MEMO TO: BFED-21(24) File

F R O M: Yuki Lei K. Sugimura, Chair Yuki Lei K. Sugimura, Chair 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)afile08:jgk

Attachment

П

#### ADVANCE FUNDING AUTHORIZATION

TO:

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

The following terms when used herein shall have the following meanings:

Lessor shall mean:

Bank of Hawaii, Equipment Finance

Lessor's address is:

P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean:

County of Maui 200 South High Street

Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Vendor's address is: Johnson Controls, Inc. 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment, and Exhibit 5461 attached thereto. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Advance shall mean:

\$5,760,646.60 Dated: September 30, 2022

Advances are limited to one Advance per month, and each Advance must be \$100,000.00 or more. Advances must be in accordance with the formal project

budget approved in writing by Lessor.

Equipment shall mean:

Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is:

Various (as shown in the IGA)

Lessee hereby requests that Lessor advance funds to Vendor in the amount of the Advance to be used for the purchase of the Equipment pursuant to the Purchase Agreement.

Attached hereto are true, correct and complete copies of the following supporting documents for this Advance:

- All government approvals, entitlements and permits required for the construction work to be paid by this Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by this Advance (collectively, the "Lien Waivers"):
- All invoices for goods and/or services to be paid by this Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by this Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by this Advance shall be paid no later than the date of the next advance request; (ii) the amount of Advance and the Vendor to be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Advance request; and (v) Lessee has otherwise performed and complied

Advance Funding Authorization (Revised 7/2021)

with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that this advance funding is being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any advance funding made by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request advances on behalf of Lessee.

Dated: September 30 \_\_\_\_\_, 2022

#### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (if requested by Lessor)
- 7. Other Required Items (if requested by Lessor)

**COUNTY OF MAU!** 

Name: MAY-ANNE A. ALIBIN

Its: DEPUTY DIRECTOR OF FINANCE

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel County of Maui

Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 9/28/22

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101. Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \*5,760,647

(\$) and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of Sept.

2022, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

Johnson Controls, Inc.

## Invoice #1

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	r. Johnson Controls, Inc. 550 Paiea St. Suite 210 Honolulu, HI 96817  Project: Maui County ESPC Phase1  Bill to: Bank of Hawaii 111 S. King St. Attn: Alex DeRoode 200 High St. 9th Floor Maui, HI 96793  Type: Lump Sum			APPLICATION No.: PERIOD TO: 09. City Contract No. C7619 Contractor's Contract No: 2PYS0014		Distribution:  X JCI X Bank of Hawaii
		The state of the s		Contract Date: 5/6/2022		
			1. ORIGIN	Accounting History and Su	mmary To Date	e \$ 28,803,233,00
			2. Change	Orders Received to Date	(c)	\$ -
(a)	Change Order Summary  Total Change Orders received previous month		3. CONTI	RACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(b)	Total Change Orders approved this mont			COMPLETED & STORED TO DATE 20.00% Complete		\$ 5,760,646,60
(c)	Change Orders received to date ( a + b ):		\$0 5. RETAI	NAGE:		s -
			1000	EARNED LESS RETAINAGE REVIOUS PAYMENTS	(4-5)	\$ 5,760,646.60
			8. CURRI	ENT PAYMENT DUE	(6-7)	\$ 5,760,646.60
			9. BALAN	CE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 23,042,586.40
	FINAL APPLICATION FOR PAYMENT:					
CONTRACTO	R'S CERTIFICATE for PAYMENT"		10	Amount Certified: \$ \$		5,760,646.60
above application, knowledge, inform	the Contract Documents, based on on-site ob Johnson Controls Inc. certifies to the Owner to nation and belief the Work has progressed as in the Contract Documents, and the Subcontractor	This Cert	ifficate is not negotiable. The AMOUNT CERT actor named herein. Issuance, payment and accepts of the Owner, Contractor or the Subcontract	TFIED is payable or eptance of payment	are without prejudice	

Contract No. 2PYS0014 PAYMENT APPLICATION SCHEDULE OF VALUES Project Name: Mani County ESPC Phase 1							SOV No: 1 Period To: Setember 30, 2022 Date Submitted: September 29, 2022				
A	В	C	D	E	P	G	В	1	1	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1 Oct-22		\$5,760,646,60	\$0	100,00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%		9
2 Nov-22		\$3,456,387.96	\$0	0%	s -		0%	5 .	0% 5	3,456,387.96	\$
3 Dec-22		\$2,304,258,64	\$0	0%	5 -		0%	s -	0% 5	2,304,258,64	\$
4 Jan-23		\$1,440,161.65	\$0	0%	s -		0%	5 .	0% \$	1,440,161.65	\$
5 Feb-23		\$1,440,161.65	50	0%	5 .		0%	s -	0% 5	1,440,161.65	\$
6 Mar-23		52,304,258.64	\$0	.014	5		0%	s .	0% 5	2,304,258,64	
7 Apr-23		\$2,304,258,64	\$0	10%	s .		0%	5	0% 5	2,304,258.64	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$
8 May-23		\$576,064.66	50	0%	5 -		0%	s .	0% 5	576,064.66	9
9 June-23		\$576,064.66	50	0%	\$ .		0%	5 -	0% \$	576,064.66	3
10 July-23		\$576,064.66	50	17%	5 .		0%	s .	0% 5	576,064.66	9
I Aug-23		\$376,064.66	\$0	0%	5 -		0%	\$ .	0% 3	576,064.66	\$
2 Sept-23		\$576,064,66	501	0%	s .		0%	\$	0% \$	576,064.66	9
3 Oct-23		\$376,064.66	\$0	094	5 -		0%	s .	0% 5	576,064,66	9
4 Nov-23		\$576,064.66	50	0%	5 .		0%	s -	0% 3	576,064.66	9
5 Dec-23		\$576,064.66	\$0	0%	5 -		0%	\$ .	0% 5	576,064.66	9
6 Jan-24		\$376,064.66	50	0%	s -		0%	5 .	0% 5	576,064.66	9
7 Feb-24		\$376,064.66	\$0	0%	5 -		0%	s .	0% 3	576,064.66	9
8 Mar-24		\$576,064.66	50	0%	5 -		094	\$	0% \$	576,064.66	3
9 April-24		\$576,064.66	\$0	0%	5		0%	s -	0% 3	576,064.66	9
20 May-24		\$576,064.66	50	0%	5		0%	\$ -	0% \$	576,064.66	9 9 9 9
1 June-24		\$576,064.66	\$0	0%	5 .		094	5 .	0% 3	576,064.66	9
22 July-24		\$576,064.66	50	67%	\$		0%	\$	0% \$	576,064.66	
23 Aug-24		\$576,064.66	\$0	0%	5 .		0%	s .	0% \$	576,064.66	9
24 Sept-24		\$576,064.66 \$0.00	50	0%	5 -		0%	s -	0% \$	576,064.66	5
	TOTALS	\$28,803,233.00	\$0	20.00%	\$ 5,760,646.60	\$0	0.00%	\$ 5,760,646.60	20,00%	23,042,586.40	

#### Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargets, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, torover.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is tree and class of any and all claims, items and on cumbrances of any nature; and that Seller will warrant and defend the same unto the Purchasor against the claims and demands of all persons.

IN WITNESS WHEREOF, Soller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of September, 2022 (the "Effect" in Date").

JOHNSON CON	FROKS, INC.
By. Ifwell.	4
its Are	sell Garcia General Hunager
By: Name:	-
its	
	Seller

To the extent the County of Maui ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

COUNTY OF MAUI

# By: Name: Its By: Name: Its County APPROVED AS TO FORM AND LEGALITY By: Deputy Corporation Counsel

6719630+3

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this \_30th\_ day of \_September \_\_\_\_\_\_\_, 20\_22 \_\_ (the "Effective Date").

JOHNSON CONTROLS, INC.

To the extent the County of Maui ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

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

By: Name: Its

County

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel

County of Maui

6779630.v3

#### EXHIBIT A

#### DESCRIPTION OF EQUIPMENT

Energy conservation measures, as more particularly described in that certain Investment Grade Audit dated September 21, 2022 for the project ("IGA").

6779630.v3

Updated Budget

Reviews and Inspections

Other Required Items

#### AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

#### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII **EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

P.O. Box 2900 Lessor's address is:

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40

The Advance shall mean: \$11,543,674.40

The monthly installment of the Advance to be disbursed on November 30, 2022 in the amount of \$2,316,418.39 shall be paid as follows: \$2,304,258.64 to Vendor, and \$12,159.75 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in

writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS CUMULATIVE OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE ONE

### AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee,

DatedNovember 30

, 2022

#### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (if requested by Lessor)
- 7. Other Required Items (if requested by Lessor)

**COUNTY OF MAUI** 

Name Scott

Director of Finance

By

Name

Its:

APPROVED AS TO FORM AND LEGALITY

Deputy Compration Counsel

County of Maui

Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 11/16/2022

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$2,304,258.64 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of November, 2022, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

Invoice #3

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Contractor: Johnson Controls, Inc. 550 Paica St. Suite 210 Honolulu, HI 96817  Owner: County of Maui Attn: Alex DeRoode 200 High St. 9th Floor Maui, HI 96793	Project: Maui County ESPC Phas  Bill to: Bank of Hawaii  111 S. King St.  Honolulu, HI 968  Type: Lump Sum		APPLICATION No.: PERIOD TO: City Contract No. C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	3 11/30/22	Distribution: X JCI X Bank of Hawaii
		-	Accounting History and S	Summary To Da	ite
			ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233,00 \$ -
Change Order	Summary				
(a) Total Change Orders received previ	ous months:	\$0	3. CONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(b) Total Change Orders approved		\$0	4. TOTAL COMPLETED & STORED TO DATE 40,00% Complete		\$ 11,521,293.20
(c) Change Orders received to date	a+b):	\$0	5. RETAINAGE:		s -
			6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 11,521,293.20
			7. LESS PREVIOUS PAYMENTS		\$ 9,217,034.56
			8. CURRENT PAYMENT DUE	(6-7)	\$ 2,304,258.64
			9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 17,281,939.80
FINAL APPLICATION FOR PA	MENT:				
and the same and t			Amount Certified: \$ \$		2,304,258.64

#### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$ 2,304,258.

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

	Contract No. 2PYS0014 Project Name: Masi County ESPC P	hasé I		PAYMENT APPL	ICATION SCHEDU	JLE OF VALUES				3 November 30, 2022 November 16, 2022	
A	В	C	D	E	F	G	н	1	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0,06% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,647	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.10	100%	\$ .	S
2	Nov-22	\$3,456,387.96	\$3,456,388	100%	\$ 3,456,387.96		0%	\$ 3,456,387.16	100%	s .	S
3	Dec-22	\$2,304,258.64	\$0	100%	\$ 2,304,258.64		0%	\$ 2,304,258.14	100%	s .	S
4	Jan-23	\$1,440,161.65	\$0	0%	\$ .		0%	\$ .	0%	\$ 1,440,161.65	\$
5	Feb-23	\$1,440,161.65	\$0	0%	s -		0%	\$ -	0%	\$ 1,440,16165	\$
6	Mar-23	\$2,304,258.64	\$0	0%	5 -		0%	s -	0%	\$ 2,304,258.64	S
7	Apr-23	\$2,304,258.64	\$0	0%	\$ -		0%	\$ -	0%	\$ 2,304,258.54	\$
8	May-23	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	\$
9	June-23	\$576,064.66	\$0	0%	\$ .		0%	s -	0%	\$ 576,064.66	\$
10	July-23	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	5
11	Aug-23	\$576,064.66	50	0%	5 -		0%	\$ -	0%	\$ 576,064.66	\$
12	Sept-23	\$576,064.66	\$0	0%	\$ -		0%	s .	0%	\$ 576,064.66	5
13	Oct-23	\$576,064.66	\$0	0%	\$ .		0%	s .	0%	\$ 576,064.66	5
14	Nov-23	\$576,064.66	\$0	0%	5 -		0%	\$ -	0%	\$ 576,064.i6	5
15	Dec-23	\$576,064.66	\$0	0%	\$ .		0%	\$ .	0%	\$ 576,064.16	\$
16	Jan-24	\$576,064.66	50	0%	\$ .		0%	s -	0%	\$ 576,064.66	S
17	Feb-24	\$576,064.66	50	(7%)	\$ -		0%	s -	0%	\$ 576,064.16	\$
18	Mar-24	\$576,064.66	\$0	0%	\$ +		0%	s -	0%	\$ 576,064.16	\$
19	April-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	5
20	May-24	\$576,064.66	50	0%	\$ .		0%	\$ .	0%	\$ 576,064.6	\$
21	June-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.6	S
22	July-24	\$576,064,66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.16	Si
23	Aug-24	\$576,064.66	50	0%	\$ +		0%	s .	0%	\$ 576,064.66	SI
24	Sept-24	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.16	Ś
		\$0.00	\$0								S
	TOTALS	\$28,803,233.00	\$9,217,035	40,00%	\$ 11,521,293.20	50	0.00%	\$ 11,521,293.10	40.00%	\$ 17,281,93910	SI

Johnson Controls Inc. - Confidential

obsesser Courtrols, Inc. Initials: Subcontractor's Initials:

page I of i

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its

. 2022 (the "Effective

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

Date").

JOHNSON CONTROLS, INC.

By:

Name: Red Years Land

By:

Name:
Its

duly authorized representative on this 30th \_\_\_\_\_ day of November

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date

By:
Name Scott K. Terrya
Its Director of Ripance

By:
Name Its
County

Seller

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Coursel

ATTACHMENT 5
Updated Budget
N/A

Reviews and Inspections

# ATTACHMENT 7 Other Required Items

#### **AMENDED AND RESTATED** ADVANCE FUNDING AUTHORIZATION

#### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: **BANK OF HAWAII EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui 200 South High Street Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101

Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance		
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60		
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01		
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40		
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76		

The Advance shall mean: \$13,001,388.76

The monthly installment of the Advance to be disbursed on <u>December 30, 2022</u> in the amount of \$1,457,714.36 shall be paid as follows: \$1,440,161.65 to Vendor, and \$17,552.71 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Energy conservation measures, as more particularly described in that certain Equipment shall mean:

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS CUMULATIVE OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS

MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE ONE AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers"):
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

Dated:

December 30 , 2022

#### Attachments:

- 1. Required Permits and Approvals
- 2 Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (if requested by Lessor)
- 7. Other Required Items (if requested by Lessor)

COUNTY OF MAUI

Napre:

Scott K. Teruya Director of Finan

Ву

Name:

Its:

APPROVED AS TO FORM AND LEGALITY

KRISTINA C. TOSHIKIYO Deputy Corporation Counsel

County of Maui

#### Required Permits and Approvals

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 12/12/2022

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$1,440,161.65 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of December, 2022, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	Johnson Controls, Inc. 550 Paiea St. Suite 210 Honolulu, HI 96817	Project: Maui County ESPC Phase1  Bill to: Bank of Hawaii	APPLICATION No.: PERIOD TO: City Contract No.C7619	4 12/30/22	Distribution:  X JCI X Bank of Hawaii	
Owner:	County of Maui Attn: Alex DeRoode 200 High St. 9th Floor Maui, HI 96793	111 S. King St. Honolulu, HI 96813 Type: Lump Sum	Contract No: 2PYSC			
			Accounting History a	and Summary To Date	a	
			ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00 \$ -	
	Change Order Summary		Current San Control			
(a)	Total Change Orders received previous months:	\$0	3. CONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00	
(b)	Total Change Orders approved this month:	\$0	4. TOTAL COMPLETED & STORED TO DATE 45.00% Complet	e	\$ 12,961,454.85	
(c)	Change Orders received to date (a+b):	\$0	5. RETAINAGE:		\$ -	
			6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 12,961,454.85	
			7. LESS PREVIOUS PAYMENTS		\$ 11,521,293.20	
			8. CURRENT PAYMENT DUE	(6-7)	\$ 1,440,161.65	
			9. BALANCE TO FINISH (NOT INCLUDING RETAINAC	GE) (3-4)	\$ 15,841,778.15	
	FINAL APPLICATION FOR PAYMENT:					

#### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

1,440,161.65

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

		S0014 ESPC Phase I	PAYMENT APPLICATION SCHEDULE OF VALUES						SOV No: 4 Period To: December 30, 2022 Date Submitted: December 12, 2022		
A	В	C	D	E	F	G	Н	1	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646,60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	-	S
2	Nov-22	\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,387.96	100%	-	S
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	-	S
4	Jan-23	\$1,440,161.65	\$0	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	-	S
5	Feb-23	\$1,440,161.65	\$0	0%	\$ -		0%	s -	0% 5	1,440,161.65	S
6	Mar-23	\$2,304,258.64	\$0	0%	s -		0%	s -	0% 5	2,304,258.64	S
7	Apr-23	\$2,304,258.64	\$0	0%	s -	TOTAL CONTRACTOR OF THE STREET	0%	S -	0% 5	2,304,258.64	S
8	May-23	\$576,064.66	\$0	0%	s -		0%	S -	0% 5	576,064.66	S
9	June-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0% 5	576,064.66	\$
10	July-23	\$576,064.66	\$0	0%	s -		0%	\$ .	0% 5	576,064.66	S
11	Aug-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0% 5	576,064.66	S
12	Sept-23	\$576,064.66	\$0	0%	s -		0%	\$ -	0% 5	576,064.66	S
13	Oct-23	\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	S
14	Nov-23	\$576,064.66	SO	0%	s -		0%	s .	0% 5	576,064.66	S
15	Dec-23	\$576,064.66	\$0	0%	s -		0%	s -	0% \$	576,064.66	St
16	Jan-24	\$576,064.66	\$0	0%	s -		0%	s -	0% \$	576,064.66	Si
17	Feb-24	\$576,064.66	\$0	0%	s -		0%	s -	0% \$	576,064.66	S
18	Mar-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0% \$	576,064.66	\$(
19	April-24	\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	S
20	May-24	\$576,064.66	SO	0%	s -		0%	s -	0% \$	576,064.66	S
21	June-24	\$576,064,66	\$0	0%	s -		0%	s -	0% \$	576,064.66	S
22	July-24	\$576,064.66	50	0%	s -		0%	\$ -	0% S	576,064.66	S
23	Aug-24	\$576,064.66	\$0	0%	s -		0%	s -	0% S	576,064.66	S
24	Sept-24	\$576,064.66	\$0	0%	s -		0%	s -	0% S	576,064.66	S
		\$0,00	\$0	0%							S
-	TOTALS	\$28,803,233.00	\$11,521,293	45,00%	\$ 12,961,454.85	\$0	0.00%	\$ 12,961,454.85	45 00% 5	15,841,778.15	Si

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (horeinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

duly authorized representative on this 30th day of December , 2022 [the "Effective Date"). JOHNSON CONTROLS, INC. By: Name: Ron Young Area Operations Lead Its

> Bv. Name: Its

> > Seller

To the extent the County of Maui ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date

COUNTY OF MAUI

Scott K. Teruy

Director of Finance

By: Name: Its

County

Deputy Corporation Counsel

County of Maui

1.2

ATTACHMENT 5
Updated Budget

Reviews and Inspections

Other Required Items

### **AMENDED AND RESTATED** ADVANCE FUNDING AUTHORIZATION

### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII **EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui 200 South High Street Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62

The Advance shall mean: \$14,461,978.62

The monthly installment of the Advance to be disbursed on January 30, 2023 in the amount of \$1,460,589.86 shall be paid as follows: \$1,440,161.65 to Vendor, and \$20,428.21 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

Dated:

### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- Reviews and Inspections (if requested by Lessor)
   Other Required Items (if requested by Lessor)

### COUNTY OF MAUI

Name: Its:

County of Maui

# Required Permits and Approvals

### Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 01/19/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$1,440,161.65 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of January, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	nctor: Johnson Controls, Inc. 550 Paiea St. Suite 210 Honolulu, HI 96817  wner: County of Maui Attn: Alex DeRoode 200 High St. 9th Floor Maui, HI 96793	Project: Maui County ESPC Phase1  Bill to: Bank of Hawaii 111 S. King St. Honolulu, HI 96813  Type: Lump Sum	APPLICATION No.: PERIOD TO: City Contract No.C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	5 01/31/23	Distribution:  X JCI X Bank of Hawaii
			Accounting History and	Summary To Date	e
			ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00 \$ -
	Change Order Summary				
(a)	Total Change Orders received previous month	s: \$0	3. CONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(b)	Total Change Orders approved this mont	h: \$0	4. TOTAL COMPLETED & STORED TO DATE 50.00% Complete		\$ 14,401,616.50
(c)	Change Orders received to date (a + b):	\$0	5. RETAINAGE :		\$ -
			6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 14,401,616.50
			7. LESS PREVIOUS PAYMENTS		\$ 12,961,454.85
			8. CURRENT PAYMENT DUE	(6-7)	\$ 1,440,161.65
			9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 14,401,616.50
	FINAL APPLICATION FOR PAYMENT:				

# CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

1,440,161.65

By: Date: Of 14/20

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Contract No. 2PYS Project Name: Maui County I		se I	PAYMENT APPLICATION SCHEDULE OF VALUES							SOV No: 5 Period To: January 31, 2023 Date Submitted: January 19, 2023			
A	В	C	D	Е	F	G	H	t	J	K	L		
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)		
1 Oct-22		\$5,760,646,60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	5,760,646.60	100%	\$ .	\$		
2 Nov-22		\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	3,456,387.96	100%	s -	S		
3 Dec-22		\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s -	S		
4 Jan-23		\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s -	S		
5 Feb-23		\$1,440,161.65	\$0	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s -	S		
6 Mar-23		\$2,304,258.64	\$0	0%	s -		0%	\$ .	0%	\$ 2,304,258.64	\$		
7 Apr-23		\$2,304,258.64	\$0	0%	s -		0%	\$ .	0%	\$ 2,304,258.64	\$		
8 May-23		\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	S		
9 June-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
10 July-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	S 576,064,66	S		
11 Aug-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	S 576,064.66	\$		
12 Sept-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
13 Oct-23		\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	S		
14 Nov-23		\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	S		
15 Dec-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
16 Jan-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
17 Feb-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
18 Mar-24		\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	S		
19 April-24		\$576,064.66	\$0	0%	S -		0%	s -	0%	\$ 576,064.66	S		
20 May-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
21 June-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
22 July-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064,66	S		
23 Aug-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
24 Sept-24		\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S		
		\$0.00	\$0	0%						the state of the s	S		
	TOTALS	\$28,803,233,00	\$12,961,455	50,00%	\$ 14,401,616.50	\$0	0.00%	14,401,616.50	50 00%	\$ 14,401,616.50	S		

Johnson Controls, Inc. Initials: Subcontractor's Initials:

more Loft

### Conditional Bill of Sale

### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Saller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons,

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of January , 2023 (the "Effective Date").

JOHNSON (	CONTROLS, INC.	
	RIN A YOUNG	LEAC
By: Name:		
Its	Sei	ler

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

> COUNTY OF MAUI Nama: Scott K. Teruya Its Acting Director of Finance Name Its County

Deputy Corporation Counsel

County of Maui

Updated Budget

Reviews and Inspections

Other Required Items

# AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

### <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui
Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc.
Vendor's address is: 2065 Main St., Suite 101
Wailuku, HI 96793

•

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. <u>1474</u>, dated <u>September 30</u>, <u>2022</u> and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of	Amount of Principal	Amount of Interest	Cumulative Total of
	the Advance for	Paid to Vendor	Paid to Lessor	the Advance
	Disbursement			
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39

The Advance shall mean: \$16,787,494.39

The monthly installment of the Advance to be disbursed on <u>February 28, 2023</u> in the amount of <u>\$2,325,515.77</u> shall be paid as follows: \$2,304,258.64 to Vendor, and \$21,257.13 to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lesson.

COUNTY OF MAU
By Name: Steve A. Tesoro Its: Deputy Finance Director  By Name: Its:  APPROVED AS TO FORM AND LEGALITY  By: The Components of Counsel

# Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 02/17/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$2,304,258.64 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 28th of February, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Contractor: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  Customer: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Project:  Maui County ESPC Phase  Bill to: Bank of Hawaii  111 S. King St.  Honolulu, HI 9681  Type: Lump Sum			APPLICATION No.: PERIOD TO: City Contract No. C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	6 02/28/23	Distribution:  X JCI X Bank of Hawaii
				Accounting History and S	Summary To Da	the state of the s
				L CONTRACT SUM  ders Received to Date	(c)	\$ 28,803,233.00
Change Order Summan  (a) Total Change Orders received previous mont		\$0	3. CONTRA	CT SUM TO DATE	(1+2)	\$ 28,803,233.00
(b) Total Change Orders approved this mor			4. TOTAL C	COMPLETED & STORED TO DATE 58,00% Complete		\$ 16,705,875.14
(c) Change Orders received to date (a + b):		\$0	5. RETAINA	GE:		\$ -
			6. TOTAL E	ARNED LESS RETAINAGE	(4-5)	\$ 16,705,875.14
			7. LESS PRE	VIOUS PAYMENTS		\$ 14,401,616.50
			8. CURREN	T PAYMENT DUE	(6-7)	\$ 2,304,258.64
			9. BALANCI	E TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 12,097,357.86
FINAL APPLICATION FOR PAYMENT						

### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

2,304,258.64

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Contract No. 2PYS0014 Project Name: Maui County ESPC Phase 1		hase 1	PAYMENT APPLICATION SCHEDULE OF VALUES						SOV No : 6 Period To : February 28, 2023 Date Submitted : February 17, 2023		
A	В	c	D	Е	F	G	Н	I	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	\$ -	\$(
2	Nov-22	\$3,456,387.96	\$3,456,387.96	100%			0%	\$ 3,456,387.96	100%	OST OF THE PARTY O	\$6
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.54	100%	\$ -	\$1
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	\$ -	\$0
5	Feb-23	\$1,440,161.65	\$1,440,162	100%	\$ 1,440,161.65		0%	\$ 1,440,161.55	100%	\$ -	\$0
6	Mar-23	\$2,304,258.64	\$0	100%	\$ 2,304,258.64		0%	\$ 2,304,258.84	100%	\$ -	\$0
7	Apr-23	\$2,304,258.64	\$0	0%	s -		0%	\$ -	0%	\$ 2,304,258.64	\$0
8	May-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$(
9	June-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$(
10	July-23	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
11	Aug-23	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
12	Sept-23	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$(
13	Oct-23	\$576,064.66	\$0	0%	s -		0%	S -	0%	\$ 576,064.66	\$(
14	Nov-23	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$(
15	Dec-23	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
16	Jan-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$(
17	Feb-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
18	Mar-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$(
19	April-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
20	May-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$0
21	June-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$0
22	July-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$(
23	Aug-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$0
24	Sept-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,064.66	\$0
		\$0.00	\$0	0%							\$0
	TOTALS	\$28,803,233.00	\$14,401,617	58.00%	\$ 16,705,875.14	\$0	0.00%	\$ 16,705,875.14	58.00%	\$ 12,097,357.86	\$0

Johnson Controls Inc. - Confidential Johnson Controls, Inc. Initials: Subcontractor's Initials:

page 1 of 1

# ATTACHMENT 4 Conditional Bill of Sale

### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A stacked hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the iswful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any end all claims, liens and encumbrances of any nature; and that Seller will warrant and defauld the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this \_\_28th\_day of \_\_\_February \_\_\_, 2023\_ (the "Effective Date").

By: Ron Young JCI Its Area Operations Leader

By: Name: Ron Young JCI Its Area Operations Leader

By: Name: Its Seller

To the extent the County of Metal ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

### COUNTY OF MAUI

By:
Name:
Its

By:
Name: Steve A. Tesoro
Its Deputy Finance Director
County

By: Corporation Counties

County of Maul

6779630.44

# **EXHIBIT A**

# DESCRIPTION OF EQUIPMENT

See Appendices 1 through 3, inclusive, to that certain investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Controling project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

Other Required Items

# AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

# <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui

Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101

Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. <u>1474</u>, dated <u>September 30, 2022</u> and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22

The Advance shall mean: \$19,117,279.22

The monthly installment of the Advance to be disbursed on <u>March 30, 2023</u> in the amount of \$2,329.784.83 shall be paid as follows: \$2,304,258.64 to Vendor, and \$25,526.19 to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers"):
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lesses.

Dated: March 30 2023	
	COUNTY OF MAUI
Attachments:	
Required Permits and Approvals     Lien Weivers     Invoices	
4. Conditional Bill of Sale	Name: Steve A. Tesoro
5. Updated Budget (if requested by Lessor)	he: Deputy Finance Director
5. Orbitals and Inspections (If requested by Lessor) 7. Orbits Required Items (If requested by Lessor)	its. Separy Finance Sincers.
	Ву
	Name:
	ite:
	APPROVED AS TO FORM AND LEGALITY  By:  Deputy Corporation Courise  County of Maui

Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

To all whom it may concern:

Date: 03/15/2023

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$2,304,258.64 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of March 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

# ATTACHMENT 3 Invoices

### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Contractor: Johnson Controls, Inc 2065 Main Street, Su Wailuku, HI 96793		Maui County ESPC Phase1  Bill to: Bank of Hawaii  111 S. King St.	APPLICATION No.: PERIOD TO: City Contract No.C7619 Contractor's Contract No: 2PYS00	7 03/30/23	Distribution:  X JCl X Bank of Hawaii
Customer: County of Maui Attn: Finance & Ger 200 High St. 9th Floc Wailuku, HI 96793	r	Honolulu, HI 96813	Contract Date: 5/6/2022		
			Accounting History an	d Summary To Date	e
	Change Order Summary		ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00
	Change Order Summary		3. CONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(6)	lers received previous months: e Orders approved this month:	\$0	4. TOTAL COMPLETED & STORED TO DATE 66.00% Complete		\$ 19,010,133.78
	s received to date (a+b):	\$0	5. RETAINAGE :		\$ -
			6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 19,010,133.78
			7. LESS PREVIOUS PAYMENTS		\$ 16,705,875.14
			8. CURRENT PAYMENT DUE	(6-7)	\$ 2,304,258.64
			9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE	(3-4)	\$ 9,793,099.22
FINAL APPLIC	ATION FOR PAYMENT:				
CONTRACTOR'S CERTIFICA	TE for PAVMENT"		Amount Certified: \$ \$		2,304,258.64
In accordance with the Contract Docu- above application, Johnson Controls In	ments, based on on-site observations	and the data comprising the	By: Rlyg	Date: 3/1	5/2023

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the

to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice

CoMBilling #7 ds.xls

Certified.

knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in

accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount

Contract No. 2PY Project Name: Mani County		0014 ESPC Phase I	PAYMENT APPLICATION SCHEDULE OF VALUES						SOV No : 7 Period To : March 30, 2023 Date Submitted : March 15, 2023		
A	В	C	D	E	F	G	н	1	J.	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1 (	Oct-22	\$5,760,646.60	\$5,760,646.60	100,00%	\$ 5,760,646.60		0%	\$ 5,760,64660	100%	\$	5
2	Nov-22	\$3,456,387,96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,38796	100%	5	- 5
	Dec-22	\$2,304,258,64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	S 2,304,25864	100%	s .	
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,16165	100%	\$ -	
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	S 1,440,161.65		0%	\$ 1,440,16165	100%	5	
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	5 2,304,258.64		0%	\$ 2,304,25864	100%	s -	
7	Apr-23	\$2,304,258.64	\$0	100%	\$ 2,304,258.64		0%	\$ 2,304,25864	100%	s	
	Mny-23	5576,064.66	50	0%	s -		0%	\$ .	0%	\$ 576,06466	
9	June-23	\$576,064.66	50	0%	s -		0%	\$ .	0%	576,064.66	
10	July-23	\$576,064,66	50	0%	5 .		0%	2	0%	576,06466	
11	Aug-23	\$376,064.66	\$0	0%	5		0%	\$ .	0%	576,064.66	
	Sept-23	\$576,064.66	50	10%	s -		0%	\$ -	0%	576,064.66	
	Oct-23	\$576,064.66	\$0	0%	5 -		0%	\$	0%	576,064.66	
14	Nov-23	\$576,054.66	50	.0%	\$ .		0%	\$	0%	576,064.66	
15	Dec-23	\$\$76,064.66	50	17%	S -		0%	\$ .	0%	576,064.66	
16	Jan-24	\$576,064.66	50	0%	s -		0%	\$ .	0%	576,064.66	
17	Feb-24	\$576,064.66	50	054	5 -		0%	\$	0%	576,064.66	4
18	Mar-24	\$576,064.66	SÚ	0%	5		0%	\$	0%	576,064.66	1
19	April-24	\$576,064.66	50	0%	\$ -		0%	5	0%	576,064.66	
	May-24	\$576,064.66	\$0	0%	s -		0%	\$	0%	576,06466	
21	June-24	\$576,064.66	50	0%	5 +		0%	\$	0%	576,064.66	
22	July-24	\$576,064.66	\$0	.0%	\$ -		0%	\$ .	0%	576,06466	1
23	Aug-24	\$576,064.66	\$0	10%	8 -		0%	5	0%	576,064.66	
24	Sept-24	\$576,064.66	50	0%	\$ -		0%	\$	0%	576,064.66	
		\$0.00	50	096							
	TOTALS	\$28,803,233.00	\$16,705,875	66.00%	\$ 19,010,133.78	50	0.00%	\$ 19,010,13378	66.00%	9,793,099,22	3

alamon Controls for Cury Artiful.	Johnson Controls, Inc. Initials;	Subcontractor's britishe	page tiet (

#### Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby ecknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF NAWAII ("Purchaser"), its successors and assigns, att of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrents that it is the lewful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrent and defend the same unto the Purchaser against the claims and demands of all persons.

in Witness Whereof, Seller has caused this Conditional Bill of Sele to be executed by its duly authorized representative on this <u>30th</u> day of <u>March</u>, 2023 (the "Effective Date").

JOHNS	ON CON	TROLS,	NC.
By:	2/	.4	7
Nam	ABL.	Yorks	
By:			
Nan	18:		

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bergains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By:
Name: Steve A. Tesoro
Its Deputy Finance Director

By:
Name.
Its
County

To all the

County of Maui

6779630.v4

Updated Budget

Reviews and Inspections

Other Required Items

#### **AMENDED AND RESTATED** ADVANCE FUNDING AUTHORIZATION

#### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: **BANK OF HAWAII EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui 200 South High Street Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and

made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of	Amount of Principal	Amount of Interest	Cumulative Total of
	the Advance for	Paid to Vendor	Paid to Lessor	the Advance
	Disbursement			
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66

The Advance shall mean: \$19,721,443.66

The monthly installment of the Advance to be disbursed on April 28, 2023 in the amount of \$604,164.44 shall be paid as follows: \$576,064.66 to Vendor, and \$28,099.78 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean:

Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers"):
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

Dated: April 28 20 23

#### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (If requested by Lessor)
- 7. Other Required Items (if requested by Lessor)

COL	INTY	ME	BAAL	10

Name: Scott K. Teruya Its: Finance Director

APPROVED AS TO FORM AND LEGALITY

KRISTINA C- TO Deputy Corporation Counsel

County of Maui

# Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 04/13/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 28th of April, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	Contractor: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  Customer: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Project: Maui County E  Bill to: Bank of 111 S. K  Honolulu  Type: Lump Sum	Hawaii	APPLICATION No.: PERIOD TO: 04 City Contract No. C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	8	Distribution:  X JCI X Bank of Hawaii
			1. 01	Accounting History and Suriginal Contract Sum	mmary To Date	\$ 28,803,233.00
				nange Orders Received to Date	(c)	\$ -
	Change Order Su			ONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(a)	Total Change Orders received previous	months:	4. TOTAL COMPLETED & STORED TO DATE			\$ 19,586,198.44
(b)	Total Change Orders approved thi	s month:	\$0	68.00% Complete		
(c)	Change Orders received to date ( a	+ b ):	\$0 5. RI	ETAINAGE :		s -
Sec			6. TO	OTAL EARNED LESS RETAINAGE	(4-5)	\$ 19,586,198.44
(c)			7. LE	ESS PREVIOUS PAYMENTS		\$ 19,010,133.78
			8. CI	URRENT PAYMENT DUE	(6-7)	\$ 576,064.66
			9 B	ALANCE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 9,217,034.56

# CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

576,064.66

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Contract No. Project Name:	2PYS Maui County E		PAYMENT APPLICATION SCHEDULE OF VALUES							SOV No : 8 Period To : April 30, 2023 Date Submitted : April 13, 2023		
A	В	C	D	E	F	G	H	I	J	K	L	
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)	
1 Oct-22		\$5,760,646.60	\$5,760,646,60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	\$ -	S	
2 Nov-22		\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,387.96	100%	s -	S	
3 Dec-22		\$2,304,258,64	52,304,258,64	100%	\$ 2,304,258,64		0%	\$ 2,304,258.64	100%	s -	S	
4 Jan-23		\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s -	S	
5 Feb-23		\$1,440,161.65	\$1,440,161,65	100%	S 1,440,161.65		0%	\$ 1,440,161.65	100%	s -	S	
6 Mar-23		\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	S -	\$	
7 Apr-23		\$2,304,258,64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s -	S	
8 May-23		\$576,064.66	\$0	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s -	S	
9 June-23		\$576,064,66	\$0	0%	\$ -		0%	\$ -	0%	576,064.66	S	
0 July-23		\$576,064.66	\$0	0%	\$ -		0%	s -	0%	576,064.66	\$	
1 Aug-23		\$576,064,66	SO	0%	s -		0%	\$ -	0%	576,064.66	S	
2 Sept-23		\$576,064.66	\$0	0%	\$ -		0%	s .	0%	576,064.66	\$1	
3 Oct-23		\$576,064.66	\$0	0%	s -		0%	s -	0%	576,064.66	\$	
4 Nov-23		\$576,064.66	\$0	0%	\$ -		0%	s -	0%	576,064.66	\$	
5 Dec-23		\$576,064,66	\$0	0%	\$ .		0%	s -	0%	576,064.66	S	
6 Jan-24		\$576,064.66	\$0	0%	s -		0%	S -	0%	576,064.66	\$	
7 Feb-24		\$576,064,66	\$0	0%	s -		0%	s -	0%	576,064.66	S	
8 Mar-24		\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	S	
9 April-24		\$576,064,66	\$0	0%	\$ .		0%	s -	0%	576,064.66	S	
0 May-24		\$576,064.66	SO	0%	s -	The state of the s	0%	s -	0% 3	576,064.66	\$	
1 June-24		\$576,064.66	SO	0%	s -		0%	s -	0%	576,064.66	\$	
2 July-24		\$576,064.66	SO	0%	s -		0%	s -	0%	576,064.66	\$	
3 Aug-24		\$576,064,66	\$0	0%	s .		0%	s -	0%	576,064.66	S	
4 Sept-24		\$576,064.66	SO	0%	s -		0%	s -	0%	576,064.66	S	
		\$0,00	\$0	0%	26	- mine-				(0.00)	S	
	TOTALS	\$28,803,233.00	\$19,010,134	68.00%	\$ 19,586,198.44	\$0	0.00%	\$ 19,586,198,44	68,00%	9,217,034.56	S	

Johnson Controls Inc. - Confidential Johnson Centrols, Inc. Initials: Subcontractor's Initials: Subcontractor's Initials:

# ATTACHMENT 4 Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hersinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its auccessors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lewful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Saller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this <u>28th</u> day of <u>April</u>, 2023 (the "Effective Date").

DI	1 / Ca
Name: Ren	Hotal !
By:	
Its	Seller

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bergeins, sells, transfers and delivers unto Purchaser, its successors and essigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By: Name: Scott K. Teruya Its Director of Finance

By: Name: Scott K. Teruya Its Director of Finance

By: Name: Its County

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel

County of Maui

6779630.44

# **EXHIBIT A**

#### **DESCRIPTION OF EQUIPMENT**

See Appendices 1 through 3, inclusive, to that certain investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

Other Required Items

#### **AMENDED AND RESTATED** ADVANCE FUNDING AUTHORIZATION

#### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: **BANK OF HAWAII EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui 200 South High Street Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88

\$20,329,494.88 The Advance shall mean:

The monthly installment of the Advance to be disbursed on May 30, 2023 in the amount of \$608,051.22 shall be paid as follows: \$576,064.66 to Vendor, and \$31,986.56 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Energy conservation measures, as more particularly described in that certain Equipment shall mean:

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor

pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers"):
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

May 30 20 23 Dated:

#### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
  6. Reviews and Inspections (if requested by Lessor)
  7. Other Required Items (if requested by Lessor)

INTY		

Name:

Steve A. Tesoro Deputy Director of Finance Its:

By Name: Its:

County of Maui

# Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 05/18/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of May, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Contractor: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  Customer: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor		Project: Maui County ESPC Phase  Bill to: Bank of Hawaii  111 S. King St.  Honolulu, HI 9681:		APPLICATION No.: PERIOD TO: 05 City Contract No. C7619 Contractor's Contract No: 2PYS0014	9	Distribution:  X JCI X Bank of Hawaii
	Wailuku, HI 96793	Type: Lump Sum		Contract Date: 5/6/2022		eta a a terre e a a esca a legenta de
-				Accounting History and Su	mmary To Dat	e
				ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00 \$ -
	Change Order Summary			3. CONTRACT SUM TO DATE	24.45	\$ 28,803,233.00
(a)	Total Change Orders received previous months		\$0	S. CONTRACT SUM TO DATE	(1+2)	3 28,803,233.00
(b)	Total Change Orders approved this month			4. TOTAL COMPLETED & STORED TO DATE 70.00% Complete		\$ 20,162,263.10
(c)	Change Orders received to date (a+b):		\$0	5. RETAINAGE :		\$ -
				6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 20,162,263.10
				7. LESS PREVIOUS PAYMENTS		\$ 19,586,198.44
				8. CURRENT PAYMENT DUE	(6-7)	\$ 576,064.66
				9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 8,640,969.90
	FINAL APPLICATION FOR PAYMENT:		_			
CONTRACTO	R'S CERTIFICATE for PAYMENT"			Amount Certified: \$ \$		576,064.66
Commercia				11/		, 1

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudic

Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

	Contract No. 2PYS0 Project Name: Mani County E		PAYMENT APPLICATION SCHEDULE OF VALUES							SOV No: 9 Period To: May 30, 2023 Date Submitted: May 18, 2023		
A	В	C	D	E	F	G	H	1	J	K	L	
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)	
1	Oct-22	\$5,760,646.60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	\$ .	\$	
2	Noy-22	\$3,456,387,96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,387.96	100%	s .	\$	
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s .	S	
4	Jan-23	\$1,440,161,65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s .	\$	
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s -	\$	
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s .	5	
7	Apr-23	\$2,304,258.64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s .	\$	
	May-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s .	5	
9	June-23	\$576,064,66	\$0	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	S -	\$	
10	July-23	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	\$	
	Aug-23	\$576,064,66	\$0	0%	\$ -		0%	s .	0%	\$ 576,064.66	\$	
	Sept-23	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	\$	
	Oct-23	\$576,064.66	\$0	0%	\$ -	r-came and t	0%	\$ -	0%	\$ 576,064.66	\$	
14	Nov-23	\$576,064.66	\$0	0%	\$ -		0%	s .	0%	\$ 576,064.66	\$	
15	Dec-23	\$576,064,66	\$0	0%	\$ -		0%	s .	0%	\$ 576,064.66	\$	
16	Jan-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	\$	
17	Feb-24	\$576,064.66	\$0	0%	\$ -		0%	s .	0%	\$ 576,064.66	S	
18	Mar-24	\$576,064.66	\$0	0%	S -		0%	s .	0%	\$ 576,064.66	\$	
19	April-24	\$576,064,66	\$0	0%	S -		0%	\$ .	0%	\$ 576,064.66	S	
	May-24	\$576,064.66	\$0	0%	\$ -	y man a mandal di li	0%	s .	0%	\$ 576,064.66	\$	
21	June-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	\$1	
22	July-24	\$576,064.66	SO	0%	s -		0%	s .	0%	\$ 576,064.66	S	
23	Aug-24	\$576,064,66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$	
24	Sept-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	\$ 576,064.66	S	
		\$0.00	\$0	0%							\$1	
П	TOTALS	\$28,803,233,00	\$19,586,198	70.00%	\$ 20,162,263.10	\$0	0.00%	\$ 20,162,263.10	70.00%	\$ 8,640,969.90	\$6	

Johnson Controls Inc. - Confidential Johnson Controls, Inc. Initials: Subcontractor's Initials:

# ATTACHMENT 4 Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of May , 2023 (the "Effective Date").

	JOHNSON CONT	ROLS, INC.
	-20	11/2
	By:	Tour and C MANAGED
	its	DOMATIONS MANAGOR
	By:	
	Name:	
	its	
		Seller

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By:
Name: Steve A. Tesoro
Its Deputy Director of Finance

By:
Name:
Its

County

APPROVED AS TO FORM AND LEGALITY

By:
Deputy Corporation Counsel
County of Maui

#### **EXHIBIT A**

# DESCRIPTION OF EQUIPMENT

See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

#### ATTACHMENT 7 Other Required Items

#### CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lease Agreement No. <u>1474</u> dated <u>September 30, 2022</u>, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit <u>5461</u> to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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.

Dated: May 30 , 20 2	ed:	May 30	, 20	23
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#### **AMENDED AND RESTATED** ADVANCE FUNDING AUTHORIZATION

#### Upon execution, this Amended and Restated Advance Funding Authorization supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: **BANK OF HAWAII EQUIPMENT FINANCE** P.O. BOX 2900 HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui 200 South High Street Lessee's mailing address is:

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc. Vendor's address is: 2065 Main St., Suite 101 Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of	Amount of Principal	Amount of Interest	Cumulative Total of
	the Advance for	Paid to Vendor	Paid to Lessor	the Advance
	Disbursement			
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88
30-June-2023	\$608,007.03	\$576,064.66	\$31,942.37	\$20,937,501.91

The Advance shall mean: \$20,937,501.91

The monthly installment of the Advance to be disbursed on June 30, 2023 in the amount of \$608,007.03 shall be paid as follows: \$576,064.66 to Vendor, and \$31,942.37 to Lessor.

> Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the monthly installment of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers"):
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing belo	ow hereby represent and wa	rrant to Lessor that they	are duly authorized	to request the
Advance on behalf of Lessee.				1.0

20 23 June 30 Dated:

#### Attachments:

- Required Permits and Approvals
   Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
  6. Reviews and Inspections (if requested by Lessor)
  7. Other Required Items (if requested by Lessor)

#### COUNTY OF MAUL

Scott K. Teruya Name Director of Finance tts:

Name: its:

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel

County of Maui

# Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 06/12/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of June, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	or: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  er: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Project: Maui County ESPC Phase1  Bill to: Bank of Hawaii 111 S. King St. Honolulu, HI 96813  Type: Lump Sum		APPLICATION No.: PERIOD TO: City Contract No.C7619 Contractor's Contract No: 2PYS0		Distribution:  X JCI X Bank of Hawaii
				Accounting History a		e
				ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00
	Change Order Summ	ary		3. CONTRACT SUM TO DATE	(1+2)	\$ 28,803,233.00
(a)	Total Change Orders received previous mo	nths:	\$0	S. CONTRACT SOM TO DATE	(1+2)	3 20,003,233.00
(b)	Total Change Orders approved this m	onth:	\$0	4. TOTAL COMPLETED & STORED TO DATE 72.00% Complete		\$ 20,738,327.76
(c)	Change Orders received to date (a+b	):	\$0	5. RETAINAGE :		\$ -
				6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 20,738,327.76
Invoices				7. LESS PREVIOUS PAYMENTS		\$ 20,162,263.10
<u>N</u>				8. CURRENT PAYMENT DUE	(6-7)	\$ 576,064.66
				9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE	E) (3-4)	\$ 8,064,905.24
	FINAL APPLICATION FOR PAYMEN	T:				

#### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

Date: 6/12/2023

576,064.66

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Contract No. 2PYS0014 Project Name: Maui County ESPC Phase 1			PAYMENT APPLICATION SCHEDULE OF VALUES				SOV No : 10 Period To : June 30, 2023 Date Submitted : June 12, 2023				
A	В	C	D	E	F	G	н	I	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,646.60	100.00%	5,760,646.60		0%	\$ 5,760,646.60	100%	\$	\$
2	Nov-22	\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,387.96	100%	\$ .	\$
	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s -	\$
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	1,440,161.65		0%	\$ 1,440,161.65	100%	s -	\$
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	1,440,161.65		0%	\$ 1,440,161.65	100%	s -	\$
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	2,304,258.64		0%	\$ 2,304,258.64	100%	s -	\$
7	Apr-23	\$2,304,258.64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	\$ -	\$
8	May-23	\$576,064.66	\$576,065	100%	576,064.66		0%	\$ 576,064.66	100%	s -	S
9	June-23	\$576,064.66	\$576,065	100%	576,064.66		0%	\$ 576,064.66	100%	s -	\$
10	July-23	\$576,064,66	\$0	100%	576,064.66		0%	\$ 576,064.66	100%	\$ -	S
11	Aug-23	\$576,064,66	\$0	0%	s -		0%	s -	0%	576,064.66	\$
12	Sept-23	\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	\$
13	Oct-23	\$576,064.66	\$0	0%	s -		0%	S -	0%	576,064.66	\$
14	Nov-23	\$576,064.66	\$0	0%	s -		0%	s -	0%	576,064.66	\$
15	Dec-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0% 5	576,064.66	\$
16	Jan-24	\$576,064.66	SO	0%	s -		0%	s -	0% 5	576,064.66	S
17	Feb-24	\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	\$
18	Mar-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0% 5	576,064.66	\$
19	April-24	\$576,064.66	\$0	0%	s -		0%	\$ -	0% 5	576,064.66	S
20	May-24	\$576,064.66	SO.	0%			0%	s -	0% 5	576,064.66	S
21	June-24	\$576,064,66	\$0	0%	\$ -		0%	s -	0% 5	576,064.66	\$
22	July-24	\$376,064.66	SO.	0%	s -		0%	s -	0% 5	576,064.66	\$
23	Aug-24	\$576,064.66	\$0	0%	s -		0%	s -	0% 5	576,064.66	S
	Sept-24	\$576,064.66	SO	0%	s -		0%	\$ -	0% 5	576,064.66	\$
		\$0.00	\$0	0%			1				\$0
	TOTALS	\$28,803,233.00	\$20,162,263	72.00%	\$ 20,738,327.76	\$0	0.00%	\$ 20,738,327.76	72,00% 5	8,064,905.24	S

Johnson Controls Inc. - Confidential Johnson Controls, Inc. Initials: Subcontractor's Initials: Subcontractor's Initials:

#### ATTACHMENT 4 Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinefter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAR ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the Iswful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, ilens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of June , 2023 (the "Effective Date").

JOHNSON	CONTROLS, INC.
By: Name:	Lower Okamoto
Its By:	
Name: Its	
	Caller

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby elso grants, bargains, sells, trensfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By: Scott K. Teruya
Ita Director of Finance

By: Name: Scott K. Teruya
Ita Director of Finance

County

APPROVED AS TO FORM AND LEGALITY

By: Manual Scott K. Teruya

County

APPROVED AS TO FORM AND LEGALITY

By: Manual Scott K. Teruya

County

APPROVED AS TO FORM AND LEGALITY

By: Manual Scott K. Teruya

County

County Of Maui

#### EXHIBIT A

#### DESCRIPTION OF EQUIPMENT

See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

## ATTACHMENT 7 Other Required Items

#### CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO: BANK OF HAWAII EQUIPMENT FINANCE

P.O. BOX 2900

HONOLULU, HAWAII 96846

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lease Agreement No. <u>1474</u> dated <u>September 30, 2022</u>, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit <u>5461</u> to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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.

Dated: June 30 20

COUNTY O	FMAUI	0	
ву	on 4	Tux	7
Name:	Scott K. Te Director of	Pinange	
Ву			
Name:			
APPROVED	AS TO FOR	M AND LEG	ALITY
by Jan	tiros	RIA	100
Deputy (	Corporation of Maui	Counsel	10190

## AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

## <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui
Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc.
Vendor's address is: 2065 Main St., Suite 101
Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. <u>1474</u>, dated <u>September 30, 2022</u> and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	ding Date Monthly Installment of Amount of		Amount of Interest	Cumulative Total of
	the Advance for	Paid to Vendor	Paid to Lessor	the Advance
	Disbursement			
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88
30-June-2023	\$608,007.03	\$576,064.66	\$31,942.37	\$20,937,501.91
28-July-2023	\$605,778.70	\$576,064.66	\$29,714.04	\$21,543,280.62

The Advance shall mean: \$21,543,280.62

The monthly installment of the Advance to be disbursed on  $\underline{\text{July } 28, 2023}$  in the amount of  $\underline{\$605,778.70}$  shall be paid as follows:  $\underline{\$576,064.66}$  to Vendor, and  $\underline{\$29,714.04}$  to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

	person(s) signin behalf of Lesses.	g below hereby repress	ant and warrant to Lessor that they are duly authorized to request the
Dated:	July 28	20_23	
Attachments:  1. Required P 2. Lien Waive 3. Invoices 4. Conditiona 5. Updated B 6. Reviews an	ermits and Approx rs Bill of Sale udget <i>lif requeste</i>	vals d by Lessor) equested by Lessor)	By Name: Scott K. Teruya Its: Director of Finance  By Name: Its:  APPROVED AS TO FORM AND LEGALITY  By: MARKET AND LEGALITY
			Deputy Corporation Counsel County of Maui

#### Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 07/20/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 28th of July, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Contractor:	Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Project: Maui County ESPC Phase1  Bill to: Bank of Hawaii  111 S. King St.  Honolulu, HI 96813  Type: Lump Sum	Ī	APPLICATION No.: 1 PERIOD TO: 07/2 City Contract No.C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	1 8/23	Distribution:  X JCl X Bank of Hawaii
				Accounting History and Sum	mary To Da	
			104.003400000000000000000000000000000000	AL CONTRACT SUM Orders Received to Date	(c)	\$ 18,803,233.00 \$ -
	Change Order Summary					
(a)	Total Change Orders received previous months	: \$0	A STATE OF THE PARTY OF THE PAR	RACT SUM TO DATE	(1+2)	\$ 18,803,233.00
(b)	Total Change Orders approved this month		The second second	COMPLETED & STORED TO DATE 74.00% Complete		\$ 11,314,392.42
(c)	Change Orders received to date (a+b):	\$0	5. RETAIN	JAGE :		\$ -
			6. TOTAL	EARNED LESS RETAINAGE	(4-5)	\$ 21,314,392.42
			7. LESS PR	REVIOUS PAYMENTS		\$ 20,738,327.76
			8. CURRE	ENT PAYMENT DUE	(6-7)	\$ 576,064.66
			9. BALAN	CE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 7,488,840.58
	FINAL APPLICATION FOR PAYMENT					

#### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

576,064.66

Ву:

le. The AMOUNT CERTIFIED is payable only to the

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

Contract No. 2PYS0014 Project Name: Maui County ESPC Phase 1			PAYMENT APPLICATION SCHEDULE OF VALUES				SOV No : 11 Period To : July 28, 2023 Date Submitted : July 23, 2023				
A	В	C	D	E	F	G	н	1	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,646,60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	\$ -	\$0
2	Nov-22	\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96	TOTAL PORT OF THE PART OF THE	0%	\$ 3,456,387.96	100%	s -	\$(
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	\$ -	SC
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	\$ -	SC
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	\$ -	SC
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	\$ -	SC
7	Apr-23	\$2,304,258.64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	\$ -	SC
8	May-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s -	SC
9	June-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s -	\$0
10	July-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	\$ -	SC
11	Aug-23	\$576,064.66	\$0	100%	\$ 576,064.66	-11	0%	\$ 576,064.66	100%	s -	\$C
12	Sept-23	\$576,064.66	\$0	0%	\$ -		0%	S -	0%	\$ 576,064.66	SC
13	Oct-23	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064,66	SC
14	Nov-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$(
15	Dec-23	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	SC
16	Jan-24	\$576,064.66	\$0	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	SC
17	Feb-24	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$0
18	Mar-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	\$0
19	April-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S
20	May-24	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	SC
21	June-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	\$0
22	July-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	\$0
23	Aug-24	\$576,064.66	\$0	0%	\$ -		0%	s -	0%	\$ 576,064.66	\$0
24	Sept-24	\$576,064.66		0%	s -	Managara Maria	0%	s -	0%	\$ 576,064.66	\$0
		\$0.00	\$0	0%							\$0
	TOTALS	\$28,803,233.00	\$20,738,328	74.00%	\$ 21,314,392.42	\$0	0.00%	\$ 21,314,392.42	74,00%	\$ 7,488,840.58	\$0

Johnson Controls, Inc. | Subcontractor's Initials: | Subcontractor's Initials: |

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") closs hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this \_\_28th\_ day of \_\_\_\_\_\_, 2023\_ (the "Effective Date").

> JOHNSON CONTROLS, INC. Name: Its Name: Its Seller

To the extent the County of Maui ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

Name:

Scott K. Teruya **Director of Finance** Its

Name. lts

County

O FORM AND

Deputy Corporation Course

County of Maui

#### EXHIBIT A

#### **DESCRIPTION OF EQUIPMENT**

See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

## Attachment 7 Other Required Items

#### CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lease Agreement No. 1474 dated September 30, 2022, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit 5461 to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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.

Dated: July 28 20 23

- X	4		5
Name: Scott	K. Teruya tor of Fina	ance	
Ву			
Name:			
APPROVED AS TO	EORM AN	DIEGALITY	
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By: 7 24 /4	well	pell	4
PRICE	ZESA (	Zarth	W
Deputy Corpor	ation Coun	sel O"	-
	i		

## AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

## <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui
Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor's hall mean:
Vendor's address is:

Johnson Controls, Inc.
2065 Main St., Suite 101
Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. <u>1474</u>, dated <u>September 30, 2022</u> and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for Disbursement	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88
30-June-2023	\$608,007.03	\$576,064.66	\$31,942.37	\$20,937,501.91
28-July-2023	\$605,778.70	\$576,064.66	\$29,714.04	\$21,543,280.62
30-Aug-2023	\$612,098.01	\$576,064.66	\$36,033.35	\$22,155,378.63

The Advance shall mean: \$22,155,378.63

The monthly installment of the Advance to be disbursed on <u>August 30, 2023</u> in the amount of \$612,098.01 shall be paid as follows: \$576,064.66 to Vendor, and \$36,033.35 to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

2023 August 30 Dated:

#### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers 3. Involces
- 4. Conditional Bill of Sale
- 5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (if requested by Lessor)
  7. Other Required Items (if requested by Lessor)

#### COUNTY OF MAUI

Name: Director of Finance Its:

Ву Name: Its:

APPROVED AS TO FORM AND LEGALITY

**Deputy Corporation Counsel** 

County of Maui

#### Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 08/11/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of August, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	Contractor: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  Customer: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Bill to	county ESPC Phase1  Bank of Hawaii  111 S. King St.  Honolulu, HI 96813  Sum		APPLICATION No.: 1 PERIOD TO: 08/3 City Contract No. C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	2	Distribution:  X JCI X Bank of Hawaii		
				1 OPIGIN	Accounting History and Sun	nmary To Date	y To Date \$ 28,803,233.00		
				Control Control Control	Orders Received to Date	(c)	\$ -		
	Change Order Summary			3. CONTRACT SUM TO DATE		(1+2)	\$ 18,803,233.00		
(a)	Total Change Orders received previous months:		\$0			******			
(b)	Total Change Orders approved this m	onth:	\$0	4. TOTAL COMPLETED & STORED TO DATE 76.00% Complete		\$ 21,890,457.08			
(c)	Change Orders received to date (a + b	\$0	5. RETAIN	AGE:		s -			
				6. TOTAL 1	EARNED LESS RETAINAGE	(4-5)	\$ 21,890,457.08		
				7. LESS PR	EVIOUS PAYMENTS		\$ 21,314,392.42		
				8. CURRE	NT PAYMENT DUE	(6-7)	\$ 576,064.66		
				9. BALANO	CE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 6,912,775.92		
	FINAL APPLICATION FOR PAYMEN	T.							

#### CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

576,064.66

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

**ATTACHMENT 3** 

Contract No. 2PYS0014 Project Name: Maui County ESPC Phase 1			PAYMENT APPLICATION SCHEDULE OF VALUES						SOV No: 12 Period To: August 30, 2021 Date Submitted: August 11, 2021		
Α	В	C	D	E	F	G	H	1	J	K.	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,646.60	100%	S .	\$
2	Nov-22	\$3,456,387.96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,387.96	100%	s -	\$
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	S +	S
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	s .	\$1
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,161.65	100%	\$ .	\$1
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	s .	\$0
7	Apr-23	\$2,304,258.64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,258.64	100%	\$ ,	\$
8	May-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	S .	\$(
9	June-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	\$	\$0
10	July-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s .	\$(
11	Aug-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s ,	S
12	Sept-23	\$576,064.66	\$0	100%	\$ 576,064.66		0%	\$ 576,064.66	100%	s .	\$(
13	Oct-23	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.66	S
14	Nov-23	\$576,064.66	\$0.	0%	\$ -		0%	\$ -	0%	\$ 576,064.66	\$0
15	Dec-23	\$576,064.66	\$0	0%	s -		0%	\$ -	0%	\$ 576,06466	SC
16	Jan-24	\$576,064.66	20	0%	s -		0%	s -	0%	\$ 576,06466	\$1
17	Feb-24	\$576,064.66	\$0	0%	\$ -		0%	\$ .	0%	\$ 576,064.66	St
18	Mar-24	\$576,064.66	50	0%	s -		0%	s -	0%	\$ 576,064.66	SC
19	April-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.56	S
20	May-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064.56	\$0
21	June-24	\$576,064.66	\$0	.0%	S -		0%	S -	0%	\$ 576,06456	S
22	July-24	\$576,064.66	50	0%	s -		0%	s -	0%	\$ 576,06456	\$0
23	Aug-24	\$576,064.66	\$0	0%	s -		0%	s -	0%	\$ 576,064,56	S
24	Sept-24	\$576,064.66	so	0%	s -		0%	s -	0%	\$ 576,064.56	\$(
		\$0.00	\$0	0%							SC
	TOTALS	\$28,803,233.00	\$21,314,392	76.00%	\$ 21,890,457.08	\$0	0.00%	\$ 21,890,457.08	76.00%	\$ 6,912,775.92	\$0

Johnson Controls, Inc., Initials: Subcontractor's Initials: page 1 of 1

## ATTACHMENT 4 Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of August , 2023 (the "Effective Date").

By: Row Young LEAN

By: Name: Row Young To LEAN

By: Name: Its

Seller

To the extent the County of Maui ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bergains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By: Scott K. Teruya Director of Finance

By: Name: Its

County

By: Transfer Tolff By Opport Corporation Counsel

County of Maui

#### **EXHIBIT A**

#### **DESCRIPTION OF EQUIPMENT**

See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

#### ATTACHMENT 7 Other Required Items

#### CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO:

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

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lease Agreement No. <u>1474</u> dated <u>September 30, 2022</u>, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit <u>5461</u> to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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.

Dated: August 30 2023

COU	NTY OF	HAU	- 0		
By Na its	sme:	Scott K. ector of	Teruya Financ	0	
	eme: _				
APPR	IOVED A	STO FO	RM AND	LEGALIT	v >>
	eputy County of	STI OH orporatio Maui	n Couns	Partition of	dyo

## AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

## <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor's hall mean:
Vendor's address is:

Johnson Controls, Inc.
2065 Main St., Suite 101
Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. 1474, dated September 30, 2022 and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used

herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
	Disbursement		10 20000.	uio Advanoc
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88
30-June-2023	\$608,007.03	\$576,064.66	\$31,942.37	\$20,937,501.91
28-July-2023	\$605,778.70	\$576,064.66	\$29,714.04	\$21,543,280.62
30-Aug-2023	\$612,098.01	\$576,064.66	\$36,033.35	\$22,155,378.63
29-Sep-2023	\$609,752.98	\$576,064.66	\$33,688.32	\$22,765,131.60

The Advance shall mean: \$22,765,131.60

The monthly installment of the Advance to be disbursed on <u>September 29, 2023</u> in the amount of <u>\$609,752.98</u> shall be paid as follows: \$576,064.66 to Vendor, and \$33,688.32 to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessos.

September 29 Dated:

#### Attechments:

- 1. Required Permits and Approvals
- 2. Lien Walvers
- 3. Involces
- 4. Conditional Bill of Sala
- 5. Updated Budget (If requested by Lessor)
- 6. Reviews and Inspections (If requested by Lessor)
  7. Other Required Items (If requested by Lessor)

## **COUNTY OF MAU!**

Scott K. Teruya Name: Director of Finance its:

By Name: Ita:

APPROVED AS TO FORM AND LEGALITY

County of Maui

## Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 09/18/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 29th of Sept. 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

onstruction Manager

## ATTACHMENT 3 Invoices

#### FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

Customer:	Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	Project:	Maui County ESPC Phase1  Bill to: Bank of Hawaii 111 S. King St. Honolulu, HI 96813  Lump Sum		APPLICATION No.: PERIOD TO: City Contract No.C7619 Contractor's Contract No: 2PYS0014  Contract Date: 5/6/2022	13	X J	ibution: CI Sank of Hawaii
					Accounting History and	Summary To Dat		20 802 222 00
				Delicarion	AL CONTRACT SUM Orders Received to Date	(c)	5	28,803,233.00 \$ -
	Change Order Summary			2 CONTR	ACCOUNT OF A THE	(1.72)	-	20 002 222 00
(a)	Total Change Orders received previous months:		\$0	3. CONTR	ACT SUM TO DATE	(1+2)	13	28,803,233.00
(b)	Total Change Orders approved this month:		\$0	4. TOTAL	COMPLETED & STORED TO DATE 78.00% Complete		S	22,466,521.74
(c)	Change Orders received to date (a+b):		\$0	5. RETAIN	AGE:		3	s -
				6. TOTAL	EARNED LESS RETAINAGE	(4-5)	s	22,466,521.74
				7. LESS PR	LEVIOUS PAYMENTS		S	21,890,457.08
				8. CURRE	NT PAYMENT DUE	(6-7)	s	576,064.66
				9. BALANO	CE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$	6,336,711.26
	FINAL APPLICATION FOR PAYMENT:							

## CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ 576,064.66

By: Date: 9/18/2023

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

	ontract No. 2PYS0014 oject Name: Maui County ESPC Phase 1		PAYMENT APPLICATION SCHEDULE OF VALUES						SOV No: 13 Period To: September 29, 2023 Date Submitted: September 18, 2023			
A	В	C	D	E	F	G	H	I	J	K	L	
							% of SCHEDULED	TOTAL	TOTAL		Retention	
				%	VALUE of	MATERIALS	VALUE	COMPLETED	% COMPLETED	BALANCE	0.00%	
	DESCRIPTION OF WORK		FROM	WORK	WORK	CURRENTLY	CURRENTLY	and	and	TO	of Total Completed	
		SCHEDULED	PREVIOUS	COMPLETED	COMPLETED	STORED	STORED	STORED	STORED	COMPLETE	and Stored To Date (Column J)	
1 00	xt-22	VALUE \$5,760,646.60	APPLICATIONS \$5,760,646.60	TO DATE 100.00% \$	TO DATE 5,760,646.60	(Not In F)	(G/F)	TO DATE 5,760,646.60	TO DATE 100%	(C-I)	(Column J) \$0	
	x-22 w-22	\$3,456,387.96	\$3,456,387.96	100.00% \$			0% \$			s -	\$0	
	W-22 xx-22	\$3,456,387.96	\$3,456,387.96	100% S			0% 3				\$0	
	n-23	\$2,304,258.64	\$2,304,258.64	100% S			0% 3		100%	s -	\$0	
	h-23 b-23	\$1,440,161.65	\$1,440,161.65	100% S			0% \$		100%	s -	\$0 \$0	
	o-23	\$1,440,161.63	\$2,304,258,64	100% S			0% 3		100%	s -	\$0	
-	or-23	\$2,304,258.64	\$2,304,259	100% S			0% 3		100%			
, ,	ay-23	\$2,304,238.64	\$2,304,239 \$576,065	100% \$			0% \$		100%	S -	\$0 \$0	
	ne-23	\$576,064.66	\$576,065	100% \$			0% \$		100%		\$0 \$0	
	ly-23	\$576,064.66	\$576,065 \$576,065	100% \$			0% 5	576,064.66	100%		\$0	
	19-23 19-23	\$576,064.66	\$576,065	100% \$			0% 3	576,064.66	100%	•	\$0	
	-	\$576,064.66	\$576,065 \$576,065	100% \$			0% 3		100%		\$0	
	pt-23 xt-23	\$576,064.66	\$5/6,065	100% \$			0% 5	576,064.66	100%	S -	\$0	
13 Oc 14 No			\$0 \$0							Ψ		
14 No		\$576,064.66	\$0 \$0	0% \$			0% 5	-	0%	\$ 576,064.66	\$0 \$0	
	n-24	\$576,064.66		0% \$			0% 5	-	0%	\$ 576,064.66	\$0	
10	h-24	\$576,064.66	\$0	0% \$			0% 5	-	0%	\$ 576,064.66	\$0	
	b-24 ar-24	\$576,064.66	\$0	0% \$			0% 5	-	0,0		\$0	
		\$576,064.66	\$0	0% \$			0% 5	-	0%	\$ 576,064.66	\$0	
	oril-24	\$576,064.66	\$0 \$0	0% \$			0% 5	-	0%	\$ 576,064.66	\$0 \$0 \$0	
20 Ma	ay-24	\$576,064.66	\$0 \$0				0% \$	-	0%	\$ 576,064.66	\$0	
		\$576,064.66	\$0 \$0	V/V 4			0% 5	-	0%	\$ 576,064.66	\$0	
	ly-24	\$576,064.66					0% 5	-	0%	\$ 576,064.66	\$0	
	1g-24	\$576,064.66	\$0	0% \$	-		0% 5	-	0%	\$ 576,064.66	\$0 \$0	
24 Se <sub>1</sub>	pt-24	\$576,064.66	\$0	070 \$	-		0% \$	-	0%	\$ 576,064.66		
		\$0.00	\$0	0%							\$0	
	TOTALS	\$28,803,233.00	\$21,890,457	78.00% \$	22,466,521.74	\$0	0.00%	\$ 22,466,521.74	78.00%	\$ 6,336,711.26	\$0	

Johnson Controls Inc. - Confidential Johnson Controls, Inc. Initials: Subcontractor's Initials: page 1 of 1

# ATTACHMENT 4 Conditional Bill of Sale

#### CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHESON CONTROLS, INC. ("Selier") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Selier's right, title to and interest in the equipment as shown in Exhibit A ettached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, liene and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 29th day of September 2023 (the "Effective Date").

JOHNSON	CONTROLS, I	vc.
Name:	Lowen	Okemote
By:		
ita		Saller

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Dete.

By:
Name: Scott K. Teruya
Its Director of Finance

By:
Name:
Its

County

APPROVED AS TO FORM AND LEGALITY

By:
Deputy Corporation Counsel

County of Maul

## **EXHIBIT A**

## DESCRIPTION OF EQUIPMENT

See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

# Attachment 7 Other Required Items

## CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lesse Agreement No. 1474 dated September 30, 2022, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit 5461 to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain Investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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.

Dated: September 29 20 23

COUNTY	bas	Rus	
By	Scot K. Te	eruya )	
its:	Director	of Finance	
By			
Name: Its:			
APPROVE	AS TO FOI	RM AND LE	GALITY
N	1	1.h	100
8y: 1	9 1419	W X	uggs
Deputy	Corporation	n Counsel	0

## AMENDED AND RESTATED ADVANCE FUNDING AUTHORIZATION

## <u>Upon execution, this Amended and Restated Advance Funding Authorization</u> supersedes and replaces in entirety all previously executed Advance Funding Authorizations.

TO: BANK OF HAWAII
EQUIPMENT FINANCE
P.O. BOX 2900
HONOLULU, HAWAII 96846

The following terms when used herein shall have the following meanings:

Lessor shall mean: Bank of Hawaii, Equipment Finance

Lessor's address is: P.O. Box 2900

Honolulu, Hawaii 96846

Lessee shall mean: County of Maui
Lessee's mailing address is: 200 South High Street

Wailuku, Maui 96793

Vendor shall mean: Johnson Controls, Inc.
Vendor's address is: 2065 Main St., Suite 101
Wailuku, HI 96793

Equipment Lease Agreement shall mean that certain Equipment Lease Agreement No. <u>1474</u>, dated <u>September 30, 2022</u> and made by and between Lessor and Lessee for the lease of the Equipment. Unless otherwise defined herein, all terms used herein have the same meanings and definitions as set forth in the Equipment Lease Agreement.

Funding Date	Monthly Installment of the Advance for	Amount of Principal Paid to Vendor	Amount of Interest Paid to Lessor	Cumulative Total of the Advance
	Disbursement			
30-Sep-2022	\$5,760,646.60	\$5,760,646.60	\$0.00	\$5,760,646.60
04-Nov-2022	\$3,466,609.41	\$3,456,387.96	\$10,221.45	\$9,227,256.01
30-Nov-2022	\$2,316,418.39	\$2,304,258.64	\$12,159.75	\$11,543,674.40
30-Dec-2022	\$1,457,714.36	\$1,440,161.65	\$17,552.71	\$13,001,388.76
30-Jan-2023	\$1,460,589.86	\$1,440,161.65	\$20,428.21	\$14,461,978.62
28-Feb-2023	\$2,325,515.77	\$2,304,258.64	\$21,257.13	\$16,787,494.39
30-Mar-2023	\$2,329,784.83	\$2,304,258.64	\$25,526.19	\$19,117,279.22
28-April-2023	\$604,164.44	\$576,064.66	\$28,099.78	\$19,721,443.66
30-May-2023	\$608,051.22	\$576,064.66	\$31,986.56	\$20,329,494.88
30-June-2023	\$608,007.03	\$576,064.66	\$31,942.37	\$20,937,501.91
28-July-2023	\$605,778.70	\$576,064.66	\$29,714.04	\$21,543,280.62
30-Aug-2023	\$612,098.01	\$576,064.66	\$36,033.35	\$22,155,378.63
29-Sep-2023	\$609,752.98	\$576,064.66	\$33,688.32	\$22,765,131.60
30-Oct-2023	\$611,833.98	\$576,064.66	\$35,769.32	\$23,376,965.59

The Advance shall mean: \$23,376,965.59

The monthly installment of the Advance to be disbursed on  $\underline{October\ 30,\ 2023}$  in the amount of  $\underline{\$611,833.98}$  shall be paid as follows:  $\underline{\$576,064.66}$  to Vendor, and  $\underline{\$35,769.32}$  to Lessor.

Disbursements of monthly installments of the Advance are limited to one disbursement per month, and each installment must be \$100,000.00 or more. Installments must be in accordance with the formal project budget approved in writing by Lessor.

Equipment shall mean: Energy conservation measures, as more particularly described in that certain

Investment Grade Audit dated September 21, 2022 for the project ("IGA").

Equipment location address is: Various (as shown in the IGA)

Lessee hereby requests that Lessor disburse funds in the amount of the <u>monthly installment</u> of the Advance above. Accordingly, the Advance now equals the sum of: (i) all amounts actually paid to Vendor under the Equipment Lease Agreement, plus the amount to be paid to Vendor pursuant to this Authorization, for the purchase of the Equipment pursuant to Vendor's Invoice(s) (as defined below) attached hereto; and (ii) all amounts actually paid to Lessor for interest accrued, plus the amount to be paid to Lessor pursuant to this Authorization for interest accrued for the current monthly period. The amount to be disbursed concurrently herewith is the monthly installment amount indicated above for the applicable funding date.

LESSEE ACKNOWLEDGES THAT THE ADVANCE AMOUNT IS <u>CUMULATIVE</u> OF ALL SUMS PREVIOUSLY DISBURSED UNDER THE EQUIPMENT LEASE AGREEMENT, PLUS THE AMOUNT REQUESTED TO BE DISBURSED FOR THIS MONTH. UPON COMPLETION OF THE CONSTRUCTION PERIOD, LESSEE ACKNOWLEDGES THERE SHALL BE <u>ONE</u> AGGREGATE OUTSTANDING ADVANCE, WHICH REPRESENTS THE SUM OF ALL DISBURSEMENTS MADE OVER THE CONSTRUCTION PERIOD.

Attached hereto are true, correct and complete copies of the following supporting documents for the Advance:

- (1) All government approvals, entitlements and permits required for the construction work to be paid by the Advance (collectively, the "Required Permits and Contracts");
- (2) All lien waivers from contractor(s) providing goods and/or services to be paid by the Advance (collectively, the "Lien Waivers");
- (3) All invoices for goods and/or services to be paid by the Advance (collectively, the "Invoices");
- (4) Conditional Bill of Sale, executed by JCI, with quitclaim joinder by Lessee, covering the equipment to be purchased by the Advance, and conveying to Lessor all right, title and interest in and to such equipment (the "Conditional Bill of Sale");
- (5) If requested by Lessor, the current project budget (the "Updated Budget");
- (6) If requested by Lessor, such third party reviews and inspections may be required by Lessor (collectively, the "Reviews and Inspections"); and
- (7) Any other documents or information reasonably requested by Lessor (collectively, the "Other Required Items").

Lessee hereby certifies the following: (i) all invoices to be paid by the monthly installment hereunder shall be paid no later than the date of the next advance request; (ii) the amount of monthly installments shall be paid are in accordance with the formal budget approved in writing by Lessor; (iii) 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; (iv) all representations and warranties of Lessee in the Equipment Lease Agreement are true and correct in all material respects as of the time of this Authorization; and (v) Lessee has otherwise performed and complied with all agreements and conditions contained in the Equipment Lease Agreement, the Advance Funding Addendum attached thereto, and all other Transaction Documents.

Lessee understands and agrees that the disbursements hereunder are being made pursuant to the terms and provisions of the Equipment Lease Agreement and the Advance Funding Addendum attached thereto, both of which are incorporated herein.

Lessee understands and agrees that any monthly installments hereunder funded by Lessor from time to time shall be subject to Lessee's payment of rent and other expenses of the Lessor as more specifically described in the Advance Funding Addendum to the Equipment Lease Agreement.

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. Lessee also acknowledges that this Advance is being made at the request of Lessee, and that Lessor has merely agreed to purchase the Equipment pursuant to the Purchase Agreement, and to lease the Equipment to Lessee pursuant to the Equipment Lease Agreement. Lessee further 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.

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, 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.

[The remainder of this page is intentionally left blank; signature page follows.]

The person(s) signing below hereby represent and warrant to Lessor that they are duly authorized to request the Advance on behalf of Lessee.

20 23 October 30 Dated:

### Attachments:

- 1. Required Permits and Approvals
- 2. Lien Waivers
- 3. Invoices
- 4. Conditional Bill of Sala
  5. Updated Budget (if requested by Lessor)
- 6. Reviews and Inspections (if requested by Lessor)
- 7. Other Required Items (if requested by Lessor)

## **COUNTY OF MAUI**

Scott K. Te Finance Dir Name Its:

By\_ Name: Its:

APPROVED AS TO FORM AND LEGALITY

Deputy Corport

County of Maui

## Required Permits and Approvals

Lien Waivers

# CONDITIONAL PARTIAL WAIVER OF LIEN - MATERIALS OR LABOR

JCI CONTRACT #2PYS0014

State of Hawaii

County of Maui

Date: 10/15/2023

To all whom it may concern:

Whereas we the undersigned, Johnson Controls, Inc., 2065 Main St, STE 101, Wailuku, HI 96793, have been employed by: County of Maui to furnish Equipment for the property known as: See IGA Exhibit Site List contained in Contract No. C7619 between the County of Maui and Johnson Controls, Inc.

We, the undersigned, for and in consideration and upon receipt of the sum of: \$576,064.66 and other good and valuable considerations, do hereby waive and release any and all lien claim or right to lien of said above described building, property and/or contract funds under the statutes of the State of Hawaii relating to Mechanic's liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the said company for said building and premises.

However, it is expressly stipulated that this partial waiver applies only to work done or materials, plans, or specifications furnished on or before 30th of Oct, 2023, not including retention or change orders billed prior to or after said date. The right to assert construction and/or mechanic's lien rights for work done or materials furnished after said date on said job is hereby expressly reserved. This waiver does not include any previously submitted yet unpaid invoices.

State of Hawaii County of Maui

Johnson Controls, Inc.

# ATTACHMENT 3 Invoices

## FORM A: CONTRACTOR'S APPLICATION and CERTIFICATE for PAYMENT

	Contractor: Johnson Controls, Inc. 2065 Main Street, Suite 101 Wailuku, HI 96793  Customer: County of Maui Attn: Finance & Gerald Dameron 200 High St. 9th Floor Wailuku, HI 96793	В	faui County ESPC Phase1  ill to: Bank of Hawaii  111 S. King St.  Honolulu, HI 96813  ump Sum	APPLICATION No.: PERIOD TO: City Contract No.C7619 Contractor's Contract No: 2PYS001	14 10/30/23	Distribution:  X JCI X Baak of Hawaii
				Accounting History and	Summary To Dat	e
				ORIGINAL CONTRACT SUM     Change Orders Received to Date	(c)	\$ 28,803,233.00
	Change Order Sum	mary				
(a)	Total Change Orders received previous n	nonths:	\$0	3. CONTRACT SUM TO DATE	(1+2)	\$ 18,803,233.00
(b)	Total Change Orders approved this		\$0	4. TOTAL COMPLETED & STORED TO DATE 80.00% Complete		\$ 23,042,586.40
(c)	Change Orders received to date ( a +	b):	\$0	5. RETAINAGE :		\$
				6. TOTAL EARNED LESS RETAINAGE	(4-5)	\$ 13,042,586.40
				7. LESS PREVIOUS PAYMENTS		\$ 22,466,521.74
			33	8. CURRENT PAYMENT DUE	(6-7)	\$ 576,064.66
				9. BALANCE TO FINISH (NOT INCLUDING RETAINAGE)	(3-4)	\$ 5,760,646.60

## CONTRACTOR'S CERTIFICATE for PAYMENT"

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, Johnson Controls Inc. certifies to the Owner that to the best of the Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Subcontractor is entitled to payment of the Amount Certified.

Amount Certified: \$ \$

576,064.66

RICY

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Subcontractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner, Contractor or the Subcontractor under this Contract.

		PYS0014 nty ESPC Phase 1	PAYMENT APPLICATION SCHEDULE OF VALUES  SOV No: 14 Period To: October 30, 2 Date Submitted: October 15, 2						October 30, 2023		
A	В	C	D	E	F	G	Н	1	J	K	L
	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATIONS	% WORK COMPLETED TO DATE	VALUE of WORK COMPLETED TO DATE	MATERIALS CURRENTLY STORED (Not In F)	% of SCHEDULED VALUE CURRENTLY STORED (G/F)	TOTAL COMPLETED and STORED TO DATE	TOTAL % COMPLETED and STORED TO DATE	BALANCE TO COMPLETE (C-I)	Retention 0.00% of Total Completed and Stored To Date (Column J)
1	Oct-22	\$5,760,646.60	\$5,760,646.60	100.00%	\$ 5,760,646.60		0%	\$ 5,760,64650	100%	s -	SC
2	Nov-22	\$3,456,387,96	\$3,456,387.96	100%	\$ 3,456,387.96		0%	\$ 3,456,38796	100%	s -	SC
3	Dec-22	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,25854	100%	s -	SC
4	Jan-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,16155	100%	s -	\$0
5	Feb-23	\$1,440,161.65	\$1,440,161.65	100%	\$ 1,440,161.65		0%	\$ 1,440,16155	100%	s .	SC
6	Mar-23	\$2,304,258.64	\$2,304,258.64	100%	\$ 2,304,258.64		0%	\$ 2,304,25854	100%	s .	\$0
7	Apr-23	\$2,304,258.64	\$2,304,259	100%	\$ 2,304,258.64		0%	\$ 2,304,25854	100%	\$ .	SC
8	May-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	\$ 576,06456	100%	s .	\$0
9	June-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	576,06456	100%	s .	\$0
10	July-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	576,06456	100%	s -	\$0
11	Aug-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	576,06456	100%	s -	\$0
12	Sept-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	576,06456	100%	s -	\$0
13	Oct-23	\$576,064.66	\$576,065	100%	\$ 576,064.66		0%	576,06456	100%	s -	\$0
14	Nov-23	\$576,064.66	SO	100%	\$ 576,064.66		0%	576,06456	100%	s -	SO
15	Dec-23	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.66	SO
16	Jan-24	\$576,064.66	\$0	0%	\$ -		0%	\$ .	0%	576,064.66	\$0
17	Feb-24	\$576,064.66	S0	0%	\$ -		0%	\$ .	0%	576,064.65	\$0
18	Mar-24	\$576,064.66	\$0	0%	S -		0%	\$ -	0%	576,064.66	\$0
19	April-24	\$576,064.66	\$0	0%	s -		0%	\$ .	0%	576,064.65	SO
20	May-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.65	\$0
21	June-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.65	\$0
22	July-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.66	\$0
23	Aug-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.65	\$0
24	Sept-24	\$576,064.66	\$0	0%	s -		0%	s .	0%	576,064.66	\$0
		\$0,00	\$0	0%					1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		\$0
	TOTALS	\$28,803,233,00	\$22,466,522	80.00%	\$ 23,042,586.40	\$0	0.00%	3 23,042,58640	80.00%	5,760,646.00	\$0

Johnson Controls Inc. - Confidential Johnson Controls, Inc. Initials: Sobcontractor's Initials: Sobcontractor's Initials:

# ATTACHMENT 4 Conditional Bill of Sale

## CONDITIONAL BILL OF SALE

Effective upon receipt of payment for the Equipment (hereinafter defined), and for good and valuable consideration receipt of which is hereby acknowledged, JOHNSON CONTROLS, INC. ("Seller") does hereby grant bargain, sell, transfer and deliver unto BANK OF HAWAII ("Purchaser"), its successors and assigns, all of Seller's right, title to and interest in the equipment as shown in Exhibit A attached hereto and made a part hereof (the "Equipment").

TO HAVE AND TO HOLD the same unto Purchaser, its successors and assigns, forever.

Effective upon receipt of payment for the Equipment, Seller hereby warrants that it is the lawful owner of the Equipment described above and has good right to sell and convey the same; that title to such Equipment is free and clear of any and all claims, ilens and encumbrances of any nature; and that Seller will warrant and defend the same unto the Purchaser against the claims and demands of all persons.

IN WITNESS WHEREOF, Seller has caused this Conditional Bill of Sale to be executed by its duly authorized representative on this 30th day of October, 2023 (the "Effective Date").

JOHNSON CONTROLS, INC.
Name: Raw Young that II
By:
lts Seller

To the extent the County of Maul ("County") has any right, title to and interest in the Equipment, the County hereby also grants, bargains, sells, transfers and delivers unto Purchaser, its successors and assigns, all of the County's right, title to and interest in the Equipment, as of the Effective Date.

By:
Name:
Its

County

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maul

## **EXHIBIT A**

## **DESCRIPTION OF EQUIPMENT**

See Appendices 1 through 3, inclusive, to that certain investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Savings Performance Contracting project (the "IGA"), hereby incorporated by reference; such equipment being located at the Premises described in Appendices 5 and 6 to the IGA.

Updated Budget

Reviews and Inspections

# Attachment 7 Other Required Items

#### CONDITIONAL CERTIFICATE OF ACCEPTANCE

TO:

BANK OF HAWAII EQUIPMENT FINANCE P.O. BOX 2900 HONOLULU, HAWAII 95846

The undersigned hereby certifies that it has begun accepting the following equipment for purposes of commencing the Lessee's rental payment obligations under Equipment Lesse Agreement No. 1474 dated September 30, 2022, including without limitation the Advance Funding Addendum thereto, between the undersigned and BANK OF HAWAII, with respect to Exhibit 5461 to be executed upon final acceptance of the Equipment:

Quantity	Description of Equipment	Serial No.
	See Appendices 1 through 3, inclusive, to that certain investment Grade Audit dated September 21, 2022, prepared by Johnson Controls, Inc. for Lessee's Energy Sevings Performance Contracting project (the "IGA"), hereby incorporated by reference; such aquipment being located at the Premises described in Appendices 5 and 6 to the IGA.	

The execution of this Certificate will in no way relieve or lessen the responsibility of the manufacturer or vendor of the equipment for any warranties it has made with respect to the same.

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, 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, small 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.

Dated: October 30 23

1	COUNTY OF MAUI
	Andrews
1	By Cook P Towns
	Name Scott K. Teruya Its: Finance Divector
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1	APPROVED AS TO FORM AND LEGALITY
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	VINCTALA C. KACHELIAN
	Deputy Corporation Counsel
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