applicable monthly period set forth therein. Lessor reserves the right to amend or replace said Schedule "1" from time to time to reflect the actual date(s) of advances made, and interest accrued thereon, and Lessee agrees to cooperate with executing any further instruments as may be required by Lessor to effectuate such change.

Lessee's liability to Lessor shall not in any way be affected by any claims concerning the use, performance, fitness, condition or quality of the equipment or by any other claims related to the equipment, and Lessee expressly waives any right to require Lessor to proceed first against the equipment vendor, or any manufacturer, distributor or dealer of the equipment for recovery of any sums advanced by the Lessor to such equipment vendor.

As a condition precedent to Lessor's obligation to make the first advance, Lessee must deliver the following documents and items, executed and acknowledged as appropriate, all in form and substance satisfactory to Lessor, in Lessor's sole discretion:

- (i) Overall construction budget (the "Project Budget") for Lessee's Energy Performance Project (the "Project"), which shall reflect the currently estimated overall cost of the Project, and shall contain a rental reserve amount allocated thereunder sufficient to pay the monthly rental payments hereunder for the Construction Period (the "Rental Reserve");

- (ii) All construction contracts for the Project;
- (iii) Performance guarantee of Johnson Controls, Inc. ("JCI");
- (iv) Investment Grade Audit prepared by JCI;
- (v) Opinions of counsel for Lessee addressed to Lessor, to Lessor's satisfaction, addressing: (A) the status, power, and due authorization of Lessee; (B) execution, delivery, binding effect and enforceability of the Lease, including this Exhibit; (C) no litigation concerning the Lease, including this Exhibit; (D) no breach of Lessee's constituent documents; (E) no violation of applicable laws; (F) that the interest payable by Lessee with respect to the payment obligations hereunder will be excluded from Lessor's gross income for federal income tax purposes; and (G) such other matters as Lessor may reasonably require;
- (vi) Proof of insurance in accordance with the requirements under the Equipment Lease Agreement and this Exhibit, and as acceptable to Lessor, naming Lessor as an additional insured and loss payee;
- (vii) JCI's payment and performance bonds in favor of the Lessee for the Project, naming Lessor as a dual obligee; and
- (viii) Conditional Bill of Sale for the equipment executed by JCI, with quitclaim joinder by Lessee, conveying to Lessor all right, title and interest in and to the equipment

Lessee agrees that Lessor shall and is hereby irrevocably authorized to make advances to itself up to the amount of the Rental Reserve (as set forth in the Project Budget), monthly, as and when due hereunder, all accrued and theretofore unpaid rents. If Lessor determines that the Rental Reserve is insufficient to pay the rents to accrue during the Construction Period, Lessee shall, within thirty (30) days of Lessor's notice to Lessee, replenish the Rental Reserve with equity funds in an amount to be determined by Lessor in its sole but reasonable discretion. If Lessor shall, in its sole but reasonable discretion, determine that the amount of undisbursed advances is less than the amount required to complete and pay for the construction of the improvements and the other items contemplated by the Project Budget, including, without limitation, the Rental Reserve, then, in addition to all other rights and remedies of Lessor, Lessor may decline to make further advances.

Lessee expressly acknowledges that it has selected the equipment and the vendor, manufacturer, distributor and/or dealer (as applicable) of the equipment, without any assistance or advice from the Lessor, and that Lessor has merely agreed to purchase the equipment at Lessee's request and to lease the same to Lessee pursuant to the terms and conditions of said Equipment Lease Agreement. Accordingly, Lessee also expressly acknowledges that neither Lessor nor any agent, employee or representative of Lessor has made any representations or warranties of any kind whatsoever with respect to the use, performance, fitness, condition or quality of the equipment, and that Lessee is not relying on any such representations or warranties by the Lessor. LESSEE IS FULLY AWARE AND UNDERSTANDS THAT LESSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, RESPECTING THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS OR MERCHANTABILITY. Lessee further understands and agrees that if the equipment does not operate as represented by the vendor or any manufacturer, distributor or dealer, or is unsatisfactory for any other reason, Lessee will make any claim on account thereof solely against such vendor, manufacturer, distributor or dealer, and not against Lessor.

All terms and provisions of said Equipment Lease Agreement and Exhibit thereto shall apply to all advance fundings and are incorporated herein, excepting however, any such terms and provisions which conflict with the terms and provisions of this Addendum.

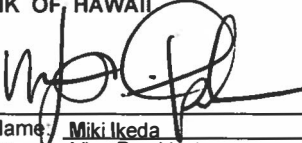
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatories to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.


The parties hereto agree that delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image or other electronic means, shall be effective as delivery of an originally executed signature page or counterpart, and shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law. Alternatively, you agree to adopt your electronic signature below as your signature and you are creating a valid, binding contract under the Federal Electronic Signatures in Global and National Commerce Act, the Hawaii Uniform Electronic Transactions Act and/or the Hawaii Uniform Commercial Code. You further acknowledge and agree that upon request you will deliver an original, fully executed copy of this document to Bank of Hawaii.

IN WITNESS WHEREOF, the parties hereto have agreed to and executed this Addendum on this 30th day of September, 2022.

LESSOR

BANK OF HAWAII

By 
Name: Miki Ikeda
Its: Vice President

By 
Name: Rian Dubach
Its: Senior Vice President


LESSEE

COUNTY OF MAUI

By 
Name: MAY-ANNE A. ALIRIN
Its: DEPUTY DIRECTOR OF FINANCE

By _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY

By 
Deputy Corporation Counsel
County of Maui

SCHEDULE "1"

Construction Period Monthly Interest-Only Payments

Start Date	End Date	Commitment Available for the Lease [A]	Beg. Outstanding Lease Principal Balance [B]	Monthly Payment owed to JCI [C]	Rebate from Hawaii Energy [D]	Monthly Interest Payment Owed to BOH [E]	Interest Reserve Budget Allocation [F]	Outstanding Lease Principal Balance [G]
		\$29.42 million less previous month's [G]	Based on previous month's [G]	Figures provided by JCI	Figures provided by JCI	Based on previous month's [G] and using a 1.85% annual rate	Bank's calculated Interest Reserve Allocation of \$850,299 less monthly interest paid to-date	Previous month's [G] balance plus [C] plus [E]
	30-Sep-2022	29,420,000	0.00	(5,760,646.60)	0.00	0.00	850,299.00	5,760,646.60
01-Oct-2022	01-Nov-2022	23,659,353	5,760,646.60	(3,456,387.96)	0.00	(9,051.32)	841,247.68	9,226,085.88
01-Nov-2022	01-Dec-2022	20,193,914	9,226,085.88	(2,304,258.64)	0.00	(14,028.71)	827,218.98	11,544,373.22
01-Dec-2022	01-Jan-2023	17,875,627	11,544,373.22	(1,440,161.65)	0.00	(18,138.90)	809,080.08	13,002,673.77
01-Jan-2023	01-Feb-2023	16,417,326	13,002,673.77	(1,440,161.65)	0.00	(20,430.23)	788,649.85	14,463,265.65
01-Feb-2023	01-Mar-2023	14,956,734	14,463,265.65	(2,304,258.64)	0.00	(20,525.95)	768,123.90	16,788,050.24
01-Mar-2023	01-Apr-2023	12,631,950	16,788,050.24	(2,304,258.64)	0.00	(26,377.94)	741,745.96	19,118,686.82
01-Apr-2023	01-May-2023	10,301,313	19,118,686.82	(576,064.66)	0.00	(29,070.88)	712,675.08	19,723,822.36
01-May-2023	01-Jun-2023	9,696,178	19,723,822.36	(576,064.66)	0.00	(30,990.72)	681,684.37	20,330,877.73
01-Jun-2023	01-Jul-2023	9,089,122	20,330,877.73	(576,064.66)	0.00	(30,914.07)	650,770.29	20,937,856.47
01-Jul-2023	01-Aug-2023	8,482,144	20,937,856.47	(576,064.66)	0.00	(32,898.25)	617,872.04	21,546,819.38
01-Aug-2023	01-Sep-2023	7,873,181	21,546,819.38	(576,064.66)	0.00	(33,855.07)	584,016.97	22,156,739.11
01-Sep-2023	01-Oct-2023	7,263,261	22,156,739.11	(576,064.66)	0.00	(33,690.38)	550,326.59	22,766,494.15
01-Oct-2023	01-Nov-2023	6,653,506	22,766,494.15	(576,064.66)	0.00	(35,771.46)	514,555.12	23,378,330.28
01-Nov-2023	01-Dec-2023	6,041,670	23,378,330.28	(576,064.66)	0.00	(35,547.87)	479,007.25	23,989,942.81
01-Dec-2023	01-Jan-2024	5,430,057	23,989,942.81	(576,064.66)	0.00	(37,693.79)	441,313.46	24,603,701.26
01-Jan-2024	01-Feb-2024	4,816,299	24,603,701.26	(576,064.66)	0.00	(38,658.14)	402,655.32	25,218,424.06
01-Feb-2024	01-Mar-2024	4,201,576	25,218,424.06	(576,064.66)	0.00	(37,067.63)	365,587.69	25,831,556.35
01-Mar-2024	01-Apr-2024	3,588,444	25,831,556.35	(576,064.66)	0.00	(40,587.39)	325,000.30	26,448,208.40
01-Apr-2024	01-May-2024	2,971,792	26,448,208.40	(576,064.66)	0.00	(40,215.77)	284,784.53	27,064,488.83
01-May-2024	01-Jun-2024	2,355,511	27,064,488.83	(576,064.66)	0.00	(42,524.61)	242,259.92	27,683,078.10
01-Jun-2024	01-Jul-2024	1,736,922	27,683,078.10	(576,064.66)	0.00	(42,093.45)	200,166.47	28,301,236.21
01-Jul-2024	01-Aug-2024	1,118,764	28,301,236.21	(576,064.66)	0.00	(44,467.83)	155,698.64	28,921,768.70
01-Aug-2024	01-Sep-2024	498,231	28,921,768.70	(576,064.66)	233,532.00	(45,442.83)	110,255.80	29,309,744.20
01-Sep-2024	01-Oct-2024	110,256	29,309,744.20	0.00	0.00	(44,566.87)	65,688.93	29,354,311.07

Total Capitalized Interest: 784,610
 Add Capitalized Interest Contingency: 65,689
 Total Estimated Capitalized Interest: 850,299

Phase 1 ROM: 28,803,233
 Add Estimated Capitalized Interest: 850,299
 Less Hawaii Energy Rebate: -233,532
 Total Estimated Final Lease 29,420,000